

112 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

VARINDER SINGH
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of this document
Punjab & Haryana High Court at
Chandigarh

CR-1159-2021
Date of Decision: 30.06.2021

VIRENDER SINGH

...Petitioner

Versus

KRISHAN AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Bhag Singh, Advocate
for the petitioner.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Instant revision proceedings before this Court arise out of the civil suit for permanent injunction filed by the petitioner/plaintiff seeking to restrain the respondents from removing, what is alleged to be an existing wall constructed between the adjoining houses of the plaintiff and defendants. The petitioner claims that the said wall was constructed by his father way back in the year 1996. Being a co-sharer in the land in question, the petitioner is in possession of the same. Land is stated to be *Gair-Mumkin-Bara*.

In the return filed by the defendants to the plaint, the stand taken therein is that due to dilapidated condition of their house, they had to construct/renovate the same but on their piece of land. In the process, the existing wall is required to be demolished. The relevant para No.7 of the written statement is reproduced hereunder:-

"7. That the plaintiff has concealed the true and material facts from this Ld. Court and he is not entitled to get any relief from this Ld. Court. The plaintiff has concealed that the defendants as well as plaintiff are already constructed their house on their respective share. The suit property i.e. wall is under the possession of the wife of defendant no.1 as the wall is the part of the house of defendant no.1. It is also necessary to mention here that defendant no.1 has old construction house over the wall and the same was got cracked by passing of time and the defendant no.1 by demolishing the said wall along with other construction i.e. rooms etc. wants to raise a new house on the same property which was already in the possession of defendant no.1. The plaintiff demolished the wall (photographs of same are attached

herewith) and when he tried to construct a new wall on the same place, the plaintiff started creating hindrance in the construction of the wall. The plaintiff filed the present suit on false facts as there is a street between the house wall of plaintiff i.e. Virender and in the house wall (suit wall) of defendant no.1 which is clearly visible in the photographs. The suit land is a joint property and till today no partition took place and nor any partition proceedings are pending before any competent court of law. In total land i.e. 1 Kanal 19 Marla, the wife of the defendant no.1 i.e. Sudesh Rani is owner of 5 Marla (photocopy of sale deed is attached herewith). The plaintiff along with some other person also thrown bricks on the defendant just to harass and humiliate and also to create hindrance in the construction of defendant no.1."

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A perusal of the above would reveal that not only the dispute pertains to the wall being a common property but also as to whether this exists in the portion of the defendants' land or the plaintiff's ? The said dispute can obviously be adjudicated only after both the sides have led their respective evidence.

In the premise, no fault can be found with the trial Court and the First Appellate Court in having dismissed the application under Order 39 Rules 1 and 2 CPC filed by the plaintiff. It was for the plaintiff to establish the *prima facie* case which he seems to have not established at this stage.

No grounds for interference is made out. Dismissed.

However, it is made clear that any construction and/or demolition which is likely to be caused in the course of building up the house by the defendants shall be subject to the final outcome of the suit and if, it is found that the wall indeed existed on the portion of the land which is in possession of the plaintiff, the defendant(s) shall have to restore the wall at their own cost at a later stage.

The trial court shall proceed without being influenced by the observations of this court, which are only for the purpose of interim orders. Needless to say, the demolition, if any, shall be at the risk and cost of defendants, in case they have restore the same depending on the final outcome of the suit.

June 30, 2021

gurpreet

(ARUN MONGA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No