

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

109+201

CR No.4082 of 2018 (O&M)

Date of Decision: 10.04.2019

JAGBIR AND ANOTHER

...PETITIONER

Versus

YOGESH AND ANOTHER

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Balraj Singh Rathee, Advocate for the petitioner.

Mr. Gitish Bhardwaj, Advocate for respondent No.1.

Mr. Balkar Singh, Advocate for respondent No.2.

B.S.WALIA, J (Oral)

CM No.27431-CII of 2018

Allowed, as prayed for.

Reply on behalf of respondent No.2, is taken on record.

CR No.4082 of 2018

[1] Civil Revision Petition has been filed under Article 227 of the Constitution of India, challenging order Annexure P-6 dated 16.04.2018, passed by the learned Civil Judge (Junior Division), Sonapat, allowing the application filed by respondent No.1-plaintiff under Order 39 Rules 1 & 2 CPC. Prayer is also for setting aside Order Annexure P-8 dated 14.05.2018, passed by the learned Additional District Judge, Sonapat, dismissing Civil Miscellaneous Appeal, filed by the petitioner/defendant Nos.1 & 2 and

requiring petitioner/defendant Nos.1 & 2 to refill the pit in question during the pendency of the suit.

[2] Brief facts of the case, leading to the filing of the revision petition are that respondent No.1/plaintiff filed a civil suit for mandatory and permanent injunction along with an application under Order 39 Rules 1 & 2 CPC, alleging therein that there were three streets/*galis* in the Eastern, Western and Southern sides of his house, which were being used by the inhabitants of the area and all the streets/*galis* were *pucca*/cemented and had been got constructed by the Gram Panchayat. It was further averred that *gali* in the Eastern side of the house of respondent No.1/plaintiff was 8 feet wide and had been shown in letters A, B, C, D and was having house of petitioner/defendant Nos.1 & 2 across the said *gali* and that petitioner-defendant Nos.1 & 2 in collusion with the Gram Panchayat i.e. respondent No.2/defendant No.3 had dug up a pit in the street at point 'x' up to depth of 8/9 feet in front of the house of respondent No.1/plaintiff.

[3] Petitioner/defendant Nos.1 & 2 filed reply to the Civil Suit taking up the stand that the *gali* in question was a private one and respondent No.1/plaintiff had nothing to do with the same and the same had been left behind by the ancestors of petitioner/defendant Nos.1 & 2 for their own use and the same had been constructed by petitioner/defendant Nos.1 & 2 with their own resources and was closed at the end near the house of petitioner/defendant Nos.1 & 2. Besides the gate of respondent No.1/plaintiff was opening in the main *gali*. Petitioner-defendant Nos.1 & 2 in the revision petition in paragraph No.4 have taken up the stand that respondent No.2/defendant No.3, i.e. Gram Panchayat, also filed reply, rebutting the

allegations in the suit and taking up the stand that the gate of respondent No.1/plaintiff was opening in the main *gali* and not in the *gali* in question and the *gali* in question had been left by the petitioner/defendant Nos.1 & 2 privately and had been made *pucca* with their own money and respondent No.1/plaintiff had nothing to do with the same and that the Gram Panchayat had not made the *gali pucca*. It needs mention here that while in paragraph No.3 of the revision petition, it has been alleged that the *galli* in question had been left by their ancestors for their use and had been constructed by them from their own resources but in paragraph No.4, the words had been left behind by the ancestors have been omitted.

[4] The grievance of the petitioner/defendant Nos.1 & 2 that despite the stand of the Gram Panchayat, i.e. respondent No.2/defendant No.3, besides there being the report of the Local Commissioner clarifying that the *gali* in question was private *gali* and had been made *pucca* by the petitioner/defendant Nos.1 & 2 with their own money, as also that the gate of respondent No.1/plaintiff was opening in the main *gali*, while the *gali* in question was used exclusively by petitioner/defendant Nos.1 & 2 and was closed near the house of petitioner/defendant Nos.1 & 2, the learned trial Court passed order dated 16.04.2018, granting interim stay and directing that the pit in the *gali* be refilled by the petitioner/defendant Nos.1 & 2.

[5] Appeal filed by the petitioner was dismissed by the learned Additional District Judge, Sonapat vide order dated 14.05.2018.

[6] Revision petition has been filed *inter alia* on the ground that the Courts below failed to take into account that the *gali* in question had been left behind by the ancestors of petitioner/defendant Nos.1 & 2 for the use of

petitioner/defendant Nos.1 & 2 and that it was not a common *gali* and that the same had been made *pucca* by the petitioner/defendant Nos.1 & 2 with their own money and construction of a pit by them in the said *gali* was not causing hindrance in any way and that by directing the filling up of the pit in question in the *gali*, the Courts below had exceeded their jurisdiction by virtually deciding the main suit finally and further that the Courts below had ignored the fact that it was respondent No.1/plaintiff, who was to prove that the *gali* in question was a public street.

[7] At the time of motion hearing, main plea of the petitioner was that even the Gram Panchayat, i.e. respondent No.2/defendant No.3, had not supported the case of respondent No.1/plaintiff and had pleaded in the written statement that the *gali* in question was not a common *gali* owned or made *pucca* by the Gram Panchayat. Relevant extract of the order dated 22.06.2018, passed by this Court is reproduced as under:-

“It is contended that even Gram Panchayat has pleaded in its written statement the fact that the gali in question is not a common gali, owned or made pucca by the Gram Panchayat and that it is the petitioners only who had made this gali pucca.”

However, a perusal of the written statement filed by respondent No.2/defendant No.3 does not disclose the stand having been taken that the *gali* in question was not a common *gali*, owned by the Gram Panchayat although it is mentioned that it was the petitioner/defendant Nos.1 & 2, who had made the *gali pucca*. However, the main plea of the petitioner/defendant Nos.1 & 2 of the *gali* in question being a private *gali* having been left behind by their ancestors for the use of the petitioner/defendant Nos.1 & 2 falls flat

on the ground in view of the categorical assertion by counsel for respondent No.2/defendant No.3, i.e. Gram Panchayat, before the learned Additional District Judge, Sonapat during the course of arguments that the disputed street vested in the Gram Panchayat.

[8] Apart from the aforementioned position as noted in paragraph No.12 of the order of the learned Additional District Judge, Sonapat, it has also been noted that there is nothing on the record to substantiate the plea on behalf of petitioner/defendant Nos.1 & 2 that the street in question was part of their property and that in the circumstances, it was *prima facie* established that the disputed street was a public street and since there was no dispute with regard to the fact that the house of respondent No.1/plaintiff was situated across the street in question, therefore, respondent No.1/plaintiff had a right to use and enjoy the street. The learned Additional District Judge also took note of the fact that undisputedly petitioner-defendant Nos.1 & 2 had constructed safety tank in the street and the same was obviously creating hindrance in the rights of not only the respondent-plaintiff but also other inhabitants in using the street and in the aforementioned background held that *prima facie* case was made in favour of respondent No.1/plaintiff, besides balance of convenience was also in favour of respondent No.1/plaintiff, as respondent No.1/plaintiff and all other villagers would be deprived of their valuable right to use the street if the petitioner/defendant Nos.1 & 2 succeeded in raising construction over the street and were allowed to use the safety tank.

[9] It was further held that in the circumstances, respondent/plaintiff would suffer irreparable loss and injury if the temporary prohibitory and mandatory injunction prayed for was not granted, accordingly, finding no

illegality or infirmity in the impugned order, passed by the learned trial Court, the learned Additional District Judge dismissed the appeal.

[10] During the course of arguments, learned counsel for respondent No.1/plaintiff has contended that as per *Section 24 (3) of the Haryana Panchayati Raj Act, 1994*, no street or pavement in a village can be dug, altered or damaged in any manner whatsoever by any person for any purpose except with prior permission of the Sarpanch or Block Development and Panchayat Officer, unless the person seeking permission has deposited with the Gram Panchayat or Block Development and Panchayat Officer an amount as may be prescribed, to restore the street or pavement to its original state and that any person contravening the aforementioned provisions, would be liable to be punished with a fine which may extend to Rs.1000/- in addition to the expenditure incurred by the Gram Panchayat in restoring the street or pavement of its original state.

[11] I have considered the submissions of learned counsel for the parties.

[12] Admittedly, it is nowhere the stand of the Gram Panchayat in the written statement that the street is a private street or that it had been left behind by the ancestors of petitioner/defendant Nos.1 & 2 for the use of petitioner/defendant Nos.1 & 2. However, the only assertion in the written statement filed by respondent No.2/defendant No.3, i.e. Gram Panchayat, is that the *gali* had not been made *pucca* by the Gram Panchayat but by petitioner-defendant No.1. The same coupled with the assertion made by the Gram Panchayat during the course of hearing before the learned Additional District Judge and as has been noted in paragraph No.12 by the learned

Additional District Judge that the Gram Panchayat had categorically asserted that the disputed street vests in it goes to show beyond an *iota* of doubt that the street in question is a public street, therefore, it is not open to the petitioner/defendant Nos.1 & 2 to dig up a pit in the middle of the said street/*gali* or to put up safety tanks on the same. Accordingly, I do not find any infirmity in the order passed by the learned Additional District Judge, upholding the order passed by the learned trial Court, restraining petitioner/defendant Nos.1 & 2 from raising any construction over the street marked by letter A, B, C, D in the site plan and in further directing them to refill the pit dug by them in the street. The revision being bereft of merit is ***dismissed***. However, nothing said in this order shall be taken as an expression on merits of the case, which shall be decided by the learned trial Court on the basis of evidence led before it.

[13] Since the revision petition has been dismissed, consequently, all pending CMs, if any, are also *disposed of*.

(B.S.WALIA)
JUDGE

April 10, 2019
'Rajneesh'

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No