

CR-1574-2021

Date of Decision: 28.10.2021

Vipin Kumar Jain

....Petitioner

VS

Parveen Jain and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sachin Saini, Advocate and
Mr. Rahul Makkar, Advocate
for the petitioner

Mr. Sanjiv Gupta, Advocate
for the respondents

SUDHIR MITTAL, J. (Oral)

Vide impugned order dated 28.07.2021, the Civil Judge (Jr. Divn.) Rohtak has dismissed the application filed by the petitioner-defendant for permitting him to reconstruct/repair the house in dispute. The reason given in support of the order is that the property is not subject matter of the suit.

The aforementioned reason is palpably erroneous as the suit challenges Will dated 30.01.2000 and the house in dispute is subject matter of the said Will.

Learned counsel for the respondents has argued that no injunction application can be filed by a defendant unless and until he has filed a counter claim. He has relied upon ***Ram Chander vs. Harbhajan Singh, 1986 PLJ 286*** and ***Harbhajan Singh vs. Kartar Singh, 1998(1) RCR(Civil) 623.***

The aforementioned judgments are distinguishable because the application filed by the petitioner-defendant is not an injunction application. It is an application under Section 151 CPC for permission to repair/reconstruct the house in dispute as it has become dilapidated. The fact that it has become

Learned counsel for the respondents then submits that the petitioner-defendant shall not be entitled to claim any equity on the basis of repair/reconstruction done by him. He will also not be entitled to any compensation.

Learned counsel for the petitioner submits that he has already undertaken to abide by the final outcome of the suit and that he will not claim any equitable rights on the basis of repair/reconstructions done by him.

In view of the above, the writ petition is allowed and the impugned order dated 28.07.2021 (Annexure P-1) is set aside. The petitioner is permitted to repair/reconstruct the house in dispute subject to the undertakings already given by him.

28.10.2021
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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No