

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CR No.6320 of 2017

Date of Order: 17.01.2019

Kuljeet Singh Vohra

....Petitioner

Versus

Rachna Devi and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek Salathia, Advocate for the petitioner.

None for respondent No.1 despite being served.

AMIT RAWAL, J (ORAL)

As per office report, respondent No.1 has been served but no one caused appearance on her behalf whereas respondent Nos.2,3 & 4 are reported to be not met at the time of service and their family members refused to accept notice, however, affixation was made.

Present revision petition is directed against the impugned order dated 05.09.2017 vide which the learned Addl. District Judge, Hoshiarpur while allowing the miscellaneous appeal filed by the respondents permitted them to raise construction subject to the final decision of the Civil suit.

The plaintiff-petitioner instituted the suit claiming the following relief:

“Suit for permanent injunction for restraining the defendants from damaging, breaking, dismantling or causing any encroachment in any manner in the wall marked AD on the ground floor and marked EH on the first floor and shown red in the site plan of the house of

the plaintiff which is shown green, and marked ABCD & EFGH in the site plan and which is detailed a under:

East: House of Suman Kumar

West : House of Archna Devi

North: Street

South: Malawa Devi Trust

situated at Mohalla Katcha Toba, Hoshiarpur.”

It was averred that there was a common wall between the houses of the plaintiff and defendants were adamant to damage and dismantle the disputed wall. Old reliance on the site plan in this respect was also laid. Along with the suit, an application under Order 39 Rules 1 & 2 CPC was filed before adjudication, a technical report of the Local Commissioner was sought from one Government approved valuer on 11.2.2016 wherein it was prima facie noticed that intervening wall is 13-1/2 inch in thickness and has nitch's (Alla's) on both sides of the wall and roof of house of Kuljit Singh rests on the intervening wall.

Upon notice, defendants contested the case of plaintiff and filed written statement and reply to stay application stating that the plaintiff had no concern with their property.

The trial Court while disposing of the application vide order dated 17.6.2015 directed the parties to maintain status quo regarding the existing position of the disputed wall till 02.07.2015. The learned Appellate Court in appeal preferred by the defendants granted permission to the defendants to raise construction subject to the final decision of the case on merits with the observation that if the wall is held to be common then both the parties will have right over half of the width of the wall and if one of the parties is found to be owner of the wall then that party may claim price of the wall or take other appropriate action as per law against the other party.

Learned counsel for the petitioner submitted that the order passed by the lower Appellate Court is wholly erroneous and unsustainable, for, the Appellate Court while maintaining the order passed by the trial Court ought to have passed direction for expeditious disposal of the suit.

There is no representation on behalf of the respondent despite service. Accordingly, I proceed to decide the present revision petition.

Before proceeding any further, it would be apt to reproduce the contents of the Technical Report dated 11.2.2016 besides the operative part of both the impugned orders passed by the trial Court as well as the learned lower Appellate Court respectively, which reads as under:

Technical Report:

TECHNICAL REPORT DATED 11.2.2016

“In above noted case I was appointed as local commissioner, I visited the site in dispute on 18.01.16 after informing both the parties. Both parties were present at the time of inspection of site. I prepared the presence sheet and got the signature of both parties. I took the photograph of the both side of the intervening wall.

I inspected the intervening wall between the properties belongings to both the parties. The intervening wall is 13-1/2” in thickness made of standard size of bricks. Bricks are laid in mud motar. The property belonging to Sh. Kuljeet Singh is double story house, where the property belongings to Smt Rachna Devi is presently in shape of plot.

The intervening wall have nitch's (Alla's) on both side of walls. The details of the nitch's (Alla's) are shown the drawing attached having 9” depth each. The roof of the G.F & F.F of house of Sh. Kuljeet Singh rests on the intervening wall of both properties.

Keeping in view of above stated I am of the opinion that intervening wall between the both properties is a common wall.”

***OPERATIVE PART OF TRIAL COURT ORDER
DATED 19.5.2016***

“This Court is of considered opinion that since evidence is yet to be led by both sides and it is yet to be ascertained 'whether wall belongs to applicant-plaintiff or respondents-defendants. In order to avoid the multiplicity of litigation and keeping in view that prima facie case and balance convenience are in favour of applicant, respondents are restrained from damaging, breaking, dismantling or making any encroachment in any manner in the wall mentioned supra till decision of this case. Accordingly, application is allowed. However, nothing contained in this order shall be construed as an opinion on the merits of the main suit.”

***OPERATIVE PART OF LOWER APPELLATE
COURT ORDER DATED 05.09.2017***

“However, since there is dispute regarding ownership of wall, it will be appropriate and protect interest of both the parties, if the defendants are allowed to raise construction by considering the wall as common and taking care that no damage is to cause on the side of defendants. The construction will be subject to final decision of the case on merits i.e if the wall is held to be common then both the parties will have right over half of the width of the wall and if one of the parties is found to be owner of the wall then that party may claim price of the wall or take other appropriate action as per law against the other party. The appeal filed by appellants is accordingly, partially allowed. However, any observation made in this judgment will not have any bearing on the merits of the main suit. Memo of

costs be prepared. Trial court record along with copy of the judgment be sent back. Appeal file be consigned to the record room.”

After hearing learned counsel for the PETITIONER and perusing the paper book with his able assistance I am of the opinion that once it has been found to be common wall, the lower Appellate Court should not have granted permission to the defendants to raise construction as the first appellate Court should have endeavored to decide the injunction application only after contest. It should not have intended to prolong the litigation any longer and directed for expeditious disposal after affording reasonable opportunities to both the parties.

Resultantly, present revision petition is allowed and the impugned order dated 05.09.2017 is set aside. The trial Court is directed to decide the suit itself as expeditiously as possible preferably within a period of one year after affording four effective opportunities to both the parties to lead evidence.

January 17, 2019
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No