

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

**Civil Revision No.612 of 2023 (O&M)
Date of Decision: 31.01.2023**

Satnam Singh

...Petitioner

Versus

Vijay Kumar & Others

...Respondents

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

Present:- Mr. Raj Kumar Arya, Advocate,
for the revisionist-petitioner.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment (Annexure P-4) handed down by learned District Judge, Pathankot (for short 'the Appellate Court') on 17.01.2023, whereby the appeal preferred by respondents-defendants No.1 and 2 against the order (Annexure P-3) passed by learned Additional Civil Judge (Senior Division), Pathankot (for short 'the trial Court') on 11.01.2021, allowing the application filed by the petitioner-plaintiff No.1 (here-in-after to be referred as 'the petitioner') and respondents No.5 to 8, i.e his co-plaintiffs, under Order 39 Rules 1 & 2 read with Section 151 CPC, has been partly allowed by way of modifying the above-said order (Annexure P-3), the petitioner has preferred the instant revision petition.

2. Shorn and short of unnecessary details, the facts culminating in the filing of the present revision petition, are that the petitioner and his

co-plaintiffs filed a Civil Suit against respondents No.1 to 4-defendants (here-in-after to be referred as 'the defendants') for seeking a decree for separate possession of the half share of the suit property, by way of its partition and they also prayed for the grant of the consequential relief of permanent injunction to restrain them (defendants) from alienating, mortgaging or disposing of any specific portion and more than their share, in the said property and also from raising any further construction over the same forcibly, while averring that the predecessors-in-interest of both the parties had jointly purchased the suit property and by virtue of a settlement arrived at between them, the father of the defendants had got the northern half share of this property whereas its remaining southern half portion had fallen to the share of the father of the plaintiffs. After the death of the father of the defendants, their mother and the father of the plaintiffs further agreed that the defendants would raise the construction in this property after leaving passage for the ingress and egress of the plaintiffs from the portion fallen to their/their father's share in the same.

3. On the self-same facts, the plaintiffs moved the afore-referred injunction application and the same was allowed by the trial Court vide the order Annexure P-3, restraining the defendants from alienating more than their share in the suit property and also from raising any construction over the same except in due course of law. Then, defendants No.1 & 2 preferred an appeal to lay challenge to the said order which has partly been allowed by the Appellate Court vide the impugned judgment Annexure P-4 and they have been restrained from alienating more than their share in the suit

property while further clarifying that in case, they raise any construction over this property, they would remove the same if that portion fell to the share of the plaintiffs.

4. I have heard learned counsel for the petitioner-plaintiff No.1 in the instant revision petition, at the preliminary stage and have also perused the file carefully.

5. Learned counsel for the petitioner contends that the plaintiffs had no passage to have access to the street existing on the northern side of the suit property and therefore, a settlement had been effected between the predecessors-in-interest of the parties that the defendants would raise the construction in this property while leaving the passage for the plaintiffs for the above-said purpose but however, they (defendants) are all out to raise construction in utter disregard of the said settlement and though, vide the order Annexure P-3, the trial Court had rightly restrained them from doing so but vide the impugned judgment, the Appellate Court has erroneously allowed the appeal to the extent of declining the prayer of the plaintiffs for an ad-interim injunction qua the construction over the suit property by the defendants and hence, the said judgment deserves to be set aside.

6. However, the afore-raised contentions are devoid of any merit because the plaintiffs have staked their claim for the ad-interim injunction on the basis of the settlement, as stated to have been arrived at between the predecessors-in-interest of both the parties regarding leaving the passage for them but in Para No.10 of the impugned judgment, the Appellate Court has categorically observed that in the written settlement deed, the factum of

leaving the passage from the portion on the southern side of the suit property, had no-where been mentioned. To add to it, as discussed earlier also, it has specifically been clarified in the impugned judgment that if the defendants would raise any construction, they would remove the same without any demur if that portion fell to the share of the plaintiffs.

7. As a sequel to the fore-going discussion, it follows that the impugned judgment (Annexure P-4) 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.

31.01.2023
seema

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>