

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

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**Civil Revision No.5763 of 2022
Date of Decision: 08th December, 2022.**

Parmod & Another

...Revisionists-Petitioners

Versus

Gurdev Singh & Others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present :- Mr. Ravinder S. Budhwar, Advocate,
for the revisionists-petitioners.

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MEENAKSHI I. MEHTA, J.(ORAL)

By way of this petition, the petitioners-plaintiffs (here-in-after to be referred as 'the plaintiffs') have laid challenge to the order dated 18.11.2022 (Annexure P-8) as handed down by learned Additional District Judge, Karnal, (for short 'the lower Appellate Court'), whereby the appeal preferred by the respondents-defendants (here-in-after to be referred as 'the defendants') to assail the order dated 06.07.2022 (Annexure P-7) passed by learned Civil Judge (Junior Division) Karnal, (for short 'the trial Court'), for granting the relief of ad-interim injunction in their (plaintiffs') favour, has been allowed and the application moved by them under Order 39 Rules 1 & 2 read with Section 151 CPC, has been dismissed.

2. As per the brief factual-matrix culminating in the filing of the present revision petition, the plaintiffs have filed a Civil Suit against the defendants for seeking a decree for the mandatory injunction for directing them (defendants) to reconstruct/rejoin the dirty water drain (for short 'the

drain') and they have, further, prayed for the relief of permanent injunction to restrain the defendants from raising any construction over the land of the drain and the street as well and also from causing any further damage to the existing drain, while averring that the plot of the defendants is located in front of their (plaintiff's) houses, across the street as constructed by the Gram Panchayat of the Village and the defendants are raising construction over their plot and they have damaged the drain which has resulted in the accumulation of the dirty water in the street and is, thus, posing a health hazard for the residents of the locality.

3. Along-with the Suit, the plaintiffs moved the afore-referred application to seek the relief of ad-interim injunction in the terms similar to the ones, as sought by them in the Civil Suit and it was allowed by the trial Court vide the order Annexure P-7 and the defendants were restrained from blocking or further breaking the drain till the disposal of the Suit. Feeling aggrieved by this order, the defendants preferred an appeal against it and the same has been allowed vide the impugned order Annexure P-8.

4. I have heard learned counsel for the petitioners-plaintiffs in this revision petition, at the preliminary stage and have also gone through the file carefully.

5. Learned counsel for the plaintiffs contends that the above-said street as well as the drain, existing along the plot of the defendants, had been constructed by the Gram Panchayat and now, the defendants, while raising the construction in their plot, have damaged the drain and due to this reason, the flow of the waste water from the houses of the plaintiffs to

the drain has been blocked which has led to the stagnation of the water in the street and in view of the afore-discussed circumstances, the trial Court granted the ad-interim injunction in favour of the plaintiffs but however, vide the impugned order, the lower Appellate Court has wrongly allowed the appeal as preferred by the defendants and has dismissed the injunction application as moved by the plaintiffs and thus, the impugned order is not legally sustainable and hence, the same deserves to be set aside.

6. However, the above-raised contentions are devoid of any merit because concededly, the street, as existing in between the houses of the plaintiffs and the plot of the defendants, has been constructed by the Gram Panchayat and the drain has been constructed only on one side of the street just adjacent to/along the plot of the defendants. As per the averments of the plaintiffs, the drain had been carved out to cater to need of the drainage of the waste water from their houses also whereas the defendants assert that the plaintiffs themselves had constructed the water outlets for draining out the waste water of their houses to the said drain. In such circumstances, the version of the Gram Panchayat regarding the afore-said facts would have been the key factor to clinch the entire controversy between the parties in this regard but however, the plaintiffs, for the reasons best known to them, have not even impleaded the Gram Panchayat as the party in their Suit.

7. Seen from yet another angle, a compromise qua the above-said dispute had, admittedly, been arrived at between the parties in the presence of the police officials. However, the lower Appellate Court has specifically mentioned in Para No.10 in the impugned order Annexure P-8 that as per

the said compromise, both the parties had agreed for the construction of the drains on both the sides of the street and to bear the expenses for the same and though the counsel for the defendants submitted that his clients were ready to even bear the entire expenses for the construction of the drains but the counsel for the plaintiffs responded that the plaintiffs were ready to bear the entire expenses of the repair/maintenance of the already existing drain, abutting the plot of the defendants and he refrained from making any submission qua to the construction of the drain in front of the houses of the plaintiffs. These observations speak volumes of the fact that the plaintiffs have neither yet performed their part of the said compromise nor seem to be willing to do so and in such circumstances, they do not deserve the relief of ad-interim injunction as prayed for, in their afore-mentioned application.

8. As a sequel to the fore-going discussion, it follows that the impugned order (Annexure P-8) does not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

9. However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the Civil Suit, pending before the trial Court.

08.12.2022.
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*