

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3173 of 2019

Date of Decision: 10.05.2022

Gram Panchayat, Village Sikri, Tehsil and District Hoshiarpur and Another

... Petitioner(s)

Versus

Kishan Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. G.S.Dhaliwal, Advocate
for the petitioner(s).

Mr. Ankur Soni, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The Gram Panchayat of village Sikri assails the correctness of the order passed by the First Appellate Court while injuncting the Panchayat from digging a drain in order to take out the dirty water, which is stagnating in the village. The trial Court dismissed the application for ad-interim injunction, filed by the respondent No.1/plaintiff, whereas the First Appellate Court has reversed the same.

2. The respondent (plaintiff-Kishan Singh) claims that he has purchased the property from Nirmal Singh and Jawant Singh etc. vide sale deed dated 23.02.1985. The learned counsel representing the parties have read over the aforesaid sale deed. It is specifically recorded therein that there is a public passage.

3. The learned counsel representing the plaintiff contends that if the drain is permitted to be dug out, it will flow close to the tomb.

Panchayat wants to dig a drain for the benefit of the residents, the Court should not injunct it. The plaintiff is required to prove his ownership by leading evidence. Prima facie, in the sale deed, it has been recorded to be a public passage, of course leading to tomb. However, there is no irreparable loss if the Panchayat is permitted to dig out a drain in order to save the residents of the village from various diseases. The first Appellate Court has overlooked the recital in the sale deed that the property purchased is a public passage.

5. The learned counsel representing the plaintiff (respondent herein) contends that it is a private property. The contention is *prima facie* wrong because it is recorded in the sale deed itself that it is a public passage.

5. Before granting injunction, the Court is required to be satisfied about the three ingredients, namely (i) prima facie case, (ii) balance of convenience and (iii) irreparable loss and injury which cannot be compensated subsequently. In the present case, the plaintiff fails to fulfill the last two parameters, referred to above. Neither the plaintiff has balance of convenience in his favour nor he will suffer any irreparable loss and injury which cannot be compensated subsequently.

6. Keeping in view the aforesaid facts, the present revision petition is allowed and the order, passed by the First Appellate Court is set aside while restoring the order passed by the trial Court.

(Anil Kshetarpal)
Judge

May 10, 2022
“DK”

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No