

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1167-2022
Decided on : 31.03.2022

Mukesh Kumari

..... Petitioner

Versus

Dharambir and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. M.S.Rana, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Article 226/227 of the Constitution of India for setting aside the orders dated 27.01.2022 (Annexure P-4) and 03.03.2022 (Annexure P-6) respectively whereby application under Order 39 Rule 1 and 2 read with Section 151 CPC was dismissed by the Courts below.

Learned counsel *inter alia* submitted that the petitioner-plaintiff is owner in possession of plot No.1253, Sector 4, Extn. Rohtak and after obtaining due permission and approval of the concerned departments of HSVP, she started construction of house on the said plot. Learned counsel further submitted that when the petitioner started raising construction over the 9" common wall between plot No.1253 and 1254, defendant-respondent No.1, who is owner in possession of adjoining plot No.1254, started causing obstruction in the construction work after colluding with respondent-defendant No.2. Still further, it was submitted that although the petitioner had obtained No Objection Certificate from respondent-defendant No.1 after making a payment of Rs.1,34,000/- to him as share in the 9" common

wall, the respondent-defendant No.1 has no right to interfere or obstruct the construction work.

Heard learned counsel and perused the relevant material available on record.

It would be relevant to observe here that relief of injunction being an equitable and discretionary relief, cannot be claimed as of right. The Court at the stage of deciding an application under Order 39 Rule 1 and 2 CPC , Court is not required to go into the merits of the case and the tests to be applied while granting temporary injunction are: (i) whether the plaintiff has a *prima facie* case (ii) whether balance of convenience is in favour of the plaintiff and (iii) whether the plaintiff would suffer irreparable loss in the absence of temporary injunction. All three of the aforementioned factors must co-exist and in absence of even one, the application under order under Order 39 Rule 1 and 2 shall fail.

Adverting to the case in hand, the sole dispute is whether the petitioner is entitled to raise construction over the 9” common wall or not. No doubt, the petitioner paid Rs.1,34,000/- to the respondent-defendant No.1 towards the share of the said wall and obtained a NOC, however, if the petitioner is allowed to raise construction over the entire 9” wall, it would definitely damage the structure of the adjoining house i.e. House No.1254.

Accordingly, without commenting upon merits of the case, instant petition being devoid of any merit, stands dismissed.

31.03.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No