

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

CR-2418-2022

Date of decision : 12.07.2022

Chand Ram

...Petitioner

Vs.

Rati Ram and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Gulshan Nandwani, Advocate for the petitioner.

MANOJ BAJAJ, J.

Chand Ram (plaintiff) has filed this revision petition to challenge the order dated 06.06.2022 (Annexure P-6) passed by Additional District Judge, Rewari, whereby appeal against the decision dated 31.05.2022 passed by Civil Judge (Junior Division), Bawal, dismissing his application under Order XXXIX Rule 1 and 2 Code of Civil Procedure for ad interim injunction in a suit for mandatory and permanent injunction against defendant/respondents, was dismissed.

Briefly, the facts are that plaintiff claimed himself to be the owner in possession of the land comprised in khewat No.331 Khatoni No.365, khasra No.227/2/1 (0-3) kitat 1 area measuring 3 marla situated within the revenue estate of Village Balawas Jat, Tehsil Bawal, District Rewari and the only passage leading to the said land is being obstructed by the defendants, thereby depriving him to approach his property, which also includes residential area. The plaintiff relied upon the jamabandi for the year 2018-19, site plan as well mutation No.730

dated 22.12.1994, whereby Gram Panchayat had allotted the said piece of land to the plaintiff being covered by the Government scheme meant for persons belong to below poverty line (BPL). As per averments, the defendants are bent upon to raise the construction on the said passage, therefore, with this cause of action, he prayed for decree of injunction mandatory as well as permanent injunction. Along with the suit, the petitioner also filed a separate application under Order XXXIX Rule 1 and 2 Code of Civil Procedure and prayed for ad interim injunction during the pendency of the suit.

The application was contested by the respondents (defendants) by filing their reply (Annexure P-3), who contested the plaintiff's prayer and pleaded that the necessary parties were not impleaded as defendants. They denied the existence of passage and further added that the suit property belongs to Gram Panchayat. The other averments in the application were also denied and they prayed for dismissal of the application.

After considering the respective stand of the rival parties, learned Civil Judge (Junior Division), Bawal vide order dated 31.05.2022 dismissed the application. Aggrieved against the said order, the appeal was preferred by plaintiff, however, the same was also dismissed vide order dated 06.06.2022.

Learned counsel has argued that the plaintiff has specifically relied upon the documentary material to *prima facie* show his ownership and possession relating to the suit property and the said

property is connected with only one passage, which is being obstructed by defendants, therefore, all the three Principles i.e. *prima facie* case, balance of convenience and irreparable loss are in favour of the plaintiff, but despite that the injunction was declined vide order dated 06.06.2022 by Civil Judge (Junior Division), Bawal by sustaining the bald averments raised by defendants. He submits that the Appellate Court erroneously held the suit not maintainable and dismissed the miscellaneous appeal. He prays for setting aside the orders dated 31.05.2022 and 06.06.2022.

After hearing learned counsel and considering the pleadings of the parties, which are on record, this Court finds that the suit of the plaintiff is based upon alleged threat of dis-possession and the Court of first instance examined the material on record to adjudicate the application filed by plaintiff under Order XXXIX Rule 1 and 2 on merits, but the Appellate Court instead of examining the validity and correctness of the order impugned before it, altogether proceeded to dismiss the appeal on different ground of maintainability. The Appellate Court has simply reproduced the provisions of Punjab Village Common Lands (Regulation) Act, 1961 and observed that in view of the bar contained in Section 13 of the Act, Civil Court has no jurisdiction. The maintainability of a suit particularly, seeking decree of permanent injunction and mandatory injunction can be ascertained after appreciating the facts pleaded by the parties, but there is no such discussion relating to the material issues. There is no reference that any

litigation between plaintiff and the Gram Panchayat is pending under the said Act, therefore, this Court finds that the impugned order is not sustainable.

Since this Court is not deciding the revision petition on merits, therefore, no notice is being issued to the other side as it may cause unnecessary burden upon it, however, it shall be open for the opposite party to move an application for recalling of the order in case petitioner has concealed material facts from this Court.

Resultantly, the order dated 06.06.2022 is set aside and the case is remanded back before the Court of Additional District Judge, Rewari to decide the miscellaneous appeal afresh after hearing the parties. The petitioner is directed to appear before the Court of Additional District Judge on 28.07.2022.

Disposed of.

(MANOJ BAJAJ)
JUDGE

12.07.2022

vanita

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