

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****125****CR-1017-2025 (O&M)****Date of decision: 17.02.2025****Darbara Singh and another****...Petitioner(s)****Vs.****Sukhpal Singh and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. S.P.S.Khaira, Advocate for the petitioners.

NIDHI GUPTA, J.

The present civil revision petition under Article 227 of the Constitution of India, has been filed by the petitioners-defendants against the impugned judgment dated 16.01.2025 passed by learned District Judge, Fatehgarh Sahib, whereby in the appeal filed by the respondents-plaintiffs, the application under Order 39 Rules 1 and 2 read with Section 151 CPC has been allowed and the petitioners/defendants have been restrained from interfering in the peaceful use and enjoyment of passage by the respondents/plaintiffs; **and** further restrained the petitioners/defendants from encroaching upon any portion of the passage by raising any type of construction over the same till the final decision of the case.

2. Brief facts of the case are that the respondents-plaintiffs had purchased the suit property measuring 1K-0M through registered sale deed bearing Vasika No. 867 dated 03.06.1997 for Rs.30,000/- from the defendants i.e. the petitioner-defendant No.1 and his real brothers Kulwant



Singh and Gurdeep Singh. On 18.09.2024, the plaintiffs filed the present suit (Annexure P-1) for permanent injunction restraining the defendants, their agents and servants from interfering into the peaceful use and enjoyment of the plaintiffs over the disputed passage marked by letters A B C D shown in red colour in the site plan attached with the plaint situated at Village Mandofal, Tehsil and Distt. Fatehgarh Sahib and also restraining the defendants, their agents and servants from encroaching upon any portion of the above said passage by way of raising any type of construction over the same. The said suit was accompanied with an application dated 18.09.2024 (Annexure P-2) under Order 39 Rules 1 and 2 read with Section 151 CPC. Vide order dated 11.11.2024 (Annexure P-6), the learned trial Court had dismissed the plaintiffs' application. The plaintiffs went in appeal against the said order dated 11.11.2024; and vide impugned order dated 16.01.2025, the learned District Judge, Fatehgarh Sahib, has allowed the application of the plaintiffs.

3. Ld. Counsel for the petitioner submits that the impugned order dated 16.01.2025 deserves to be set aside as the disputed passage was not part of the sale deed. It is submitted that vide the sale deed dated 03.06.1997, the plaintiffs had bought land measuring 1 Kanal. The case of the plaintiffs that the petitioners had encroached upon the said land, is incorrect. Moreover, admittedly, the land is still joint and has not been partitioned. It is contended that the present suit has been filed only with an intent to prevent the petitioners from constructing new house on their



part of the land. It is accordingly prayed that the impugned order be set aside.

4. No other argument is raised on behalf of the petitioners.

5. I have heard learned counsel for the petitioners and perused the case file in great detail.

6. Perusal of the record of the case shows that the learned trial Court had denied granting of ad interim injunction to the plaintiffs vide order dated 11.11.2024 on the ground that the petitioners had denied the existence of any passage; and in view of the fact that the suit property was joint in nature. However, the record bears out that vide sale deed dated 03.06.1997, the plaintiffs had bought suit property describable as “1 kanal of land from Khasra No. 31//5/1/3 with specific boundaries i.e. East Ruri Sucha Singh etc. West passage 15 feet wide, North Plot of Dara Singh etc. South Land of vendor”. From the above writing, it is clear that the passage of 15 feet wide was a part of the sale deed. Further, admittedly, the said sale deed was signed by defendant No.1/petitioner No.1 herein.

7. Thus, a *Prima facie* case is made out in favour of the plaintiffs. As the disputed passage forms part of the sale deed in question, therefore balance of convenience lies in favour of the plaintiffs. It has further been pleaded by the plaintiffs that they have been enjoying the peaceful possession of the suit property since the year 1997. Needless to say, any construction raised by the petitioners by encroaching upon any part of the disputed passage would therefore, cause irreparable loss/ injury to plaintiffs.



8. Accordingly, I find no error in the impugned order dated 16.01.2025 passed by learned District Judge, Fatehgarh Sahib. The reasoning given by the learned trial Court in order dated 11.11.2024 (Annexure P-6) for dismissing the application of the plaintiffs under Order 39 Rules 1 and 2 read with Section 151 CPC to the effect that the suit property is still joint between the parties and, therefore, the remedy available to the plaintiffs is partition of the property in terms of share purchased by them, is untenable in view of the admitted fact that the disputed passage formed part of the sale deed. The defendants are not denying the execution of the sale deed.

9. Hence, the present civil revision petition is **dismissed**.

10. Pending application, if any, stands disposed of.

17.02.2025

Divyanshi

(NIDHI GUPTA)

JUDGE

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