

CR No. 1228 of 2021

Date of Decision: July 01, 2021

Mangal Singh

.....Petitioner

versus

Satbir Singh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. S.K. Verma, Advocate  
for the petitioner

**Sudhir Mittal, J. (Oral)**

The petitioner is the plaintiff. He has filed a suit for declaration to the effect that defendants No. 1 and 2 have no right to raise underground construction and consequential relief of injunction. Alongwith the suit, application under Order 39 Rules 1 and 2 CPC was filed wherein it was pleaded that underground construction is being undertaken unlawfully without getting the site plan passed. The said application was disposed of by the trial Court vide order dated 12.03.2021 by recording that no basement is being constructed and that digging is being done only upto a depth of four feet in accordance with the sanctioned plan. It was further held that in case the sanctioned plan is violated, the plaintiff would be entitled to approach the concerned local authority and put it on guard. Dissatisfied, the plaintiff-petitioner preferred an appeal alongwith an application for ad interim injunction. The said application has been dismissed vide impugned order dated 26.05.2021 and the order of learned trial Court has been upheld.

Learned counsel for the petitioner has raised two fold submissions :

(a) instead of confining the digging upto four feet a complete and proper basement is being dug which is contrary to the sanctioned site plan and;

(b) the entire plot had been covered whereas according to the sanctioned building plan only 59% is permitted to be covered. Reliance has been placed upon photographs Annexure P-5.

The said photographs are not evidence of construction of a basement beyond four feet in depth nor are they the evidence of coverage of the entire plot. In any case, there was no grievance raised regarding coverage of the plot in the application filed under 39 Rules 1 and 2 CPC before the trial Court and, thus, the said ground is not available to the petitioner. In this view of the matter this revision petition has no merit and is, accordingly, dismissed.

It may be noticed that vide impugned order dated 26.05.2021 the application for ad interim injunction has been dismissed and it appears that the appeal is still pending. Learned counsel for the petitioner, however, does not agree with this but a perusal of para 1 of the said order gives this impression.

In case the appeal is still pending, the petitioner would be at liberty to lead *prima facie* evidence to show that sanctioned building plan has been violated.

July 01, 2021

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**[SUDHIR MITTAL]**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No