

In the High Court of Punjab and Haryana at Chandigarh

102

CR-4355-2017 (O & M)

Date of Decision: January 25, 2023

BIMLA AND ANR

....PETITIONERS

VERSUS

MUNISH

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Kshitij Sharma, Advocate for the petitioners.

Mr. Manoj Kaushik, Advocate for the respondent.

ANUPINDER SINGH GREWAL, J (ORAL)

Learned counsel for the petitioners submits that the Executing Court has gone beyond the decree by ordering the removal of encroachment in southern and western direction to the extent of 03 feet each in both the directions, although it was not so specified in the decree.

A Coordinate Bench of this Court had passed the following order on 29.11.2022:-

“The petitioners herein are the judgment debtors. In a suit filed by the respondent-Sh.Munish, a neighbour, for the grant of permanent and mandatory injunction complaining encroachment in the public street, the First Appellate Court held that the defendants have dug the foundation at least upto 3 feet in the said street. The operative part of the findings of the First Appellate Court are extracted as under:-

“He has also been able to prove that the defendants have dug the foundation at least upto three feet in the said street and thus, he is clearly entitled for the relief of permanent as well as mandatory injunction against the defendants.”

Though, in the regular second appeal, filed by the petitioner some observations with regard to the width of street have come, however, the appeal was dismissed.

There is a dispute with regard to the extent of encroachment made by the petitioners. There are two streets on Southern and Western sides of the petitioners’ house. The First Appellate Court while decreeing the suit, has observed that the petitioners have dug the foundation at least upto 3 feet in the said street. However, there is no clarity as to “Whether the aforesaid 3 feet encroachment is in the street located towards the Western or the Southern sides or on both the sides of the petitioners’ house?” Hence, let the trial Court record, in original, be requisitioned for 05.12.2022, through a Special Messenger on the charges to be deposited by the petitioners.”

In pursuance to the previous order, lower Court record has been received. A perusal of the site plan (Ex.P-3) indicates that the portion, which is marked yellow ABCD is on the western side and the alleged encroachment is stated to have been carried out in this portion.

Site plan (Ex.P-3) has been shown to the counsel for the respondent/decreed-holder who states that the portion in the site plan which has been coloured 'yellow' is on the western side of the petitioners' house. In the decree, it had been specified that the encroachment with regard to 'yellow' portion to the extent of 03 feet would be cleared.

Consequently, the petition is partly allowed and the impugned order (Annexure P-5) is set aside to the extent that the petitioner/judgment-debtor shall clear the encroachment on the western side as coloured 'yellow' in the site plan within a period of one month.

Learned counsel for the petitioner undertakes that the encroachment on the western side as coloured 'yellow' in the site plan to the extent of 03 feet shall be cleared within a period of 03 months.

(ANUPINDER SINGH GREWAL)
JUDGE

January 25, 2023
A.Kaundal

Whether speaking/ reasoned	:	Yes/No
Whether Reportable	:	Yes/No