



CR-580-2025 (O&amp;M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-580-2025 (O&amp;M)

Date of decision : 25.03.2025

Rajinder

..... Petitioner

versus

Vikram Singh &amp; ors.

..... Respondents

**CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN**

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Present :- Mr. Vinod Bhardwaj, Advocate  
for the petitioner.Mr. Rishi Nijhawan, Advocate  
for the respondents.

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**PANKAJ JAIN, J. (ORAL)**

1 Present revision petition is directed against order dated 27.11.2024 (Annexure P-4) passed by Additional District Judge, Kaithal whereby order dated 18.07.2024 (Annexure P-3) dismissing the application filed by the plaintiff under Order XXXIX Rule 1 & 2 CPC was declined stands affirmed. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the petitioner as plaintiff and respondents as defendants.

2 Plaintiff filed suit for permanent injunction claiming that defendants were threatening to encroach upon common *rasta* leading to the fields of the plaintiff. The suit was accompanied by an application filed under Order XXXIX Rule 1 & 2 CPC seeking temporary injunction



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restraining the defendants from encroaching the *rasta* forcibly and illegally during the pendency of the suit.

3 The Courts below though returned the finding that there is a *gair mumkin rasta* existing on the suit land leading to the fields of the plaintiff, however, declined interim injunction holding that the plaintiff has failed to prove any threat of encroachment at the hands of defendants.

4 Learned counsel for the plaintiff while assailing the impugned orders passed by the Courts below submits that once existence of *rasta* claimed by the plaintiff is admitted and is not denied that the same leads to the fields of the plaintiff, the Courts below ought not have non-suited plaintiff and should have granted interim injunction.

5 *Per contra*, counsel for the defendants submits that the plea taken before this Court with respect to existence of 11 feet *rasta* is beyond the pleadings in the plaint. Both the Courts have concurrently found that there is no threat of encroachment as claimed by the plaintiff and have thus rightly dismissed the application filed by the plaintiff. He further brings to the notice of this Court, order dated 11.06.2024 whereby *ad-interim* ex-parte injunction was declined to the plaintiff by Trial Court.

6 I have heard learned counsel for the parties and have gone through the records of the case.

7 Application for grant of temporary injunction is to be tested on famous tripod test of prima-facie case, balance of convenience and irreparable injury. Trite it is that for prima-facie case the applicant is not required to prove his case to the hilt, but the applicant is only required to prove that he has a debatable issue to raise before the Court. In the present



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case, since it is not denied that there is a common passage in existence which leads to the fields of the plaintiff, this Court finds that the plaintiff successfully proved prima-facie case. The defendants in pleadings also do not dispute the existence of *rasta* rather the stand of the defendants is that they do not intent to encroach upon the *rasta* nor have they ever attempted to do so. But, it is matter of record that the parties are already party to kalandra under the provisions of Section 107/151/150 Cr.P.C. wherein the authorities have initiated action apprehending breach of peace *qua* same dispute.

8 It will be thus for the convenience of both the parties that the common *rasta* in existence remains free from any encroachment. The *rasta* is depicted in the Revenue Record. The encroachment upon *rasta* definitely shall lead to irreparable injury. In view of above, this Court finds that the Courts below erred in dismissing the application filed by the plaintiff.

9 Keeping in view the totality of circumstances, the present revision petition is disposed off with the order that the defendants shall not encroach upon the admitted common *rasta*, as pleaded by them in their written statement. The existing *rasta* as per the revenue record shall be kept free from any encroachment.

10 Needless to say nothing observed hereinabove shall be construed as expression of opinion on the merits of the suit.

**25.03.2025**  
Pooja Sharma-I

**( PANKAJ JAIN )**  
**JUDGE**

Whether speaking/reasoned:  
Whether reportable:

Yes/No  
Yes/No