

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

CR-168-2024
Decided on 12.01.2024

Manvir Kaur and others

...Petitioners

Versus

Gurdial Singh and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Vijay Rana, Advocate
for the petitioners.

RITU TAGORE, J. (Oral)

1. The present revision petition has been filed by the petitioners seeking to set aside the order dated 11.12.2023 (Annexure P-7) passed by learned Civil Judge (Junior Division), Phillaur, District Jalandhar.
2. The petitioners and proforma respondent No.2 are the original defendants No.1 to 4 in a suit for permanent injunction instituted by Gurdial Singh, respondent No.1 (plaintiff before the learned lower Court).
3. As evident from the copy of plaint (Annexure P-1), respondent No.1 (plaintiff before the learned lower Court) filed a suit for permanent injunction pleading that agriculture land of the parties, involved in the suit is adjacent to each other. The land shown in color red described with letters ABCD measuring 2 Karam X 72 Karam comprising in Khasra No.44//12 and 44//19 belong to petitioners (defendants before the learned lower Court) and respondent No.2 (defendants before the learned lower Court), land described with letters PQRS comprising in Khasra No.44//11, 44//20 belongs to respondent No.1 (plaintiff), as detailed in the head note of the
plaint and illustrated in the site plan attached with the plaint.

4. The respondent No.1 (plaintiff) further asserted that the land owned and possessed by both parties benefits from natural and lateral support of each other. However, a day prior to filing of the suit, the petitioners (defendants) openly declared to excavate the earth from the land falling in Khasra No.44//11 and 44//20, having no right to do so and if petitioners (defendants) are permitted to carry out their illegal designs, this would cause irreparable loss and injury to the land of respondent No.1 (plaintiff), leading to its collapse. The respondent No.1 (plaintiff) claims that, with the timely help of the villagers, he thwarted the petitioners' (defendants) illegal actions and requested them to refrain from digging the land but they refused. Based on these material allegations, respondent No.1 (plaintiff) filed suit, seeking to restrain the petitioners (defendants) from altering the level or lowering the level or moving any earth from the land measuring 2 karams x 72 karams as shown in color red in the site plan and marked as ABCD adjacent to his land.

5. As revealed from Annexure P-2, on 26.07.2023, respondent No.1 (plaintiff) filed the above captioned suit and obtained an *ex parte* order in his favour, prohibiting petitioners (defendants), their servants/agents etc. from digging, removing earth or altering the level of the property comprised in Khasra No.44//12 and 44//19 (as detailed in the plaint) except in due course of law, with a rider that *ex parte* order does not impact other legal proceedings, including those under the SARFAESI Act.

6. A subsequent order dated 09.08.2023 (Annexure P-3) shows that petitioners (defendants No.2 to 4) represented by their counsel, appeared before the trial Court and proceedings were adjourned to 18.09.2023 for submission of their written statements and the service of respondent No.2 (defendant No.1). However, as evident by Annexures P-4 to P-7 on

subsequent dates (18.09.2023, 18.10.2023 and 17.11.2023) petitioners (defendant No.2 and 3), failed to file their written statement despite being given a final opportunity. Consequently, their defence was struck off due to non-compliance of the orders of the Court as detailed in order dated 11.12.2023. Being aggrieved by the aforesaid order dated 11.12.2023, the petitioners (defendants), have filed the instant revision.

7. Learned counsel for the petitioners contends that service regarding respondent No.2 (defendant No.1) was incomplete and plaintiff failed to provide the correct address of the respondent No.2 (defendant No.1), as such, petitioners (defendant Nos.2 to 4) did not submit their written statement. Submitting further that legal precedents dictate affording the parties an opportunity to defend their case, learned counsel stated that doors of contest should not be closed hastily for a litigant. Emphasizing that the case is still in its early stage, with the service of respondent No.2 (defendant No.1) yet to be completed, the learned counsel submits that petitioners be afforded an opportunity to raise their defence before the Court to prevent irreparable loss to them.

8. Considering the prayer raised in the present revision, notice to respondent No.1 is deemed unnecessary and is dispensed with.

9. In the light of the relief claimed by respondent No.1 (plaintiff) against the petitioners (defendants No.2 to 4) in the case on hand, denying them right to contest the relief would result in serious prejudice. Furthermore, it is emphasized that a party should be allowed to contest the matter on merits rather than scuttling their rights on rigid grounds. Deciding a dispute after hearing both the parties is deemed preferable, and a technical approach leading to closure of contesting doors should be avoided, *moreso*, when other party can always be compensated with costs. In the

circumstances, when case was pending for service of the respondent No.2 (defendant No.1), the learned lower Court should have granted an opportunity to the petitioners to file their response. In this regard, the impugned order does not withstand the judicial scrutiny.

10. In circumstances to do complete justice between the parties, I believe one opportunity be granted to the petitioners to file their written statement before the learned lower Court enabling them to put forth their stand before the Court to the assertions and allegations raised by the plaintiff against them. Accordingly, impugned order dated 11.12.2023 (Annexure P-7) is set aside, contingent upon payment of Rs.4000/- as costs payable by the petitioners (revisionists) to the respondent No.2 (plaintiff).

11. Petitioners are directed to appear before learned lower Court on the next date of hearing as fixed by the Court and make the payment of costs and file their written statement on the date fixed or within 15 days thereafter.

12. Accordingly, revision is allowed in above terms.

(RITU TAGORE)
JUDGE

12.01.2024
Rimpal

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