

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CR-2005-2023 (O&M)

Date of reserved:-29.02.2024

Date of pronouncement: 05.03.2024.

Renu @ Renu Sachhar and another

...Petitioners.

Versus

The Municipal Council and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Aashna Aggarwal, Advocate and
Mr. Karan Singla, Advocate for the petitioners.

Mr. Yogesh Goyal, Advocate for
Mr. Ashish Yadav, Advocate
for the respondent/ M.C., Rewari.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioners has challenged order dated 01.03.2023 (Annexure P-12) passed by learned trial Court, vide which application filed by the petitioners under Order 39 Rules 1 and 2 read with Section 151 of CPC was dismissed and further the petitioners has challenged order dated 21.03.2023 (Annexure P-14) passed by the First Appellate Court, vide which the appeal preferred by the petitioners against order dated 01.03.2023 has been dismissed.

2. The facts as per the case of the plaintiff are that the petitioners/ plaintiffs filed a civil suit No.180 of 2023 for permanent injunction and also move an application under Order 39 Rules 1 and 2 read with Section 151 CPC along with the said civil suit praying for an order of temporary

injunction for restraining the defendants from causing any loss, damages, destruction, demolition to the existing godown over the disputed property and from interfering into the peaceful user and enjoyment and settled possession of the plaintiffs and from dispossessing/ ousting the plaintiffs from the suit property, in any manner till decision of the case.

3. The plaintiffs alleged to be owners in possession of property marked with letter ABCD and portion shown with red colour in the site plan attached with the plaint. It was further alleged that the aforesaid portion was being used as godown by the plaintiffs since long peacefully, openly without interruption and interference. Plaintiff No.2 is carrying on the business of electronics in the name and style of M/s Haryana Enterprises as a proprietor in the shop situated at Railway Road, Rewari near Shankar Market, Rewari, shown with red colour in the site plan. It was pleaded that the disputed portion shown with red colour in the site plan never remained to be a rasta/ gali/ passage and was never used as such on the spot. The defendants have never maintained the disputed portion as rasta or gali and have no concern whatsoever with the disputed property shown with red colour in the site plan. The boundaries and adjoining properties were also mentioned in the plaint.

4. It was further pleaded that at the instance of Sunil Kumar, who is brother of Sanjay Kumar, husband of the plaintiff, defendants have issued notice No.243/MCR dated 20.1.2023 and No.5242 dated 27.12.2022 in the name of husband of plaintiff No.1 and father of plaintiff No.2 for removing/ demolishing the existing structure of the plaintiff over the disputed portion in the shape of Tin shed which is being used as godown. The said notices

were replied by the husband of plaintiff No.1 and father of plaintiff No.2, but the defendants at the instance and in collusion with Sunil Kumar are intending and adamant to damage the disputed property and its existing structure (godown) and to interfere in peaceful use, enjoyment and settled possession of the plaintiff over the suit property. So, if the defendants succeed in their illegal object then in that eventuality the plaintiff will suffer irreparable loss and injury which could not be compensated in any manner. Hence, it was prayed that defendants be restrained from causing any kind of loss, damage, destruction, demolition etc. to the existing godown over the disputed property and goods lying therein of the plaintiffs and from interfering in the peaceful use, enjoyment and settled possession of the plaintiffs and from dispossessing/ ousting the plaintiffs in any manner till final decision of the present case.

5. Upon notice, defendants appeared and filed their joint written statement/ reply denying that the plaintiffs are owners in possession of the property marked with letters ABCDEFGH and portion shown in red colour in the site plan and marked with letters ABEF. It was also denied that the aforesaid portion is being used as a godown by the plaintiffs since long peacefully, openly without interruption and interference of anyone as a matter of right. It was also submitted that the alleged sale deed Vasika No.9941 dated 08.03.2013 and the site plan annexed with the sale deed in favour of Sandeep son of Shyam Sunder, vendor of the plaintiffs, depicts location of the property/ shop in dispute as Vishwa Karma Gali, Shankar Market, Rewari and showing property of 'Digar' person towards northern side. It was also alleged that the land in dispute is a rasta sare aam and is

being used for the common purpose and same vests in Municipal Council, Rewari who is the absolute owner of rasta sare aam and has all the rights to take care and maintain and construct the road, drainage and remove any obstacles, hindrance or encroachment from the rasta sare aam. It was alleged that the plaintiffs had encroached the rasta sare aam shown by letters ABCDEFGH and shown by red colour in the site plan attached with the written statement. When the defendants received a complaint against the encroachment of Municipal Council, then they inspected the spot and found that the plaintiffs had encroached the rasta sare aam and had blocked the same without any basis. Thereafter, the defendants issued show cause notice No.243/MCR dated 20.1.2023 and No.5242 dated 27.12.2022 to the plaintiffs' husband to produce the documents regarding the ownership of the land and site plan got sanctioned from M.C., Rewari and other relevant documents, to prove their ownership, but the husband of the plaintiff had not produced any such document till date. It was alleged that the present suit has been filed just to grab the property of the M.C., Rewari illegally and it was prayed that the application of the plaintiffs may be dismissed.

6. The application filed under Order 39 Rules 1 and 2 read with Section 151 CPC by the petitioners/ plaintiffs was dismissed by the trial Court vide order dated 01.03.2023.

7. Aggrieved by the said order the petitioners/ plaintiffs filed a appeal before the First Appellate Court, Rewari against order dated 01.03.2023. The appeal filed by the plaintiffs/ petitioners was also dismissed by the Appellate Court vide order dated 21.03.2023. So, aggrieved by the aforesaid orders the present revision petition has been filed

by the petitioners/ plaintiffs for setting aside the said orders.

8. Learned counsel for the petitioners has contended that both the Courts below have ignored the fact that the present suit is simpliciter suit for permanent injunction and only possession is to be seen in a suit for permanent injunction. In the present case, the defendants/ respondents admitted the possession of the petitioners alleging that they have encroached upon the land of the respondents. So once the possession is admitted then the only remedy available with the defendants/ respondents is to dispossess the petitioners in due course of law and not forcibly. In this respect he has relied upon the judgment of this Court in **Parmod Kumar (deceased) through LRs Vs. Municipal Corporation, Faridabad**, in RSA No.-3605-2011, decided on 21.12.2021 and judgment of Hon'ble Supreme Court in **Rame Gowda (D) by LRs. Vs. Mr. Varadappa Naidu (D0 by Lrs and another, 2004(1) R.C.R. (Civil) 519.**

9. He has further contended that the show cause notices that have been issued are not pertaining to the suit property and the Courts below have misread sale deed No.1563 dated 08.07.2020. The husband of the petitioner had replied to the show cause notices and the matter is still under consideration of the respondents. He has argued that the respondents want to forcibly demolish the tin shed and other construction of the petitioners over the shop Nos. 16-A and 16-B of which the petitioners are owners in possession and the respondents have no right to do so. Even, it has been ignored that the gallery/ rasta in between the shops of Shanker Market is private property of the owners and has been left between the row of shops by consent of the owners and has not been notified or declared as land of the

Municipal Council, but wrongly it has been presumed to be a public rasta by the trial Court. While relying upon the judgment of this Court in **Municipal Corporation of Ludhiana Vs. Oswal Spinning and Weaving Mills Ltd., 1991 PLJ 480.**, he has further contended that the every rasta/ street cannot be treated as a public street under the Haryana Municipal Act. He has urged that the entire approach of the Courts below are illegal, ultra-vires, void and without jurisdiction and the impugned orders are liable to be set aside.

10. On the other hand, it has been contended by learned counsel for the respondents that it is simpliciter suit for permanent injunction and no declaration has been sought by the petitioners claiming title to the property in dispute. It has not been disclosed by the petitioners that how they have acquired right in the same either by prescription or by purchase. He has also contended that the plaintiffs have encroached upon rasta sare aam and they are not owners of the disputed street. The defendants are proceeding only as per law and they have issued show cause notice No.243/MCR dated 20.1.2023 and No.5242 dated 27.12.2022 to the plaintiffs directing them to remove the illegal encroachment. The plaintiffs are owners of shop in question but they have illegally encroached the rasta sare aam without any basis. He has contended that the orders passed by the Courts below are valid and legal orders and do not call for any interference.

11. I have heard learned counsel for the parties and have gone through the relevant record.

12. As per the plaintiff, he is owner in possession of property marked with letters ABCD and shown in red colour in the site plan and no gali/ rasta sare aam exists on the spot. On the other hand, the defendants are

alleging that the plaintiffs have illegally encroached upon rasta sare aam for which they have no right.

13. The plaintiffs have placed on record Vasika No.1563 dated 08.07.2020, vide which plaintiff No.1 namely, Renu had purchased the property from Sandeep. From the perusal of the aforesaid sale deed, it is revealed that that shops No.16-A purchased by plaintiff No.1 bearing house tax No.1681/1-1681/2 is situated at Vishwakarma Gali, Shankar Market, Nai Basti, Rewari and is bounded by rasta sare aam on the western side. But in the site plan produced on record by the plaintiffs the aforesaid Vishwakarma Gali has not been shown and correctness of this site plan has been disputed by the defendants. The Courts below have rightly held that the correctness of the site plan is to be determined during the trial after appreciating the evidence produced on record. But it has already been observed that from the sale deed Vasika No.1563 dated 08.07.2020, it is prima facie apparent that the property purchased by plaintiff No.1 is bounded by rasta sare aam on the western side and the property purchased by the plaintiff is situated in Vishwakarma Gali, which shows that a gali exists on the spot. As such, the plaintiffs have not come to the Court with clean hands.

14. In the show cause notices No.243/MCR dated 20.1.2023 and No.5242 dated 27.12.2022 also it is mentioned that in Ward No.11, Shankar Market, Railway Road, the plaintiffs have illegally raised construction over the road coming from Punjab National Bank towards Vishwarkma School. Vide the aforesaid show cause notices the defendants had given time of seven days to the plaintiffs to produce documents of their ownership over the suit property, to which the plaintiffs had duly replied, but they have

failed to produce any such document showing their ownership. The issuance of show cause notices by the defendants to the plaintiffs also strengthens the fact that only legal course is being adopted by the defendants.

15. The case law cited by learned counsel for the petitioners is of no help to the petitioners being not applicable to the facts of the case in hand, when the plaintiffs have failed to prove prima facie case in their favour, also failed to prove that balance of convenience lies in their favour and in case the injunction is not granted in their favour, they are likely to suffer irreparable loss. The application filed under Order 39 Rules 1 and 2 read with Section 151 CPC by the plaintiffs have been rightly dismissed by the trial Court and order of the trial Court has been rightly upheld by the First Appellate Court.

16. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

17. All pending applications, if any, also stand disposed of accordingly.

18. Nothing expressed hereinabove shall be construed as an opinion on the merit of the case.

(SUKHVINDER KAUR)
JUDGE

05.03.2024.

komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No