

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 1261 of 2021 (O&M)

Date of decision : 8.10.2021

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Chhaju Ram

.....Petitioner

vs.

Ramphal

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr.Sumit Sangwan, Advocate for the petitioner.

Mr. R.A. Sheoran, Advocate for the respondent.

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H. S. Madaan, J.

Case taken up through video conferencing.

Briefly stated, facts of the case are that, plaintiff – Ramphal had filed a suit for grant of permanent injunction against defendant Chhaju Ram, for restraining him from creating any type of interference in the common passage comprised in Khasra/Plot No. 206 min, Khewat No. 216, Khatoni No. 244 and Khasra/Plot No. 205 min, Khewat N. 218, Khatoni No. 246 as per jamabandi for the year 2016-2017, situated in village Pandwan, Tehsil and district Charkhi Dadri. According to the plaintiff, this passage was left in the year 1987 in brotherhood Panchayat and it is being used for ingress and egress to his house. Alongwith the suit, the plaintiff had moved an

application for grant of ad interim injunction. On getting notice, the defendant put in appearance and resisted the suit, as well as application for ad interim injunction. After hearing the arguments, the trial Court of Civil Judge (Junior Division), Charkhi Dadri, vide order dated 26.5.2021 dismissed the application under Order 39 Rules 1 and 2 CPC.

Feeling aggrieved, plaintiff Ramphal had preferred an appeal before the District Judge, Charkhi Dadri, which was assigned to Additional District Judge, Charkhi Dadri, who vide order dated 8.6.2021, accepted the appeal and consequently allowed the application under Order 39 Rules 1 and 2 CPC. The defendant-respondent was restrained from creating any type of interference in the passage in dispute till final decision of the case. The respondent was directed to remove the construction, if any, raised in the area of common passage forthwith, failing which the appellant would be entitled to get the same removed through the process of the Court at the expenses of the respondent.

The defendant felt aggrieved by that order and has preferred the present revision petition, which is being opposed by the respondent-plaintiff.

I have heard learned counsel for the parties, besides going through the record.

As per case of the plaintiff, a writing dated 21.2.1987 had taken place, in terms of which, the plaintiff and defendant had left 3 feet strip each for the purpose of common passage in between Khasra

Nos. 205 and 206. However, subsequently, the defendant – respondent tried to raise construction including 3 feet of land in his house, which was in violation of the settlement. Though as per version of the defendant, settlement was not of any value because it was not signed by all the co-sharers and defendant had no need to leave that piece of land for the purpose of passage. But then after perusing the record, it comes out that a passage exists between plot No. 206 and 205, which is statedly 6 feet wide, 3 feet strip having been left by both the parties. Although during the course of arguments, learned counsel for the revisionist tried to project that there is another passage abutting the house of the plaintiff, but he could not establish that on record. Even if we see the site plan now placed on record by him, Annexure P-11, that shows opening of gate of house of plaintiff towards Khasra No. 203, having a toilet constructed therein with the adjoining *Shamlat* land comprised in Khasra No. 203, which abuts the common passage. Thus passage in dispute comes out to be necessary for going to and coming out of the house of the plaintiff. The photographs placed on record by the revisionist also reflect the existence of passage there. Though the writing is between plaintiff and defendant only and according to defendant no other co-sharer had signed the same. But that does not lessen the value of the writing because as stated, presently the house in question belongs to Chhaju Ram and no other co-sharer.

The order passed by learned Additional District Judge does not suffer from any illegality or infirmity, much less apparent on the

face of it, the three necessary ingredients for grant of ad interim injunction, i.e. a good prima facie case, balance of convenience in favour of plaintiff and plaintiff suffering irreparable loss and injury in case of decline of the relief, are fulfilled in the present case.

Learned Additional District Judge was justified in allowing the appeal and setting aside the order passed by Civil Judge (Junior Division), Charkhi Dadri, dismissing the application because that order could not pass the judicial scrutiny.

As regards judgments referred to by learned counsel for the revisionist, i.e. i) Karupathal vs. Palani Naicker alias K. Palaniappan (died), Saraswathi and another Law Finder Doc Id # 1740559 ii) Natesan vs. Arumugham and others Law Finder Doc Id # 865655, iii) Harish Chander and others vs. Ghisa Ram and another 1981 AIR (SC) 695 and iv) Secretary U.P.S.C. And anotehr vs. S. Krishna Chaitanya 2011 AIR SC 3101, those are not applicable, due to different facts and circumstances of the case and the context in which such observations had been made.

In view of the above discussion, no interference with the impugned order, by way of exercising the revisional jurisdiction of this Court under Article 227 of the Constitution of India, is called for. Thus, the revision petition is found to be without any merit and is dismissed accordingly.

8.10.2021
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes/ No

Whether reportable

Yes/ No