



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

128+274

CR-3203-2023 (O&M)
Decided on: 19.09.2024

Harbans Lal and others

...Petitioners

Versus

Nirmal Singh and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Rajeev Dev Sharma, Advocate
for the petitioners.

RITU TAGORE, J.

CM-7488-CII-2024

This application has been filed for fixing the main case to some
early date of hearing.

Since main case is listed today, the application is rendered
infructuous.

Application is accordingly disposed of.

CM-9639-CII-2023

Heard on application for impleadment of LR's of petitioner
No.3-Rachpal Singh son of Santa Singh.

In view of the averments made in the application, persons
detailed in para No.2 of the application are impleaded as LR's of petitioner



No.3-Rachpal Singh (deceased), for the purpose of adjudication of this revision, subject to just exceptions.

Amended memo of parties is taken on record.

CR-3203-2023 (O&M)

1. This revision is directed against the order dated 26.10.2022 (Annexure P-2), passed by learned Civil Judge (Junior Division), Pathankot, whereby the application under Order 21 Rule 32 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') was dismissed.

2. Learned counsel assailed the order dated 26.10.2022, contending that the learned lower Court completely ignored the evidence presented by the petitioners, which proved that respondents willfully violated the directions contained in the judgment and decree dated 24.04.2014.

3. Learned counsel submits that petitioners instituted a civil suit No.114 dated 04.05.2009 titled 'Harbans Lal and others Vs. Nirmal Singh and others' against the respondents for a declaration and permanent injunction. The said suit was decreed vide judgment and decree dated 24.04.2014, holding the petitioners to be owners in possession of the suit property i.e. measuring 0-7 marlas No.Khata 801 No.Khatauni 1432 No. Khasra 1968 situated in village Daulatpur, Tehsil Pathankot as recorded in the Jamabandi for the year 2006-07. The respondents (defendants in the suit before trial Court) were found to have no right and title in the suit property and were restrained from interfering in the possession of the petitioners or carving out any passage/path or creating any opening such as door, windows and ventilators, in the suit property.



4. Learned counsel submits that petitioner Rachpal Singh AW-1 specifically deposed that respondents unloaded gravel (Bajri) on the suit property on 12.08.2016, for laying a *pucca* path and willfully violated the judgment and decree dated 24.04.2014 (Annexure P-1). Om Parkash, AW-2 also supported these allegations. However, the learned trial Court fell in error in dismissing the application on the basis of surmises and conjectures, without properly appreciating the evidence. A prayer is thus made to set aside the impugned order dated 26.10.2022.

5. I have heard learned counsel for the petitioners and have gone through the paper book with his able assistance.

6. It is a matter of record that the suit for declaration and permanent injunction, filed by petitioners was decreed in their favour vide judgment and decree dated 24.04.2014 (Annexure P-1) and respondents were restrained from interfering in peaceful possession of the petitioners and were further restrained from creating any passage, window, or any other opening by way of door and ventilators in the suit property, owned and possessed by the petitioners.

7. It is also a matter of record that the petitioners filed an application under Order 21 Rule 32 of CPC against the respondents, who contested it. The learned trial Court framed the issues and allowed the parties to present evidence. Thereafter, upon appraising the evidence, the trial Court concluded that the petitioners failed to present any cogent and definite evidence to establish their assertions of willful violation of the judgment and decree dated 24.04.2014 (Annexure P-1) and dismissed the



8. I have gone through the findings of the learned trial Court and find no ground to interfere in the same. Learned trial Court in para No.13 and para No. 14 of the impugned order specifically observed that petitioners did not present any compelling and cogent evidence such as photographs, to establish that on 12.08.2016, the respondents had thrown a loaded truck of gravel (*Bajri*) on the suit property. The Learned trial Court also noted the Om Parkash AW-2's admission that no police complaint was made regarding the alleged incident on 12.08.2016, nor the incident was photographed. The Court further noted Om Prakash PW-2' s failure to provide the truck number or the name of its driver, which contributed to disbelieving his version. Additionally, the Court noted the admission of AW-2 that a sewage line had already been laid by Municipal Corporation, Pathankot, 18/20 years ago underneath the suit property. Considering all this evidence collectively, the learned trial Court held that the petitioners failed to prove their assertions of willful violation of the judgment and decree dated 24.04.2014 (Annexure P-1), which is required to be proved a kin to a criminal case, while placing reliance on **Raj Kumar Vs. Parshotam Dass, AIR 2002 (2) RCR (Civil) 678.**

9. The learned counsel for the petitioners failed to point out any infirmity in the findings of learned trial Court on account of misreading or misapplication of evidence or leaving out any material piece of evidence by the learned trial Court before reaching the above conclusion and inferences.

10. As a sequel to the foregoing discussion, it is held that the learned trial Court has rightly exercise the jurisdiction that vested in it and



perversity so as to warrant any intervention by this Court. Accordingly, the revision petition is dismissed.

11. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

19.09.2024
Rimpal

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