

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2101 of 2021

Date of Decision: 14.03.2022

Sunil Kumar and Another

... Petitioner(s)

Versus

Shakuntla Devi and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ravish Bansal, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. The petitioners are the defendant No.1 and 2 in a suit, filed by the respondent No.1 (the plaintiff) for grant of decree for possession of the area shown with words “CDEIG” measuring 2’7” x 20’, shown in red colour in the site plan. The plaintiff has also prayed for grant of mandatory injunction directing the defendants to remove the encroachment and grant a decree of declaration that the sale deed, executed by Sawan Ram, in favour of the defendant No.2 and 3, is not binding on the rights of the plaintiff.

2. The plaintiff has already concluded her evidence and now, the case is fixed for the defendants’ evidence. The defendants have also filed a counter claim for grant of decree of mandatory injunction directing the plaintiff to repair the wall, which has been alleged to have been peeled off by the plaintiff.

3. During the pendency of the suit, the petitioners filed an application seeking directions to the plaintiff to allow the peaceful inspection/examination of the building by a Building Expert.

4. The trial Court has dismissed the application. Questioning the correctness of the aforesaid order, the learned counsel representing the

petitioners contends that the plaintiff has taken down a substantial portion of the wall belonging to the petitioners. He contends that such tearing down is required to be proved by examining the Building Expert, who should be permitted to enter into the premises of the plaintiff and inspect the condition of the wall.

5. In the alternative, he contends that the petitioners should be permitted to drill a hole in the wall in order to lead evidence to prove the thickness thereof.

From the reading of the plaint and the written statement as well as the counter claim, filed by the petitioners, it is evident that the parties are required to prove their ownership, in accordance with law. If the wall in question was constructed by the petitioners in their own area, the other party has no right to reduce its thickness. However, if the wall was constructed after encroaching upon some portion of the respondent's (plaintiff's) land, then the position may be different.

6. In these circumstances, the petitioners are required to prove their ownership. They are also required to prove that some part of their plot has been encroached upon by the plaintiff. For proving such facts, no Building Expert is required to be examined.

7. As regards the alternative prayer, this Court does not find it proper to entertain the same for the first time, because no such prayer was made before the trial Court.

8. In view of the above, no ground is made out to interfere. Consequently, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

March 14, 2022
"DK"

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