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

C.R NO. 146 OF 2023

DATE OF DECISION: 11.01.2023

Gaje Singh and others

...Petitioners

Versus

Ramesh Kumar and others

...Respondents

CORAM : HON'BLE MR.JUSTICE ARUN MONGA

Present : Mr. Ravinder Malik (Ravi), Advocate,
For the petitioners.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting-aside appellate order dated 19.12.2022 (Annexure P-4) passed by learned Additional District Judge, Kurukshetra. Vide impugned order, appeal filed by respondent/plaintiffs against order dated 13.10.2021 (Annexure P-3) passed by learned Additional Civil Judge (Senior Division), Kurukshetra dismissing the application filed under Order 39 Rules 1 and 2 read with Section 151 CPC, has been allowed.

2. Facts as pleaded before the trial Court are that plaintiffs and defendants are co-owners in possession of the land comprised in Khewat No.19 Khatoni Nos. 14 to 36, Kittas-42, situated at village Kheri Ram Nagar, Hadbast No.374, Tehsil Thanesar, District Kurukshetra. All of them are in exclusive possession as per their private partition. They have reserved some land for passage (*Rasta*), which is being used for ingress

and egress. The defendants in collusion with each other are trying to demolish the passage in question forcibly and illegally. Hence, prayer was made to restrain the defendants from interfering in the continuous peaceful user of plaintiffs over the *Rasta* in question. Along with the suit, plaintiff/respondents herein also filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC praying for ad interim injunction restraining the defendant/appellants from creating any hinderance and interfering in the peaceful user of plaintiff/respondents over the *Rasta* in question which is existing in Khasra Nos.833, 834, 835, 848, 849 and 850 and from demolishing the same in any manner, forcibly and illegally.

3. Upon notice, defendant/appellants filed their separate replies denying existence of any *Rasta* of plaintiffs in the land in question. It was stated that radish crop had been cultivated on Khasra No. 848 and Paddy crop in Khasra No.849. It was further submitted that defendants were/are in exclusive possession of the land in question.

4. Vide order dated 13.10.2021 (Annexure P-3), learned trial Court dismissed the application filed by plaintiff/respondents under Order 39 Rules 1 and 2 read with Section 151 CPC. Aggrieved, plaintiffs filed civil miscellaneous appeal, which was allowed by learned Additional District Judge, Kurukshetra vide impugned order dated 19.12.2022 (Annexure P-4). Hence, the instant revision petition by defendants.

5. I have heard learned counsels for the parties and have gone through the records.

6. From the pleadings what, thus, emerges is that there is a dispute with regard to existence of *Rasta* on the land in question. Plaintiffs, on one hand, are claiming that they have been using the area as demarcated by them per their pleadings as *Rasta* and on the other hand,

defendants claim that the area in question has never been a *Rasta* and they have throughout been cultivating the land for agricultural produce.

7. Therefore, I am of the view that learned trial Court ought to have appointed a local commissioner to get the report of physical status of the land and thereafter take a decision on the rival contentions for the purposes of passing any interim order during the pendency of trial. Having not done so, factual averments qua existence of Raasta remained unverified vis-à-vis actual physical status of the land existing as on date. Furthermore, the disposal of application under Order 39 Rules 1 and 2 CPC by learned trial Court has though been reversed by learned First Appellate Court but again without ascertaining the actual physical status of the land.

8. In the peculiar premise, the instant revision petition is disposed of with liberty to the petitioners to move an appropriate application before learned trial Court for appointment of Local Commissioner at their cost. Learned trial Court shall be at liberty to appoint Local Commissioner as per the above discussion and also fix his/her fee, as may be deemed fit.

9. Till the report of Local Commissioner is received, parties are directed to maintain status quo *qua* the land in question with liberty to the learned trial Court to pass any further orders, as it may deem appropriate.

10. Disposed of accordingly.

JANUARY 11, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No