

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

**CIVIL REVISION No.3291 of 2021 (O&M)
DATE OF DECISION : 13.05.2022**

Maha Singh and AnotherPetitioners

versus

Subh Lata and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Balbir Singh Saini, Advocate for the petitioners

..

ALKA SARIN, J. (Oral):

The challenge in the present revision petition under Article 227 of the Constitution of India is to the order dated 04.03.2020 passed by the Civil Judge (Junior Division), Panipat and to the order dated 01.09.2021 passed by the District Judge, Panipat.

The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for permanent injunction for restraining the defendant-petitioners herein from interfering in the peaceful possession or creating any hindrance in the erection of walls of their property on the portion marked by letters ABCD shown red in the site plan attached which

is part of complete house AFED and bounded as North: 52' Gali, South: 52' - House of Sidhu, Sat Narain-Chand Ram now in possession of Maha Singh & Birmati & one Narender, East: 19' - Street, West: 29' House of Om Parkash now of Rajesh Kumar situated at Painter Wali Gali, Idgah Colony, Panipat.

Along with the said suit, an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) was also filed. It was averred in the plaint that father of the plaintiff, namely, Krishan Lal being owner in possession of the suit property had filed a Civil Suit against one person named Om Parkash seeking a direction therein to close the door opened by him in the western side of the plaintiff's (therein) plot and restraining him from interfering in the peaceful possession of the plaintiff and opening any other door and window, etc. towards the plot of the plaintiff therein. The said suit bearing No.557 of 1992 was decreed vide judgment and decree dated 23.03.1998 whereby the defendant Om Parkash therein was directed to close the door opened towards the western side of the plaintiff's plot and was further restrained from opening any door, window, ventilator, etc. towards the plaintiff's property. Thereafter, Sat Narayan and Chand Ram in collusion with the Municipal Committee attempted to carve out a passage from the suit property by getting the same brick-paved by the Municipal Committee, Panipat. The plaintiff-respondent No.1 herein and her mother filed Civil Suit No.108 of 2000 against the said Sat Narayan and Chand Ram which was decreed on 03.05.2001 whereby the defendants therein were restrained from brick-paving and laying any pipeline and the plaintiff-respondents

herein were declared owners in possession of the same. Thereafter, Om Parkash sold his property situated towards the western side of the suit property to one Rajesh Garg and Rajesh Garg stepped into the shoes of said Om Parkash and he opened three ventilators towards the western portion of the plaintiff's property. Satya Rani and the plaintiff Subh Lata filed an application under Order 21 Rule 32 CPC and the said application was allowed vide order dated 13.03.2010 directing the said Rajesh Garg to close all the ventilators. A Local Commissioner was appointed by the Court and he got the ventilators closed with the police help. The defendant-petitioners herein have stepped into the shoes of Chand Ram and they were interfering into the peaceful possession of the plaintiff-respondents over the suit property and wanted to use the suit property as a street. An FIR to this effect was also registered. The defendant-petitioners herein i.e. Maha Singh and Birmati filed a Civil Suit No.35 of 2018 titled '*Maha Singh vs. Shubh Lata*' for permanent injunction averring therein that the plaintiff-respondents had encroached upon the suit property and sought an injunction against them. The injunction application was dismissed on 23.07.2018 whereafter the suit was withdrawn by the defendant-petitioners on 19.08.2019.

Upon notice, application under Order 39 Rules 1 and 2 CPC was contested by the defendant-petitioners on the ground that the plaintiff-respondents were neither owner nor in possession of the suit property and that they had not attached the correct site plan. The Trial Court after hearing the parties and on the basis of the documents on record passed an order dated 04.03.2020 holding that the plaintiff-respondents had a good

prima facie case and the balance of convenience was in their favour and restrained the defendant-petitioners from interfering in the suit property in any manner till the final decision of the case. Aggrieved by the said order, the defendant-petitioners herein filed an appeal which was also dismissed vide order dated 01.09.2021. Aggrieved by the orders passed by the Courts below, the present revision petition has been filed.

Learned counsel for the petitioners would contend that the petitioners had stepped into the shoes of Chand Ram, however, the street qua which the present suit has been filed is the only street which leads to their house. The learned counsel has further relied upon a judgment of the Supreme Court in **Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs & Ors. [2008(2) RCR (Civil) 879]** to contend that in order to be granted an injunction in his favour the plaintiff would have to establish that on the date of filing of the suit he was in lawful possession of the suit property.

Heard.

In the present case, there is no denying the fact that the present defendant-petitioners have stepped into the shoes of their predecessor-in-interest, namely, Chand Ram. The learned counsel for the defendant-petitioners is not in a position to deny the fact that earlier civil suits filed by the plaintiff-respondents were decreed in their favour against the predecessor-in-interest of the defendant-petitioners. The learned counsel is also not in a position to deny the fact that the defendant-petitioners themselves had filed Civil Suit No.35 of 2018 titled '*Maha Singh vs. Shubh Lata*' for permanent injunction averring therein that the plaintiff-

respondents herein had encroached over the suit property and had sought injunction against them. After the interim injunction application was dismissed vide order dated 23.07.2018, the suit was withdrawn by the defendant-petitioners. It has been noticed by both the Courts below that there is no documentary evidence which has been produced by the defendant-petitioners to show that the suit property was a public street and they had a right to use it. From the documentary evidence available on the file both the Courts below rightly reached the conclusion that a *prima facie* case is made out by the plaintiff-respondents and the balance of convenience is also in their favour. The judgment relied upon by the learned counsel in Anathula Sudhakar's case (*supra*) would be of no help to him in as much as in the present case there are numerous judgments in favour of the plaintiff-respondents holding them to be the lawful owners of the suit property.

In view of the above, I do not find any illegality or infirmity in the orders passed by the Courts below. The revision petition is accordingly dismissed. Pending applications, if any, stand disposed off accordingly.

13.05.2022
parkash

(ALKA SARIN)
JUDGE

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
