

CR-296-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.119

CR-296-2021

Date of Decision: 22.04.2024

KAMALJIT KAUR

....Petitioner

Versus

RACHHPAL SINGH AND ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Sandeep Bansal, Advocate,
for the petitioner.

Mr. Rishabh Gupta, Advocate,
for the respondents.

ARCHANA PURI, J. (Oral)

Challenge in the present revision petition is to the order dated 09.02.2021 (Annexure P-3) passed by learned Trial Court, whereby an application filed at the instance of the respondents/plaintiffs, for issuance of direction to the petitioner/defendant to allow the draftsman of the plaintiff to effect measurements of the house in question to prepare the site plan, was allowed.

Learned counsel for the parties heard.

During the pendency of the suit for mandatory injunction, filed at the instance of the respondents, Rachhpal Singh and Harpal Singh, against the present petitioner, Kamaljit Kaur, an application was filed for issuance of direction to the defendant to allow the draftsman of the plaintiff to effect measurements of the house in question, to prepare the site plan. The said application was resisted by the defendant. However, after hearing counsel

for the parties, the same was allowed, vide the impugned order.

During the course of arguments, learned counsel for the petitioner has made reference to copy of the plaint, Annexure P-7, as well as written statement filed, which is Annexure P-8, wherein in paragraph No.10, specific objection had been raised with regard to description of the property to be not correctly given in the plaint. Also, during the submissions made and as culled out from the paperbook, there was earlier litigation between the parties, relating to inheritance of Udham Singh, their common ancestor. It is submitted by learned counsel for the petitioner that earlier suit for declaration was filed by the petitioner-Kamaljit Kaur, against the defendants and the said suit was decreed by learned Trial Court. The said suit consisted of five properties, as depicted in decreesheet, copy whereof is Annexure P-4.

Learned counsel for the petitioner submits that the property described at '**D**' is the same property, which forms the basis of the subject suit. However, learned counsel submits that description of the boundaries has been wrongly mentioned and it was one turn qua clockwise, which was required to be made and the same has been given amiss. On query by the Court, it is submitted by learned counsel for the petitioner that even if, there is dispute with regard to identity of the property, at this stage, he has no objection if the measurements are conducted qua the suit property, without prejudice to the rights of the parties to be adjudicated on merits, from the outer of the house of the property, as there is total construction made on the suit property and the same is also bounded on three sides by three other properties, which have already been constructed and are closed ones.

In these circumstances, he has no objection if the measurements, for the purposes of site plan for identification of the suit

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property, as asserted by the respondents/plaintiffs, are allowed from the roof.

This offer, as such, is accepted by learned counsel for the respondents and he submits that he has no objection, if access is given to the totally constructed suit property from the roof and in these circumstances, the revision petition be accepted.

In the light of the offer, so made by learned counsel for the petitioner, which is acceptable to learned counsel for the respondents, the impugned order dated 09.02.2021 is modified to the extent that the respondents/plaintiffs along with the draftsman, shall not be having access to the inside of the property. In any case, if the staircase is existing inside the property, they shall have access to the staircase only to reach the roof of the property and the respondents/plaintiffs with the help of draftsman, may conduct the measurements of the suit property, from the roof.

The parties are directed to make appearance before learned Trial Court concerned, on the date already fixed and learned Trial Court shall affix the date for visit of the parties, as per their convenience, for the aforesaid purpose.

In the light of the aforesaid observations, the instant revision petition stands disposed of.

22.04.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No