

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

CR-5715-2023 (O&M)

Date of reserved: 30.04.2024

Date of Pronouncement: 06.05.2024

Pardeep Kumar

...Petitioner.

Versus

Umed Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Anurag Jain, Advocate;
Mr. Ajay Kamboj, Advocate and
Mr. Kuljeet Singh, Advocate
for the petitioner.

Mr. Shailendra Jain, Sr. Advocate with
Mr. Munish Kumar, Advocate
for respondents No.1 to 3.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 31.05.2023 (Annexure P-9) passed by learned Additional District Judge, Hisar, vide which the appeal preferred by respondents/ plaintiffs was allowed and well reasoned order dated 12.05.2023 passed by the learned trial Court on an application under Order 39 Rules 1 and 2 read with Section 151 CPC, was set aside and the stay was granted against the petitioner/ defendant.

2. The material facts for adjudication of the present revision

petition are that the respondent/ plaintiff has filed a suit for permanent injunction (mandatory and prohibitory) to the effect that the defendant be restrained from creating hindrance in the alleged free passage of two karam which is allegedly existing on the southern *Doll* of khasra No.6//21, 22, 23, 24/1, 24/2, 25 and northern *Doll* of sanctioned drain comprised in khewat No.8 and 2 as per jamabandi for the year 2021-22 situated at village Hindwan, Tehsil and District Hisar and alleging that he has acquired easementary rights and has further prayed for restraining the petitioner/ defendants from alienating the alleged passage in question.

3. The brief facts as per plaint are that Jug Lal was owner in possession of big chunk of land and there was an approved passage which was touching the boundary of the said land up to khasra No.6//21 which was being used by Jug Lal for egress/ ingress to his fields. A family settlement took place between Jug Lal and his four sons, namely, Hari Singh, Deep Chand, Gulzari Lal and Nihal Singh by virtue of the said family settlement and kept his 1/5 share, which was incorporated in Mutation No.524 dated 11.05.1949, thereafter, the entire land was orally partitioned between above four sons of Jug Lal regarding which Mutation No.666 dated 07.03.1961 was sanctioned at the time of the said partition. A settlement took place between four sons of Jug Lal as per which they left a passage on the southern doll of khasra No.6//21, 22, 23, 24/2, 24/2 and 25 and northern side of sanctioned drain. Due to the said passage, less land was given to father of plaintiff No.1 instead of his actual share. Since the date i.e. 07.03.1961 the predecessor of the parties were using the said passage for ingress/ egress of their fields. It has been specifically averred that except

this passage there is not other passage in existence for egress and ingress of the land of the plaintiffs and their forefathers have acquired easementary rights in the passage in question. It was alleged that the defendant was creating hinderance in the said passage and irreparable loss would be suffered by the plaintiffs if the defendant succeeds in encroaching upon the said passage. Hence, the present suit was filed.

4. On notice, the defendant appeared and filed written statement denying that any such passage was left as claimed by the plaintiffs at the time of the alleged partition between four brothers. It was also denied that due to the said passage less land was given to the father of plaintiff No.1. It was alleged that predecessor of defendant was having share to the extent of 135 kanal 19 marlas land and this much land was given to him. The said passage is not shown in any official record as it never existed and rough site plan has not been prepared, as per the spot. It was averred that the plaintiffs are approaching to their fields from the side of canal, falling on the south of khasra No.22/1, 2, 3, 4, 5/1 and also from drain and canal side falling towards eastern side of khasra No.5//11/1, 12/1, 18/2, 24/1 and from village Shahpur side falling on North of Khasra No.5//11/1 (7-14) which they have concealed in the present suit. It was also alleged that report of the Local Commissioner was false and tainted and the plaintiffs in fact tried to create path by ploughing tractor in the land. The plaintiffs have filed false and vexatious suit to create passage forcibly in the land of the defendant, without any right. If the plaintiffs require any passage the same can be obtained only under the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

5. Alongwith the suit, the plaintiffs also filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC praying therein that during pendency of the suit, the defendants be restrained from encroaching, blocking, demolishing or making any hindrance in the passage in question.

6. The plaintiffs also filed an application for appointment of Local Commissioner, which was allowed by trial Court, vide order dated 26.04.2023 and Advocate Sachin Siwach alongwith the concerned Halqa Patwari, were appointed as Local Commissioner to visit the suit property and give report regarding the existence of a *Rasta* or sewerage line at the spot. After inspecting the spot on 01.05.2023 in the presence of both the parties, Advocate Sachin Siwach alongwith Halqa Patwari, submitted his report dated 08.05.2023 before the trial Court alongwith copy of Aksh Shijra, photographs and rough site-plan as per spot.

7. The aforesaid application under Order 39 Rules 1 and 2 read with Section 151 CPC filed by the plaintiffs was dismissed by trial Court, vide order dated 12.05.2023. The plaintiffs/respondents preferred appeal before the first Appellate Court, Hisar, which was allowed, vide judgment dated 31.05.2023. Aggrieved against the said judgment, the defendant/revision petitioner has knocked the doors of this Court by way of present revision petition.

8. Learned counsel for the revision petitioner has contended that the trial Court has wrongly observed that the predecessor-in-interest of the plaintiffs were entitled for 135 Kanals—19 Marlas of land during partition, but have received only 129 Kanals—1 Marla land and were given less land on account of passage, which is running through the land of the petitioner/

defendant. He has contended that there is nothing on record to suggest that the petitioner/defendant was given some extra land over and above his entitlement, which could be used as a passage for ingress and egress. He has argued that heavy reliance has been placed upon the report of the Local Commissioner by the Appellate Court while reversing the order dated 12.05.2023 of the trial Court. The report of the Local Commissioner, on the face of it is contrary to the photographs appended with the said report. The perusal of the photographs would show that since *Rabi* crop was there in the fields of the respondents in the month of April, 2023 and after harvesting the same, the remains of the same are visible in the said photographs. So by no stretch of imagination, any inference can be drawn that there was passage existing through the fields of petitioner/defendant. It has also been erroneously observed that the Aksh Shijra, appended with the report of the Local Commissioner, reflects the passage, whereas it only records running of a *Khaal* in Khasra No.129, without there being any reflection of any passage whatsoever. He has further contended that the report of Local Commissioner is contrary to the spot as a height of passage to the extent of 6” to 12” above the level of adjacent land is also on the face of it contrary to the photographs. He has argued that the respondents/plaintiffs have three routes to have access to their fields. Rather under the garb of the passage, the plaintiffs want to grab the land of the petitioner/defendant. He has urged that the plaintiffs cannot claim any easementary rights from the fields of the petitioner and the revenue record does not support the contentions of the plaintiffs that they have acquired easementary rights. In the absence of any documents to support their said contention and without seeking any

declaration to that effect, simpliciter suit for injunction is barred in law in terms of provisions of Section 34 of the Specific Relief Act. He has contended that the impugned judgment passed by the Appellate Court, Hisar, vide which the well reasoned order of the trial Court has been reversed, is not sustainable in the eyes of law and is liable to be set aside.

9. On the other hand, learned counsel for respondents/ plaintiffs contended that the passage in dispute is the only passage available for approaching the land of the plaintiffs. He has asserted that less land came to the share of Hari Singh, since the said passage was left and plaintiffs, who are sons of Hari Singh, received 129 Kanal—1 Marla of land, while his share in the same was 135 Kanal—19 Marlas. He has contended that the sons of the plaintiffs and his forefathers have been using this passage since 1961, so they also require easementary rights in the said passage. He has vehemently contended that from the report of Local Commissioner also, it is made out that passage is in existence at the spot, as such the order of the trial Court has been rightly set aside by the Appellate Court, Hisar and the plaintiffs have been rightly permitted to use the passage in dispute without any hindrance.

10. The submissions made by learned counsel for the parties have been heard and relevant record has been perused.

11. As per the plaintiffs, the oral partition and family settlement took place in 1961 and passage in dispute was left for ingress/outgress of the plaintiffs, defendant and other co-sharers and on that account, less land was given to the father of plaintiff No.1 instead of his actual share. The perusal of Mutation No.666 reveals that each of the brothers of Hari Singh,

Deep Chand, Gulzari and Nihal Singh, had 135 Kanal—19 Marlas land, but only 129 Kanal—1 Marla of land was given to Hari Singh.

12. The Local Commissioner was appointed in this case, vide order dated 26.04.2023 of the trial Court. Local Commissioner Advocate Sachin Siwach alongwith Halqa Patwari, inspected the spot on 01.05.2023 in the presence of both the parties and submitted report on 08.05.2023 before the trial Court alongwith copy of Aksh Shijra, photographs and rough site-plan of the spot. The Local Commissioner has specifically mentioned in his report that there is existing *Rasta* adjacent to the fields of Khasra No.6//21, 22, 23, 24/1, 24/2, 25 and 5//21 and the southern side of passage, there is a watercourse/*Khaal*. It has been submitted therein that the passage is about 2 Karam (11 feet) wide 6” to 12” above the level of adjacent field Khasra No.6//21, 22, 23, 24/1, 24/2, 25 and 5//21. In Aksh Shijra and rough site-plan annexed with the said report of Local Commissioner also, the *Rasta* has been shown. The photographs have also been annexed with the report, which also show said existing passage.

13. The trial Court has rightly observed that the Local Commissioner appointed by the Court is not a witness for any party and it has not been shown as to why the Local Commissioner comprising of Advocate Sachin Siwach and concerned Halqa Patwari, would submit a false report. Otherwise also, if the defendant wants to disprove the report of Local Commissioner, he may do so during the course of trial, but at this stage, there is nothing to disbelieve the report of Local Commissioner.

14. It is the specific stand of the plaintiffs that no other passage except passage in dispute is available to the plaintiffs to approach their land.

It has also been rightly observed in the impugned order that though as per contentions of the defendant, the plaintiffs are having an alternative passage, but from the Aksh Shijra, they could not show as to from where any alternative passage touches the land of the plaintiffs. No passage alongwith the side of Canal has been shown in the Aksh Shijra.

15. It has also been rightly observed that this contention of the defendant that the plaintiffs have created such *Rasta* by ploughing tractor constantly, cannot be appreciated at this stage without the cogent evidence, which is yet to be adduced and the same is a matter of trial. When as per report of the Local Commissioner, the said passage is about 2 Karam (11 feet) wide, 6” to 12” above the level of adjacent fields, so *prima facie*, it does not appear that the said passage could have been created by ploughing tractor constantly. The plaintiffs are claiming the passage on the basis of oral family settlement as well as on the basis of easementary rights which will be decided during the trial. But at this stage, a *prima facie* case is made out in favour of the plaintiffs. As it is the only passage for ingress/outgress for the land of the plaintiffs, so the balance of convenience also lies in favour of the plaintiffs and plaintiffs shall suffer an irreparable loss if they are not allowed to have access to their land by using the passage in dispute.

16. Thus, there being no illegality or infirmity in the impugned judgment 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 expression on the merit of the case.

(SUKHVINDER KAUR)
JUDGE

06.05.2024.
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No