

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(117)

CR-1853-2023

Date of Decision : March 23, 2023

Mulkh Raj since deceased through LR

.. Petitioner

Versus

Municipal Council, Fazilka

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Aakash Singla, Advocate, for the petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present civil revision, the challenge is to the order dated 24.01.2023 (Annexure P-5) passed by the Civil Judge (Sr. Division), Fazilka by which application filed under Section 151 CPC for leading the additional evidence, has been rejected.

It may be noticed that in the suit filed by the petitioner-plaintiff, the claim of the petitioner-plaintiff is that he has not encroached upon any land as being alleged. In order to prove the same, while leading the affirmative evidence, the petitioner had examined a private architect/draftsman as PW-1 so as to prove a site plan on record as Ex.P-1 to show that there is no encroachment.

After the evidence of the plaintiff was closed, the defendants led the evidence which has also closed. Thereafter, the petitioner had taken

10 adjournments to lead the rebuttal evidence. As no evidence in rebuttal was led and last opportunity was granted, the petitioner-plaintiff filed an application on 19.01.2023 seeking permission to lead additional evidence so as to prove the master plan of the area in question. The said application has been disposed of by the impugned order dated 24.01.2023 (Annexure P-5) wherein, it has been held by the trial Court that the master plan of the area has already been proved by PW-1 and the said master plan is already on record as Ex.P-1. It has been further recorded by the trial Court that the said master plan has not been denied by the defendants and has rather admitted its content. Hence, there is no ground to summon the similar documents as being prayed by the petitioner. The said order dated 24.01.2023 (Annexure P-5) is under challenge in the present petition.

Learned counsel for the petitioner argues that once a document, which is the master plan prepared by the Municipal Council is a public document, the petitioner has full right to summon the same in order to prove his case.

On being asked as to whether, the factum that there is an approved master plan with the Municipal Council of the area concerned, was to the knowledge of the petitioner or not at the time of filing the civil suit, learned counsel for the petitioner conceded the fact that he had the knowledge about the same. On being asked as to whether any averment has been made in the suit that the construction done by the petitioner is in accordance with the master plan, he submitted that as per the averments made in the suit, the construction is alleged to be as per the master plan.

That being so, once a particular master plan, which plan is equal to the

master plan of the Municipal Council, has been proved through PW-1, which plan has not been objected to be not in accordance with the master plan being maintained by the Department and rather the Department conceded the said plan to be the master plan, which fact is clear from the paragraph 4 of the impugned order, no grievance subsists with the petitioner to file the present civil revision petition to challenge the said order.

Learned counsel for the petitioner submits that once the petitioner intends to bring on record the master plan as being maintained by the Municipal Council, he has full right to do so even if a particular master plan proved by him during leading of the affirmative evidence which plan has not been denied by the defendants as the said prayer could not have been objected by the Court. This shows the attitude of the petitioner that the suit is to be conducted in a manner required by the petitioner and not in accordance with law.

Once, a finding was recorded by the trial Court that the master plan which has already been proved by the petitioner himself and has not been objected to by the other side and have been conceded, the question of filing of the present civil revision petition to challenge the said order is a luxury litigation only.

No prejudice which has been caused to the petitioner, has been pointed out except the statement that the petitioner has a right to bring on record the similar master plan as he intends to do so. These kind of a luxury litigation needs to be stopped.

In the absence of any prejudice shown to this Court qua the impugned order, no interference is called for by the Court, hence, the

present civil revision petition is dismissed with the cost of Rs.25,000/- to be deposited with the Institute for Blind, Sector 26, Near Homoeopathic Medical College And Hospital, Chandigarh.

March 23, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No