

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 5896 of 2018****Date of Decision: 22.09.2023**

Rakesh Kumar Jain

... Petitioner(s)

Versus

Vinay Kumar and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Varshit Garg, Advocate
for Mr. Aayush Gupta, Advocate
for the petitioner(s).

Mr. Gurcharan Dass, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. Through this revision petition, the correctness of the order passed by the trial court while rejecting the plaintiff's application for directing the defendants to allow the Building Expert to visit the property and take photographs thereof, was dismissed.

2. On the one hand, the plaintiff claims that some part of the joint property has been partitioned, whereas a common courtyard was left for the joint user of the property. The plaintiff also claims that the defendants be directed to remove the illegally constructed toilet and a hut in the common courtyard. On the other hand, the defendants claim that the entire property was divided by metes and bounds.

3. Admittedly, at present, the property which is allowed to have been used for the construction of a toilet and a hut is under the control of the

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defendants. The plaintiff's request for directing the defendants to allow inspection by a Building Expert and to take photographs was to bring on record the status of the construction over the property. It would not amount as a direction to the defendants to collect evidence on behalf of the plaintiff. In fact, the trial Court has taken a narrow view of the matter particularly when the property is under the control of the defendants. The plaintiff, in order to prove his case, is required to prove that a toilet and a hut has been constructed on a common courtyard. For proving such fact, the visit of a Building Expert by permitting him to take photographs shall be necessary.

4. Keeping in view the aforesaid facts, the present revision is allowed. The impugned order is set aside. The defendants are directed to permit the plaintiff's Building Expert to visit the site and take photographs. The trial Court will fix the date and time for visit of the Building Expert.

(Anil Kshetarpal)
Judge

September 22, 2023
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No