

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

CR No.4418 of 2022

Date of decision: 14th October, 2022

Amit & another

... Petitioners

Versus

Vijay @ Bije

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vikram Singh, Advocate for the petitioners.

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 29.09.2022 (Annexure P5) passed by learned Additional District Judge, Jhajjar vide which the appeal preferred by the respondent/plaintiff against the order of the trial Court has been allowed.

Learned counsel appearing for the petitioners inter alia contends that the lower appellate Court by way of the impugned order has virtually decided the suit in question at this stage. Learned counsel submits that the application under Order 39 Rules 1 and 2 CPC was still pending adjudication before the trial Court therefore, the learned lower appellate Court has grossly erred in passing the impugned order which would affect the outcome of the said application. Learned counsel further submits that on the one hand the lower appellate Court

observed that the wall in dispute was not a common wall, however on the other hand still went ahead and allowed the appeal of the respondent.

I have heard learned counsel and perused the relevant material on record.

In view of the fact that the application under Order 39 Rules 1 and 2 CPC filed by the respondent/plaintiff is still pending adjudication, this Court would desist from delving into the merits of the case at this stage. The revision petition stands disposed of with direction to the trial Court to expeditiously decide the application under Order 39 Rules 1 and 2 CPC filed by the respondent/plaintiff in accordance with law, without being influenced by the order passed by the lower appellate Court, positively on the next date of hearing.

The operation of impugned order shall remain in abeyance till the decision of the application under Order 39 Rules 1 and 2 CPC.

(MANJARI NEHRU KAUL)
JUDGE

October 14, 2022

rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No