

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

CR-1567-2022(O&M)

Date of decision:-14.2.2023

Jang Singh

...Petitioner

Versus

Naresh Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Shvetanshu Goel, Advocate
for the petitioner.

Mr.Vivek Goyal, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Naresh Kumar had brought a suit for grant of permanent injunction against defendants Ram Sarup and others for restraining them from demolishing the Rasta/Gohar marked as A to C at village Kunjpura, Tehsil and District Karnal in an illegal and forcible manner.

2. According to the plaintiff he and his family members are using the said Rasta/Gohar for ingress and egress to main road from the suit land and the defendants had threatened to demolish the same and in case they succeed in doing so, the plaintiff would not be left with any access to his fields.

3. The suit was contested by the defendants. However, the trial Court of Civil Judge (Jr.Divn.), Karnal vide a detailed judgment and decree dated 6.1.2011 decreed the suit filed by the plaintiff against the defendants observing that there is a Rasta/Gohar of 2 karam towards the northern side of Rect.No.140, Killa No.1, 2 and 3 and towards the eastern side of Killa No.8 and 3 leading to the suit land being owned and possessed by the plaintiff from the main road. Therefore, the plaintiff is entitled to a decree for permanent injunction.

4. Feeling aggrieved, defendant No.1 Ram Sarup (since dead) represented by his LR's had preferred an appeal before learned District Judge, Karnal, which was assigned to learned Additional District Judge, Karnal. However, that appeal was dismissed vide a detailed judgment and decree dated 8.7.2013, in the process, judgment and decree passed by the trial Court were upheld.

5. The plaintiff had then filed a petition under Order 21 Rule 32 CPC before Civil Judge(Jr.Divn.), Karnal praying that warrants of attachment of property of JDs/defendants be issued, in addition to warrants of their arrest and said defendants/JDs be detained in civil imprisonment for compliance of the decree.

6. On notice, the JDs appeared and filed objections. However, those were dismissed on account of non prosecution vide order dated 27.8.2021. The Executing Court had appointed a Local Commissioner to carry out demarcation. The said Local Commissioner had accordingly done so and submitted his report. Thereafter, warrants of possession were issued by the Court of Civil Judge(Jr.Divn.), Karnal, leaving the

respondent/JD Jang Singh aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was given to the respondents/plaintiff and respondent No.1 has put in appearance through his counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. Learned counsel for the revision petitioner has stated that learned Civil Judge (Jr.Divn.), Karnal has wrongly issued warrants of possession in execution of decree for permanent injunction. In support of his contention, he has referred to judgment **Sarup Singh Versus Daryodhan Singh, 1972 AIR(Delhi) 142** by Full Bench of Delhi High Court, wherein it was observed that issuance of delivery of possession in execution of a decree for injunction was not justified since such a decree has to be executed in a manner provided by Order 21 Rule 32(1) and (3).

10. After going through the impugned order, I find that there is merit in the arguments of learned counsel for the revision petitioner. It has to be taken note of that the decree passed in favour of plaintiff was for grant of permanent injunction restraining the defendants from demolishing the Rasta/Gohar forcibly and illegally. Although the demarcation was carried out and report was submitted in the Court but the Court was to ensure that the rasta was made available to the plaintiff without any obstruction and not to deliver possession of Rasta/Gohar to the decree holder/plaintiff.

11. Therefore, the order passed by Civil Judge (Jr.Divn.), Karnal in that regard is not sustainable and the same is set aside. The trial Court

is directed to proceed further in the matter in light of Order 21 Rule 32 CPC so as to take necessary steps to ensure that the Rasta/Gohar leading to fields of the plaintiff remains unobstructed and without any hindrance and in case the JDs create any obstruction, then the Court may take necessary action against them as provided under the law.

12. The revision petition is allowed accordingly.

The interim order passed on 28.4.2022 therefore comes to an end.

Since the main revision petition has been allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

14.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No