

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

CR no.241 of 2019

Date of Decision: 01.03.2019

Sarabjit Singh

...Petitioner

Vs.

Manju Bala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Atul Goyal, Advocate,
for the petitioner.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order of the learned appellate court, reversing the order of the trial court (Civil Judge, (Jr. Divn), Ludhiana), dated 21.01.2013, such order having been passed on applications filed under Order 39 Rules 1 and 2 of the CPC by both, the plaintiffs as also the present petitioner who is the defendant-counter-claimant in the suit.

The dispute is with regard to what is contended to be a *rasta*, and as per the learned trial court, is also shown in the revenue record as such.

The trial court in its order dated 21.01.2013 having held that the passage in question has been shown to be the private property of the present petitioner, i.e. the counter-claimant, with the respondents-plaintiffs having no right to use it, restrained them from interfering in the peaceful possession of the petitioner.

However, the petitioners' (counter-claimants') application seeking a mandatory interim injunction for removal of sand, stone and bricks stated to have been laid out over the *rasta*, was declined, with that matter itself to be eventually adjudicated upon in the suit itself. (The interim injunction with regard to restraint on the plaintiffs in interfering in the suit property obviously also being subject to the final decision of the suit).

The respondents-plaintiffs having filed an appeal against that order, the learned appellate court, vide the impugned order dated 13.03.2015, eventually directed that the parties would maintain *status quo* with regard to user, nature and possession of the *rasta* in dispute, as there was an apprehension in the mind of the counter claimant (present petitioner) that the plaintiffs would change the nature of the *rasta* and convert it to their personal use.

It was also observed thereafter that the *rasta* in dispute had been shown as a *kacha rasta* even by the local commissioner appointed by the court. It was therefore directed vide the impugned order, that sand, *bharat*, stone or concrete etc., or any other articles used to make it a *pucca rasta*, should not be put by either of the parties till the disposal of the suit.

Upon query to the learned counsel as to why, after almost 4 years of the aforesaid order having been passed, this revision has been filed challenging it, he submits that though the petitioner-counter claimants have no grievance with regard to the order directing maintenance of status quo, however in criminal proceedings instituted, the respondents-plaintiffs are misusing the order to say that a stay having been granted by the appellate court, that is being violated by the petitioner herein by trying to remove the

stones etc. laid out on the path.

Having considered the matter, I do not see as to why the impugned order needs to be interfered with by this Court, the allegation in the FIR (even as per the learned counsel for the petitioner) being that the petitioner is removing the sand, stones and concrete etc. already existing on the path.

Though undoubtedly the impugned order directs that the sand, stone etc. should not be laid to make the passage *pucca*, a perusal of the order of the learned trial court shows that, as already noticed the interim mandatory injunction that was refused to be granted, was that the material in the shape of *bharat* and sand be got removed as had been put by the plaintiff in the land of the counter claimant. Thus obviously, at that stage, the petitioner herein had admitted to the presence of the aforesaid material on the *rasta*/path.

That being so, naturally any *bharat*, sand/concrete etc. already existing on the path, is not to be removed by the present petitioner during the pendency of the suit.

Whether or not such sand etc. has been removed, as is stated to be alleged in the FIR, (as contended before this Court, the copy of FIR not being on record), would naturally be a matter to be gone into by the investigating officer.

With these aforesaid observations, this petition is disposed of.

01.03.2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : no