

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

Sr. No.114

CR-3368-2021 (O&M)

Date of Decision: 10.01.2022

GULZAR SINGH AND ANOTHER

...Petitioner

VERSUS

MANGA SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Khushkaran Kumar, Advocate,
for the applicants/petitioners.

ARCHANA PURI, J.

The matter has been taken up through video conferencing in the light of COVID-19 pandemic.

The instant revision petition has been filed to assail the order dated 26.02.2019 (Annexure P-4) passed by learned Civil Judge (Jr. Divn.) and judgment dated 17.09.2021 (Annexure P-6) passed by learned Addl. District Judge, vide which an application as well as the appeal to challenge the order, so passed by the Civil Judge (Jr. Divn) had been dismissed.

Initially, petitioners/plaintiffs had filed suit for mandatory injunction, thereby directing the defendants no. 1 to 4 to remove the walls, as detailed in the plaint and also suit for permanent injunction, restraining the defendants No.1 to 4 from raising further construction in the site marked with letters A B C D E F, as shown in the site plan. Besides the same, also suit for possession to deliver the vacant possession of the site, as detailed therein had been filed. Along with the suit, an application under Order 39 Rules 1 and 2 read with Section 151 CPC was filed and the same was dismissed vide order dated 26.02.2019 passed by Civil Judge (Jr. Divn.). An appeal filed to challenge the aforesaid order was also dismissed vide judgment dated 17.09.2021.

It is the claim of the petitioners that they were in possession over the suit property for the last 37 years. They had constructed a *Kacha* house on the site in dispute, which had fallen due to heavy rain. They started residing in another house, which was purchased by them on 09.06.1995. However, the defendant, with the help of the police, took possession of the site in dispute and raised boundary wall around three sides illegally and unlawfully, which is required to be removed. Still, they are further raising construction over the site in dispute.

On the contrary, the contesting defendant refuted the claim of the petitioners/plaintiffs and denied about them to be the owner in possession, as pleaded. In fact, defendant No.1 asserts himself to be owner in possession of the suit property and also planted *kikkar* and *daik* trees in the same. The property came to him, on the basis of the Will by his father. The electricity and water connections are already installed in the suit property in his name and he is regularly paying the electricity and water bills.

Though the plaintiffs assert themselves to be owners in possession of the suit property for the last 37 years, but however, not even a single document has come on record to substantiate the plea of ownership or possession. In fact, there is no mention made as to when *Kacha* house was built and when it had fallen down. In fact, the petitioners/plaintiffs now admit possession of the defendants over the suit property. There was an earlier civil suit filed by defendants against Parkash Ram and others and the site plan as filed along with the suit, which was decided in favour of the defendants tallied with the boundaries of the site plan as annexed with the suit in hand. Since, it is petitioners/plaintiffs who had come forth to seek

relief from the Court, it was required on their part, to establish necessary ingredients for issuance of injunction in their favour but, as observed aforesaid, no document as such, to establish their ownership or possession, at any stage has been placed on record, despite their asserting to be in possession for the last more than 37 years.

Considering the aforesaid circumstances, learned Lower Courts have rightly decided the application under Order 39 Rule 1 and 2 read with Section 151 of the CPC as well as the appeal against the present petitioners. As such, there is no merit in the present revision petition, and the same is hereby dismissed.

(ARCHANA PURI)
JUDGE

10.01.2022

sonu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No