

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2449-2020 (O&M)

DATE OF DECISION: AUGUST 5, 2022

PAWAN KUMAR

...PETITIONER

VERSUS

RAM KARAN & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. SURESH K. JINDAL, ADVOCATE
FOR THE PETITIONER.

MR. NITIN SHERWAL, ADVOCATE
FOR RESPONDENTS NO.1 TO 3.

MANOJ BAJAJ, J.(ORAL)

CM-9346-CII-2022

Though the applicant-respondents No.1 to 3 have filed this application under Section 151 CPC for preponement of CM-5797-CII-2021, seeking vacation of interim stay(status quo) order dated 2.11.2020, but learned counsel prays that main case be taken on board for hearing.

Notice in the application.

At this stage, Mr. Suresh K. Jindal, Advocate accepts notice on behalf of the non-applicant/petitioner and does not oppose the prayer.

Application is allowed and upon oral request of both the learned counsel for the parties, main case is preponed to today for hearing.

Main Case

The petitioner(plaintiff) has filed this revision petition to challenge the order dated 23.10.2020, passed by the Addl. District Judge,

Panipat, in CMA-14 of 2020, whereby the order dated 7.9.2020, passed by the Civil Judge(Jr.Divn.), Panipat in Civil Suit No.139 of 2020, allowing his application under Order 39 Rule 1 & 2 CPC, was reversed.

The brief facts of the case are that the petitioner(plaintiff) filed a suit for permanent and mandatory injunction relating to the dispute over a common wall dividing his property with the property of the defendants (respondents No.1 to 3). The plaintiff's claim is based upon the ground that previously through Civil Suit No.565/2010 decided on 23.9.2013, the shares of the parties in the common wall having width of 13 inches were determined in equal shares to the extent of 6½ inches each. Since the defendants No.1 to 3 were raising construction by violating the said decree, therefore, he preferred the suit to seek injunction against him and prayed for following reliefs:-

“(1) Permanent Injunction for restraining defendants no.1 to 3 from (a) demolishing the 13 inch wide common wall (b) raising construction of their 1st & 2nd floors on the left-over 4 inch wall of the plaintiff (c) raising construction over their house no.20 without getting the site plan sanctioned from Municipal Corporation, Panipat (2) Mandatory injunction for directing (a) defendants no.1 to 3 to restore 13 inch wide common wall to its original shape & condition and demolish the 1st floor wall constructed over the left-over 4 inch wall of the plaintiff (b) defendant no.4 to demolish the illegal construction raised by defendants no.1 to 3 over house no.20.”

Alongwith the suit, he filed an application under Order 39 Rule

1 & 2 CPC for ad interim injunction.

The suit is being contested by the defendants who pleaded that the construction relating to the common wall is confined to their share only and it has been completed upto roof level of the first floor. Further, it was also undertaken by them that in case, it is found to be on any part of the plaintiffs share, they would demolish it at their own expense. As per written statement, the plaintiff had already constructed the wall on his side, who encroached upon the share of defendant No.2, and laid a counter claim to seek a decree for mandatory injunction, directing the plaintiff to remove his illegal encroachment. Defendant No.4 Municipal Corporation filed a formal reply that in case the construction is found to be without prior permission, action would be taken.

Considering the pleadings and submissions of the parties, the trial Court vide its order dated 7.9.2020, proceeded to dispose of the plaintiff's application under Order 39 Rule 1 & 2 CPC, by restraining the defendants No.1 to 3 from raising any further construction on any portion of the common wall. Aggrieved against this injunction, the defendants preferred an appeal and the same was accepted by Addl. District Judge, Panipat, vide impugned order dated 23.10.2020.

Learned counsel for the petitioner has argued that the trial Court had carefully examined the facts and circumstances of the case before arriving at a conclusion that the defendants No.1 to 3 are encroaching upon part of the property of the plaintiff and restraining them, but the appellate Court has reversed the said order by dismissing his injunction application. Learned counsel has argued that the trial Court had appointed a Local Commissioner to inspect the suit property and the said report (Annexure P-

3) alongwith the site plan clearly shows that the defendants No.1 to 3 are raising construction on pillars upto first floor, and though there is no encroachment on ground floor, but the construction above the ground floor shows encroachment on the portion of the property falling in the share of the plaintiff. According to him, both the parties have equal shares to the extent of 6½ inches in the common wall, but with this encroachment, the defendants-respondents No.1 to 3 have covered the wall to the extent of 9 inches. He prays that the impugned order dated 23.10.2020, be set aside and the injunction order dated 7.9.2020, passed by the trial Court be restored.

The prayer is opposed by the defendants-respondents No.1 to 3 on the ground that the construction raised by the plaintiff-petitioner is confined only to the portion owned by the defendants No.1 to 3 and according to him, the construction has already reached to the first floor and whereas on plaintiff's side, there is no construction touching the common wall. He has argued that the appellate Court has rightly exercised the appellate jurisdiction in examining the balance of convenience, as the interim injunction would cause irreparable loss to the defendants.

During the course of hearing, he has drawn the attention of the Court to the the photographs of the wall appended with CM-9346-CII-2020 as Annexure A-1(colly), and prayed for dismissal of the petition.

After hearing the learned counsel and considering the material on record, particularly the level of construction which has reached above the first floor, this Court finds that the plaintiff has failed to establish *prima facie* case in his favour. The dispute relates to a common wall and according to plaintiff, a small portion is being encroached by defendants and it can be

finally decided on the basis of evidence, therefore, at this stage, balance of convenience also lies in favour of the defendant-respondent. Besides, the facts and circumstances of the case reveal that in case injunction application is allowed, the defendant is going to suffer irreparable loss. Further a perusal of the impugned order shows that the appellate Court has considered the merits of the case in a proper manner and the same does not suffer from illegality or impropriety.

Resultantly, this Court does not find any merit in this revision and the same is dismissed.

August 5, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No