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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-258-2025

Date of decision : 17.01.2025

Suresh Kumar

... Petitioner

Versus

Shiv Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Randhir S. Hooda, Advocate
for the petitioner.

Mr.Jagdish Manchanda, Addl.A.G. Haryana
for respondent no.4.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the order dated 28.02.2024 (Annexure P-3) vide which the Civil Judge (Jr.Div.), Gurugram had dismissed the application filed by the petitioner under Order 39 Rules 1 and 2 CPC. Challenge is also the order dated 17.12.2024 (Annexure P-4) vide which the appeal filed by the petitioner had been dismissed.

2. Learned counsel for the petitioner has submitted that although the plaintiff-petitioner is owner of 390 square yards of the land but he is cultivating the said land along with the land of his brothers and the total land which the petitioner is cultivating is 17 kanals. It is submitted that the said possession of the plaintiff is since long and that the defendants are in

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possession of the land which is on the road and for the access to the said land of which the plaintiff is in possession, there was a rasta from the land of the said defendants. It is submitted that the reason for filing the present suit is that the defendants have now put up wire fencing on the said rasta and are in the process of erecting a gate so as to restrain the present petitioner from using the said passage towards his land. It is submitted that the Courts below have illegally dismissed the application filed by the petitioner under Order 39 Rules 1 and 2 CPC and thus, the impugned orders deserve to be set aside and the application filed by the petitioner under Order 39 Rules 1 and 2 CPC deserves to be allowed.

3. This Court has heard the learned counsel for the petitioner and has perused the paper book and finds that the impugned orders are in accordance with law and deserve to be upheld and the revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

4. Brief facts of the case are that the present petitioner had filed a suit for declaration with permanent and mandatory injunction and the plaint has been annexed as Annexure P-2 along with the present petition. An application under Order 39 Rules 1 and 2 CPC was also filed along with the said suit. A written statement was filed by the defendants, although the said written statement has not been annexed with the present petition. The trial Court vide order dated 28.02.2024 had dismissed the said application by observing that the share of the petitioner is to the extent of 390 square yards but the plaintiff-petitioner had claimed right over the entire killa no.20, 11

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and portion of killa no.10 as shown in green colour in the site plan (which has been annexed as Annexure P-1 along with the present petition). Reference was also made to the earlier suit filed by the plaintiff.

5. An appeal was filed by the petitioner against the said order, which was also dismissed vide order dated 17.12.2024. In the said order, it was observed that the plaintiff-present petitioner had relied upon the site plan attached with the plaint to claim that the portion which was shown in red color in the said site plan was being used by him to reach the land which he was alleging to be in his possession and was comprised in killa no.11 and killa no.20. It was observed that from a perusal of the Aks Shijra, it had transpired that no such passage was in existence as claimed by the petitioner and that killa no.18 and 19 which had been shown to be a part of the joint land, by the petitioner, was actually owned and possessed by the defendants exclusively. It was observed that the plaintiff-petitioner had failed to show the existence of any passage and that the defendants who were the exclusive owners in possession of killa no.18 and 19 could not be restrained from use and occupation of the same. It was further observed that the trial Court had discussed about the share of the plaintiff and also about the earlier litigation and thus, the Ist Appellate Court came to the conclusion that there was no prima-facie case in favour of the plaintiff-petitioner nor any irreparable loss would be caused to the defendants in case of non-grant of injunction.

6. No revenue record has been shown to this Court to show that there was any such passage which has been alleged in the site plan (Annexure P-1) in killa no.18 and 19. The Aks Shijra which is a part of the

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revenue record and to which presumption of truth is attached, as observed by the Ist Appellate Court did not show existence of any such passage as alleged by the petitioner. The said Aks Shijra has not been annexed nor the observations of the Ist Appellate Court on the said aspect have been disputed before this Court. Even the observation of the Ist Appellate Court to the effect that the defendants were in exclusive possession of killa no.18 and 19 has not been rebutted and no document of ownership has been annexed nor any argument with respect to the same has been raised. The argument that the plaintiff-petitioner is in possession of killa no.20, 11 and portion of kill no.10 as depicted in site plan (Annexure P-1), which is a self-serving site plan and has been prepared by the plaintiff-petitioner without reference to any revenue record, is not even remotely born out from the record. There is nothing on record to show that the petitioner is in exclusive possession of the said land comprised in killa no.20 and 11 and part of killa no.10 which in total comes to 17 kanal. Moreover, even the observations of the trial Court to the extent that the petitioner has only 1/24 share which comes to around 390 square yards has not been disputed. Once neither the possession of the petitioner on 17 kanals of the land comprised in killa no.20, 11 and part of killa no.10 is prima facie proved nor there is any revenue record produced, much less, Aks Shijra to show that there is a passage in killa no.18 and 19, the question of grant of any injunction in favour of the plaintiff-petitioner does not arise. Moreover, as per the observation of the Ist Appellate Court the said killa numbers are in the exclusive ownership of the defendants which observation has not been

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disputed before this Court. It has been rightly observed by the Ist Appellate Court that the plaintiff-petitioner has no prima-facie case in his favour and thus, the impugned orders have been rightly passed and deserves to be upheld and the present petition being meritless, deserves to be dismissed and is accordingly dismissed.

7. It is clarified that the observations made in this order are only for the purpose of disposing of the present revision petition arising out of the proceedings under Order 39 Rules 1 and 2 CPC and would not be construed as an expression of final opinion on the merits of the main suit, which would be decided by the trial Court independently, in accordance with law.

(VIKAS BAHL)
JUDGE

January 17, 2025.*Davinder Kumar*

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No