

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

Sr. No.250

CR-3388-2023

Date of Decision: 18.05.2024

SUKHMA DEVI

....Petitioner

Versus

MEENAKSHI AND ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Ashwani Bakshi, Advocate,
for the petitioner.

Mr. Deepak Girotra, Advocate,
for respondent No.1.

Ms. Nikita Goel, Advocate, for
Mr. Prateek Mahajan, Advocate,
for respondent No.2.

ARCHANA PURI, J. (Oral)

Challenge in the present revision petition is to the order dated 06.04.2023 (Annexure P-1), passed by learned Trial Court, whereby an application filed by the petitioner (who is plaintiff before learned Trial Court), for appointment of Local Commissioner to report the existing position of the houses of the petitioner and respondent No.1 and to demarcate the erection raised over House No.26-R, had been dismissed.

Learned counsel for the parties heard.

During the pendency of the suit for damages, prohibitory and mandatory injunction, filed at the instance of the petitioner/plaintiff, an

application was filed at the behest of the petitioner/plaintiff for appointment of Local Commissioner.

It is submitted by learned counsel for the petitioner that the respondent No.1 (who is defendant No.1 before learned Trial Court), has raised five-storeyed construction, as a result whereof adjoining house of the petitioner/plaintiff was damaged. Furthermore, it is submitted by learned counsel for the petitioner that there are violations of the Municipality Rules, as respondent No.1 has also covered part of the street while extending balcony, as a result whereof, there is obstruction *vis-a-vis* use of the street by the petitioner.

However, learned counsel for respondent No.1 submits that the application was filed at initial stage, when the issues had not been framed by learned Trial Court. In the given circumstances, the application could not be allowed, for the purposes of collecting evidence, at the behest of the petitioner/plaintiff.

In view of the submission, so made by learned counsel for respondent No.1, learned counsel for the petitioner submits that he has no objection, if relief is granted to him qua filing of similar application, at the stage, after framing of issues and recording of statement of the petitioner/plaintiff in his evidence.

It is pertinent to mention that in view of the observations given in the impugned order, there is an option given to the petitioner/plaintiff, to file such an application, at appropriate stage of the proceedings.

In the light of the same, even though, application, as such, had been dismissed, but however, in view of the observations made by learned Trial Court, the petitioner always has an option to file a similar application, after recording of statement of the petitioner in evidence. Upon filing of

similar application, learned Trial Court may pass appropriate order, considering the pleadings and the statement of the petitioner, if the necessity is felt, in accordance with law, without being influenced by any observations made aforesaid.

In view of the aforesaid, the instant revision petition disposed of.

18.05.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No