

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-6284 of 2019 (O&M)

Date of decision: 07.12.2021

Kulbhushan Jain

...Petitioner

Versus

Suresh Kumar Bansal and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Sanjeev Sharma, Advocate for the petitioner.

Mr. Ashwani Bhardwaj, Advocate for respondent No.1.

Mr. Prateek Mahajan, Advocate with
Mr. Trideep Sharma, Advocate for respondent No.2.

H.S. MADAAN, J.

1. This revision petition is directed against order dated 20.07.2019 (Annexure P-1) passed by Civil Judge (Sr. Divn.) Rohtak, vide which such Court had dismissed the application filed by petitioner Kulbhushan Jain-defendant No.1 in the civil suit brought by plaintiff Suresh Kumar Bansal (respondent No.1 in the present petition) against him, seeking direction to Municipal Corporation, Rohtak-respondent No.2 to produce site plan of building of plaintiff as well as order dated 13.09.2019 (Annexure P-2) passed by that very Court, vide which application for review had been dismissed.

2. Briefly stated facts of the case as pleaded by revisionist Kulbhushan Jain in the present revision petition and as can be gathered

from the record are that, plaintiff Suresh Kumar Bansal-respondent No.1 in the present revision petition had filed a suit for declaration against Kulbhushan Jain-defendant No.1 and Municipal Corporation, Rohtak through its Executive Officer-defendant No.2, contending that he is registered owner of property bearing No.1874/5, Old Anaj Mandi, Rohtak, whereas, defendant No.1 is owner of the property nearby and in between property of plaintiff and defendant No.1, a street exists called Anup Gali; that defendant No.1 being an Advocate by profession misusing his such status, had been obstructing the plaintiff from use of that gali, claiming that it is his personal property and no individual can use the street without his permission; he had served two legal notices dated 21.04.2015 and 18.09.2015 upon the plaintiff; as a matter of fact, defendant No.1 has no concern with the said street, however, he of his own had changed its name as Sunder Lal Jain Gali; defendant No.2-Municipal Corporation has been asserting it as a common passage vesting in it; defendant No.1 had raised a well in front of house of the plaintiff in an unauthorized manner; the plaintiff wanted to remove portion of the wall to have free movement from his house to the passage in question but could not do so on account of resistance offered by defendant No.1.

3. Feeling aggrieved, the plaintiff brought a suit for declaration that Anup Gali is a public passage as per Haryana Municipal Corporation Act, 1994; that it is a public property used by public at large; in addition to that, seeking relief of mandatory

injunction, directing defendant No.1 not to object to use of such passage by the plaintiff by raising of bamboos in the street for construction of projection on the roof and for demolition of the wall in the passage for easy movement of plaintiff.

4. On notice, the defendants put in appearance. Defendant No.1 filed written statement cum counter claim raising various legal objections. On merits, controverting the assertions in the plaint, contending that the passage is a private lane existing on the western side of residential house of defendant No.1; it is known as a Gali Lala Sunder Lal Jain and it is an integral part and parcel of the residential house of defendant No.1; the plaintiff or any other person has got no right or interest therein; such defendant prayed for dismissal of the suit.

5. Issues on merits were framed. The plaintiff adduced evidence. In rebuttal, defendant No.1 also produced evidence. On 20.07.2019, defendant No.1 tendered document Ex.DX in his defence and on that very day, moved an application praying for issuance of direction to defendant No.2-Municipal Corporation, Rohtak to produce building plan of property of defendant No.1. That application was declined by the trial Court, observing that the said fact was within the knowledge of defendant No.1 since beginning of the case and he had an opportunity to call for record from the office of Municipal Corporation, Rohtak while leading evidence but he preferred not to do so and the application was merely an excuse to seek another opportunity from the Court. Therefore, the application was dismissed.

Documentary evidence of defendant No.1 was closed and the case was adjourned to 30.07.2019 for rebuttal evidence and arguments. Defendant No.1 had then moved an application for review of the order, contending that the application had been dismissed under the misconception that prayer made by such defendant was with regard to building plan of his own house and not with regard to building plan of the plaintiff. After contest, the trial Court dismissed the application, stating that inadvertently, in the order it had been written that defendant No.1/applicant had sought his own building plan from defendant No.2 whereas that related to building plan of the plaintiff. However, the application for review was also dismissed.

6. Feeling dissatisfied, defendant No.1 has approached this Court by way of filing the present revision petition, notice of which was given to plaintiff and defendant No.2, who have put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the record and I find that there is no illegality or infirmity in the impugned order, warranting interference by this Court. The trial Court has rightly observed that defendant No.1 could have called for record with regard to sanctioning of site plan of house of the plaintiff from defendant No.2-Municipal Corporation, Rohtak while the case was fixed for evidence of such defendant. He did not do so and at the fag end of the trial moved an application seeking production of site plan of house of the plaintiff by defendant No.2. The trial Court

observed that it was a dilatory tactics just to gain more time. The application was not for additional evidence just calling upon defendant No.2 to produce site plan of the house of plaintiff. Even if that site plan was produced without its formal proof that would not have been helpful to defendant No.1 in any manner.

8. Learned counsel for the revisionist has stated that if the application is allowed, the trial Court would get an opportunity to go through the site plan and then to arrive at proper conclusion whether the passage in question is a public street or a private lane belonging to defendant No.1. However, I do not find much force in that contention. For proving whether the nature of passage in question, municipal record is an important piece of evidence. Defendant No.1 could have summoned that record during the course of his evidence but it was not so done and at the fag end of the trial, the application in question was filed, which was rightly dismissed by the trial Court. There is nothing to show that the said site plan has got any direct bearing on the controversy. It was upon the parties to the suit to prove the nature of the passage in question by leading cogent and convincing evidence. The application was filed on behalf of defendant No.1, craving for issuance of directions to Municipal Corporation, Rohtak-defendant No.2 to produce the site plan at the fag end of the trial, was rightly rejected by the trial Court and no fault can be found with the impugned order passed by the trial Court in that regard.

9. Learned counsel for the revisionist has referred to

judgment Anil Rishi Vs. Gurbaksh Singh, 2006 (2) RCR (Rent) 60, by the Supreme Court but that judgment had different facts. There the plaintiff had filed a suit for declaration against the defendant stating that the sale deed set up by the defendant had not been executed by him and rather it was a forged and fabricated document so as to with a view to prove forgery and fabrication in document. For that reason it was observed that a party in possession of a document can always be directed to produce the same. This judgment does not find application to the facts and circumstances of the present case. As already observed, the site plan in question does not have much relevance to the present controversy and does not have any direct bearing thereon. The order rejecting the application so filed by defendant No.1 as well as order declining to review the first order do not suffer from illegality, infirmity or legal lacuna. There is no ground to interfere with such order by way of exercising revisional jurisdiction. The revision petition is bound to fail and the same stands dismissed.

07.12.2021

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(H.S. MADAAN)
JUDGE

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