

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-267-2021 (O&M)

Date of decision : March 31, 2021

PATHFINDER GLOBAL SCHOOL AND OTHERSPetitioners

Versus

INDRASANI DEVIRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Prateek Gupta, Advocate for the petitioners.

Mr. Manoj Yadav, Advocate for the respondent.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioners - defendants have filed this petition for setting aside order dated 04.11.2020 passed by learned Civil Judge (Senior Division), Patnaudi (Gurugram) whereby application under Order 39 Rule 1 and 2 read with Section 151 CPC filed by the respondent – plaintiff was allowed as well as order dated 23.12.2020 passed by the learned Additional District Judge, Gurugram, whereby appeal filed by the petitioners, has been dismissed.

Brief facts necessary for adjudication of the matter are that respondent – plaintiff filed a suit for permanent injunction against the present petitioners alongwith an application under Order 39 Rules 1 and 2 CPC seeking interim relief. It is pleaded that plaintiff is the owner of a plot of 100 square yards with a house built thereon, as described in the plaint. She claims to have purchased the plot vide sale deed dated 15.05.2015. It is pleaded that vendor of the entire land

in killa No. 23/1/1 had carved out a colony and had sold the land in the shape of plots. It is pleaded that plaintiff's plot is bound by a 16 feet wide passage on the eastern side, plot of one Rakesh Jain on the western side and of Suman Devi on the Southern side and boundary wall of the petitioners/defendants school, on the northern side. It is stated that since carving out of the colony and purchase of plot in 2015 which is at a dead end adjoining the boundary wall of the school, has been used by the plaintiff for ingress and egress to her residential house. It is averred that the defendants subsequently purchased some of the property towards south of the plaintiff's plot. Plaintiff's plot stands boxed in and now the defendant school seeks to take down part of the boundary wall at point A-B besides blocking the passage at point C-D as shown in the site plan, thereby obstructing the plaintiff's access to her residence.

Present petitioners/defendants resisted the application while stating that defendant – school was running since much prior to the plaintiff purchasing the plot in 2015. Land situated north of the passage and of plaintiff's plot, where the school is situated, was purchased by them vide sale deed executed in the year 2005 and subsequently plots were purchased towards south of the plaintiff's property vide sale deeds dated 16.01.2019, 10.09.2018, 26.09.2018, 27.02.2018 and 24.12.2018. Stand taken by the defendant – petitioners is that the plaintiff does not have an exclusive right to use the passage for ingress and egress. The petitioners seek to use the passage for benefit of some of the teachers and students, who are stated to be residing in the property situated on the southern side of the plaintiff's property belonging to one Smt. Geeta Devi. Said property is stated to have been taken on lease by the petitioners.

Learned trial Court vide impugned order dated 04.11.2020 allowed plaintiff's application under Order 39 Rules 1 and 2 CPC. Respondents were restrained from carving out any passage/rasta at point A and B through the

boundary wall of school and blocking the passage in question or installing an iron gate at point C and D and raising any sought of construction over the land purchased by the defendants vide sale deeds executed in the year 2018 and 2019, in a manner which disturbs alignment of the rasta/passage. Appeal preferred by the petitioners/defendants was dismissed by learned Additional District Judge, Gurugram vide impugned order dated 23.12.2020. Aggrieved therefore, present revision petition has been filed.

Learned counsel for the petitioners vehemently argues that both the learned courts below have gravely erred in allowing application under Order 39 Rules 1 and 2 CPC filed by the plaintiff. It is submitted that the petitioners are entitled to use the passage in question for ingress and egress of the teachers and students from the premises in petitioner's possession, near the plaintiff's plot to the school. Petitioners, it is stated, sought to provide access of about 2/3 feet for teachers and students residing in the said area so that they are not constrained to take a circuitous route to the school. It is further submitted that allowing plaintiff's application under Order 39 Rules 1 and 2 CPC, in fact, amounts to allowing the main suit of the plaintiff – respondent. Learned counsel submits that plaintiff has failed to establish a prima face case or balance of convenience in her favour neither would she suffer any irreparable loss in case interim relief is not granted to her. It is, thus, prayed that this petition be allowed, impugned orders be set aside and plaintiff's application under Order 39 Rules 1 and 2 CPC be dismissed throughout.

Learned counsel for the respondent per contra submits that this petition deserves to be dismissed as both the learned courts below have returned concurrent finding against the petitioner after proper appreciation of facts and circumstances. Respondent, it is submitted, is being unnecessarily harassed.

Disputed passage is the only way of accessing respondent's house and in case

impugned orders are not maintained, she would be denied proper access to her house. Learned counsel refers to certain photographs placed on record, to submit that petitioner school is creating unnecessary obstacles in the passage. Learned counsel for the respondent submits that despite order dated 03.07.2021 passed by the learned trial Court to maintain status quo regarding construction at the points AB and CD, petitioners did not desist and the plaintiff was constrained to file for contempt and an application under Order 39 Rule 2A CPC. It is asserted that no ground whatsoever is made out for permitting a 2 feet passage after carving out a way from the boundary wall of the school which was very much in place before the petitioners purchased the property adjoining and south of the plaintiff's property. Moreover, no prejudice is caused to the petitioners as due to outbreak of pandemic COVID-19, none of the teachers are residing in the premises taken on lease by the petitioners. Learned counsel for the respondent – plaintiff submits that petitioners merely seek to harass the plaintiff by prolonging proceedings. It is, thus, prayed that this petition be dismissed.

I have heard learned counsel for the parties and have gone through the file. A perusal of the site plan attached with this revision petition, as was before the courts below, reveals that plaintiff's plot adjoins the boundary wall of the school which is on its northern side. Two plots south of the plaintiff's plot are stated to have been purchased by the petitioners – defendants in the years 2018 and 2019. Building on the plot in between the two plots purchased by petitioners, as reflected in the site plan, is stated to have been taken on lease by the petitioners i.e. building on the plot of Smt. Geeta. Plaintiff's plot is at the dead end adjoining the boundary wall of the school. It is not denied that boundary wall of the school adjoining the plaintiff's plot was in place when respondent – plaintiff had purchased the property in 2015. Entry to the school is admittedly from the other side and not from the area/side where the plaintiff's house is situated. Dispute arose between the parties

after purchase of land by the petitioners to the south of plaintiff's plot, when the petitioner - school tried to create access to the school from the northern side of plaintiff's plot, where the boundary wall was admittedly in existence. It is alleged that an attempt is also being made to block the passage at C and D by installing an iron gate, which would lead to blocking of/obstruction to ingress and egress to the plaintiff's plot. Learned trial Court in the given factual matrix has rightly observed that in view of the pleadings of the parties at that stage, photographs and documents available on file, prima facie case in the plaintiff's favour is made out and balance of convenience is also in favour of the plaintiff. Needless to say, in case interim relief is denied to the plaintiff, it would lead to irreparable loss and harassment to the plaintiff not only due to frequent movement of the school staff vehicles etc. but also due to blockage of the passage, hindering ingress and egress to the plaintiff's residential house.

At this stage, I do not find any ground whatsoever to grant any indulgence to the petitioners for creating a passage of about three feet for providing access to the school from the area around the boundary wall of the school adjoining the plaintiff's house or for allowing erection of iron gate at point C and D. Decision in **Brahma Kumari Ishwariya Vishwa Vidayalya, Sira versus Dev Parkash 2013 (2) PLR 740** relied upon by the petitioners is not relevant for adjudication of the present matter. Both the learned courts below have rendered concurrent findings of fact, which calls for no interference in exercise of revisional jurisdiction. Impugned order dated 04.11.2020 passed by learned Civil Judge (Senior Division), Pataudi (Gurugram) as well as order dated 23.12.2020 passed by the learned Additional District Judge, Gurugram are, thus, upheld.

However, keeping in view the nature of the suit, learned trial Court is directed to conclude the proceedings in accordance with law, within six months

from the next date of hearing fixed before it.

Present petition is, accordingly, disposed of.

March 31, 2021
rts

(Lisa Gill)
Judge

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