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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2901-2023 (O&M)

Date of decision: May 10, 2023

Manohar Lal Nagpal

....Petitioner

versus

Veena Rani and another

....Respondents

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

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 19.01.2023 passed by learned Civil Judge (Junior Division), Hisar, whereby application filed by petitioner/plaintiff for directing respondent No.1 to fill the pits dug by wall of the house of the petitioner was dismissed.

2. The revision petition is premised on the averments that petitioner filed suit for permanent injunction against the respondents *inter alia* to the effect that respondent No.1 be restrained from raising construction over the plot in dispute and not to damage/ peel off the wall of petitioner/plaintiff abutting the plot of respondent/defendant No.1 and for permanent injunction restraining respondent/defendant No.2-Municipal Corporation, Hisar not to sanction site plan of the plot in question as dimensions are wrongly mentioned in the sale deed.

2.1. During pendency, petitioner/plaintiff moved an application for issuance of directions to respondent No.1 to fill the existing hole in the plot of respondent No.1, adjoining the wall of petitioner on which house of petitioner stands or to grant permission to petitioner to fill the holes so dug up by respondent No.1 as same are dangerous to wall of the house of petitioner.

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2.2. Vide impugned order dated 19.01.2023, learned trial Court dismissed the said application.

3. Learned counsel for petitioner would contend that respondent No.2-Municipal Corporation, Hisar has also issued letter to respondent No.1 for filling up the holes/ pits dug up abutting the wall of house of petitioner. He would further urge contend that holes abutting the wall may damage the entire building as rain water will weaken its foundation.

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

5. Impugned order dated 19.01.2023 passed by learned Civil Judge (Junior Division), Hisar, is premised, *inter alia*, on the following reasoning:

“By way of the present suit, the plaintiff has sought permanent injunction restraining the defendant No.1 from raising any construction over the plot in dispute. However, it is submitted by the applicant/plaintiff in the plaint itself that defendant No.1 has purchased the said house vide sale-deed No.20139 dated 24.02.2022 and now, she is in possession of the said house. Meaning thereby, the plaintiff has nothing to do with the ownership and possession of the plot in question. It is also not disputed that defendant No.1 is not the owner in possession of the plot in question. Since, vide order dated 16.05.2022 passed by the undersigned court, the defendants were restrained from causing any interference into the common wall. Now, by way of the present application, the plaintiff/applicant has sought directions from the court against the defendant No.1 for filling the existing holes in the plot in dispute. The plaintiff is neither the owner nor in possession of the plot in question. Moreover, the owner of the plot in question is defendant No.1 who has alleged that the said construction has been stopped by her because of the filing of the present suit. It appears that the defendant No.1 has not raised construction on his own plot of which she has right to do so. She cannot be restrained from raising any construction over the plot of which she is the absolute owner, as admitted by the plaintiff in itself. Further, no report of any expert has been placed on the file which would show that said holes may cause damage to the house of the plaintiff. Therefore, the defendant No.1 cannot be directed to fill the existing holes in the plot in dispute just for the benefit of the plaintiff. There seems no merit in the application moved by the applicant/plaintiff. Accordingly, the application in hand stands dismissed.”

6. There is no room for interference in the aforesaid valid reasons recorded by learned Court below.

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- 7. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.
- 8. Dismissed.
- 9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 10, 2023
mahavir

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