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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2366-2023 (O&M)

Date of decision: April 21, 2023

Manmohan Aggarwal

....Petitioner

versus

Rameshwar Chahal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ajay Jain, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)**CM-6997-CII-2023**

For the reasons stated in application, same is allowed subject to all just excretions.

Main case (O&M)

Petition herein is for setting aside/ modifying impugned order dated 15.10.2019 passed by learned Civil Judge (Junior Division), Hisar whereby application under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') filed by petitioner-plaintiff, was partly allowed restraining defendants No.1 to 3 from interfering in possession of plaintiff and proforma-defendants over property in question. Further, seeks setting aside/ modification of order dated 16.09.2022 passed by learned Additional District Judge, Hisar, whereby appeal filed against aforesaid order dated 15.10.2019 by petitioner-plaintiff, was dismissed.

2. The revision petition is premised on the averments that plaintiff-petitioner filed suit for permanent (prohibitory) and mandatory injunction restraining defendants/contesting respondents No.1 to 3 herein, their officials and workers from causing interference and interruption in peaceful ownership possession of plaintiff and proforma defendants over suit property and from causing any damage, destruction,

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raising any construction or changing the nature of the plots No. 1,2 and 3 as well as the road towards the eastern side of the plot No.1.

2.1. Alongwith suit, an application under Order XXXIX Rules 1 and 2 read with Section 151 of CPC for temporary injunction was also filed. Vide impugned order dated 15.10.2019, learned trial Court partly allowed the aforesaid application restraining defendants No.1 to 3 from interfering in possession of plaintiff and proforma-defendants over property in question.

2.2. Aggrieved, plaintiff-petitioner preferred an appeal before learned First Appellate Court against aforesaid order dated 15.10.2019, which was dismissed vide order dated 16.09.2022.

2.3. Thereafter, plaintiff sought information under the Right to Information Act, 2005 (for short 'RTI Act') and requisite information was supplied vide letter dated 21.03.2023 (Annexure P-5), along with letter dated 06.03.1987 and the Trace Drg. (Annexures P-6 and P-7).As per the same, towards east of plot No.1 exists 30 ft. wide road and not vacant land. Contesting defendants are trying to change nature of road existing towards east of plot No.1 owned by plaintiff.

3. I have heard learned counsel for petitioner and perused the case file.

4. Having heard learned counsel for the petitioner, I am of the view that impugned orders require no interference. Impugned order dated 15.10.2019 passed by learned Civil Judge (Junior Division), Hisar, is premised, *inter alia*, on the following reasoning:

“6. *It is settled law that while passing an interim order of injunction under Order 39 Rules 1 & 2 CPC, the Court is required to consider three basic principles, namely (a) prima facie case, (b) balance of convenience and inconvenience, and (c) irreparable loss and injury.*

7. *With regard to prima facie case in favour of plaintiff / applicant, it is relevant here to mention that plaintiff has claimed that he is owner in possession of plots No. 1 to 3 along with proforma defendants. Plaintiff further claimed that he has constructed boundary wall around plots No. 1 to 3 in the year 1995 but defendants No. 1 & 2 are raising construction by the side of plot No. 1 i.e., area of road and they want to usurp the portion of plot No. 1 without any right. Plaintiff also claimed that there exists a road towards eastern side of plot No. 1. Perusal of pleadings of parties shows that the entitlement of plaintiff qua*

plots No. 1 to 3 is not denied by defendants No. 1 to 3 but defendants No. 1 to 3 have stated that there is vacant land of shops abutting plot No. 1 which plaintiff wants to grab. To substantiate their respective claims, both plaintiff and defendants have annexed site plan along with lay out plan of the suit land. Perusal of layout plan as well as site plan shows that prima facie there is vacant land abutting plot No. 1 on the eastern side but there is no documentary evidence to show that there is a road abutting plot No. 1 as claimed by plaintiff. Hence, qua the vacant land abutting plot No. 1 in question as shown in red colour in the layout plan tendered by the defendants, there is no prima facie case in favour of plaintiff. However, qua plots No. 1 to 3 in question, there exists prima facie case in favour of plaintiff.

8. With regard to balance of convenience and irreparable loss, it is relevant here to mention that balance of convenience lies in favour of plaintiff qua plots No. 1 to 3 in question because if injunction is not granted, then, he would be unable to enjoy the property belonging to him and he would suffer irreparable loss, which cannot be compensated later on. However, qua land abutting plot No. 1, balance of convenience lies in favour of defendants because plaintiff has failed to adduce any document to show that said land is a road as claimed by him.

9. In view of above said discussion, application under Order 39 Rules 1 & 2 read with Section 151 CPC is hereby partly allowed to the effect that defendants No. 1 to 3 are hereby restrained from interfering in the possession of plaintiff and proforma defendants over plots No. 1 to 3 in question and from forcibly dispossessing the plaintiff and proforma defendants from plots No. 1 to 3 in question and from changing the nature of plots No. 1 to 3 in question till decision of the present suit. Needless to say that this order shall have no bearing on the merits of the case.”

4.1. Learned First Appellate Court, vide impugned order dated 16.09.2022, upheld the aforesaid order, which is premised, *inter alia*, on the following reasoning:

“9. It is admitted that the defendant No.3 is a Registered Society and was established for residential and commercial purpose for Government Gazetted Officers. It is also admitted fact that the plot No.1 measuring 325 sq. yards was initially allotted in favour of Sh. Kewal Singh vide sale deed No.3749 dated 27.9.1985. It is also admitted fact that plaintiff purchased plot No.1 from Kewal Singh vide sale deed No. 3152 dated 5.10.1987. Similarly, plots No.2 and 3 were also sold in favour of proforma defendants. There is no dispute regarding ownership of plots No.1 to 3 and considering their ownership, the injunction was granted against the defendants regarding plots No.1 to 3.

10. The main dispute in the present appeal is that plaintiff also wants to seek injunction regarding the land existing towards eastern side of plot No.1. In order to get injunction, the plaintiff is required to show that he has got right and interest in the said land. The most relevant document in this regard is sale deed No.3749 dated 27.9.1985 vide which plot No.1 was sold by the defendant No.3 society in favour of Kewal Singh. As per the photocopy of the sale deed No. 3749 dated 27.9.1985, it is clear that plot No.1 measuring 325 square yards according to the map submitted to Town and Country Planning Department, Haryana, Chandigarh, was sold by defendant No.3 society in favour of Kewal Singh. It is admitted that there exists a 40 feet wide

road towards the northern side of plots No.1 to 3. In order to prove the fact that a GaliSare Aam exists towards eastern side of plot No.1, plaintiff is required to produce the map submitted to the Town and Country Planning Department, Haryana, Chandigarh. Merely by mentioning in the sale deed No.3152 dated 5.10.1987 that there exists a GaliSare Aam towards eastern side of plot No.1, is not sufficient because the boundaries mentioned in the said sale deed are not binding on the society and by merely mentioning the vacant land as Gali Sare Aam in the said sale deed dated 5.10.1987 would not convert the vacant land into a street. The entire land was owned by society and society carved out plots and roads in the land and sold the plots as per the map submitted to Town and Country Planning, Haryana, Chandigarh. As per the map of lay out plan, placed on the file, the vacant land is shown towards eastern side of plot No.1. In these circumstances, it cannot be said that a prima facie case is made out in favour of plaintiff. As such, balance of convenience also does not lie in favour of plaintiff and the plaintiff would not suffer any irreparable loss, if injunction is not granted in his favour.

11. Resultantly, in view of above said observation and discussion, this court is of the considered view that there is no illegality or infirmity in the impugned order dated 15.10.2019 passed by the learned trial court, vide which the injunction application of the plaintiff was partly allowed. As such, the present appeal being devoid of merits is hereby dismissed with costs. Lower court file be sent back along with copy of judgment. Appeal file be consigned to record room."

5. Having heard the arguments of learned counsel for the parties, there is no room for interference in the aforesaid valid reasons recorded by learned Courts below.

5.1. Learned counsel for the petitioner has pointed out that the letters dated 21.03.2023 (Annexure P-5) and dated 06.03.1987 (Annexure P-6 and 7) show 30' wide road towards the east of plot No.1 and, therefore, *qua* the said road also, the ad-interim injunction ought to be granted to the petitioner. I am unable to accept this contention. Admittedly, these letters were obtained by the petitioner only after the passing of the impugned orders by the learned Courts below and have been produced for the first time in the present petition. There was no question of their consideration by the learned courts below at the time of passing the impugned orders. It would, therefore, be unjust and unfair for this Court to find fault with or interfere with the impugned orders on the basis of these letters.

6. No material irregularity in law or procedure has been committed by learned Courts below, so as to exercise extraordinary revisional jurisdiction herein.

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7. However, any construction, if carried out as has been alleged by petitioner on the disputed land shall be subject to final outcome of trial. Furthermore, my attention has been drawn to the layout plan (Annexure P-7), as supplied by the Department Town and Country Planning, Haryana under the RTI to the petitioner. In order to resolve controversy, on oral request of learned counsel for petitioner, petitioner is permitted to implead office of the Directorate of Town and Country Planning, Haryana as party to suit proceedings, who shall ensure that approved layout plan is followed for the construction on the spot.
8. Disposed of.
9. As already observed hereinabove, needless to say that any construction in violation shall be at own risk and peril of the party doing so and competent authority shall deal with the same in accordance with law, if it is found to be illegal.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 21, 2023
mahavir

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No