



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

313

CR-1325-2021 (O&M)

Date of Decision : 11.02.2025

SAMAY SINGH (SINCE DECEASED) THR LRS

.... Petitioners

VERSUS

INDERJEET YADAV AND ANR

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.R. Yadav, Advocate for the petitioners.

Mr. Samarth Sagar, Advocate and
Mr. Sunil Kumar, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 31.05.2021 (Annexure P-4) passed by the learned Civil Judge (Junior Division), Gurugram and the order dated 29.06.2021 (Annexure P-6) passed by the learned Additional District Judge, Gurugram dismissing the application filed by the plaintiff-petitioner under Order 39 Rules 1 and 2 CPC.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner, namely, Samay Singh filed a suit for declaration and mandatory injunction with a relief of permanent injunction averring therein that he was owner in possession of the plot measuring 91 square yards in the area along with residential house therein bearing House No.59 situated within the *Lal Dora* of Mauza Carterpuri, Tehsil and District Gurugram. The description of the land was given as under :

'East: Length 12.10 feet, then land of Master Shamsher and others

West: Length 16.10 feet, then by raasta Share-aam

North: 55.7 feet, then raasta

South: 55.3 feet, then house of Sheotaj son of Nyadar'

3. The claim of the plaintiff-petitioner in the plaint is that the respondents while constructing their house have raised projections over the *raasta* which is to the northern side of the house. Along with the suit an application for interim injunction was also filed under Order 39 Rules 1 and 2 CPC for restraining the respondents from raising or extending the projections over the passage owned by the plaintiff-petitioner. Reply was filed to the said application. Vide the impugned order dated 31.05.2021 the said application was dismissed by the Trial Court. Aggrieved by the same an appeal was preferred by the plaintiff-petitioners which appeal was also dismissed by the Appellate Court vide order dated 29.06.2021. Hence, the present revision petition by the plaintiff-petitioner.

4. Learned counsel for the plaintiff-petitioner would contend that initially when the plaintiff-petitioner, namely Samay Singh had purchased the house vide sale deed (Ex.P-11) dated 11.08.2015, the *raasta* existed to the northern side of the house leading to someone else's residence. However, subsequently the said *raasta* was closed and was not being used by anyone and thereafter the same was included by the plaintiff-petitioners in their

property and a gate was installed at the beginning of the said *rasta* and therefore the same had become a part of their property.

5. *Per contra*, learned counsel for the respondents would contend that both the Courts have concurrently found that there is no *prima facie* case in favour of the plaintiff-petitioner herein inasmuch as the sale deed dated 11.08.2015 itself, upon which the entire case is based, shows the *rasta* on the northern side of the house of the plaintiff-petitioner and since it has been shown as a *rasta* there was no question of the same being made part of the property owned by the plaintiff-petitioners. Learned counsel would further contend that the plaintiff-petitioner cannot arbitrarily enclose the *rasta* and include it in their own property.

6. Heard.

7. In the present case the plaintiff-petitioner, namely, Samay Singh filed the suit averring in the plaint that he was owner in possession of the property measuring 91 square yards stated to have been purchased vide sale deed dated 11.08.2015. A perusal of the said sale deed, which has been appended with the revision petition as Annexure P-11, reveals that there is a *rasta* shown on the northern side of the house of the plaintiff-petitioner. The argument of the learned counsel for the plaintiff-petitioner that the same stood included in the house of the plaintiff-petitioners due to its non-usage by the other residents and since the end of the passage had been closed by the other residents, cannot be accepted. The case as set up by the plaintiff-petitioner in the plaint is that there existed a *rasta*. At no point of time has it been the case of the plaintiff-petitioners that the said *rasta* was purchased by

him. There is nothing *prima facie* on the record to even remotely suggest as to how the said *rasta* got included in the property of the plaintiff-petitioner. It is trite that at the time of deciding an application under Order 39 Rules 1 and 2 CPC, the plaintiff has to show a *prima facie* case, irreparable loss and that the balance of convenience is in his favour. In the present case, as discussed above, no *prima facie* case is made out in favour of the plaintiff-petitioner. The balance of convenience is also not in favour of the of the plaintiff-petitioner inasmuch as *prima facie* there is no clear right in favour of the plaintiff-petitioner over the said *rasta*.

8. In view of the above, I do not find any merit in the present revision petition and the same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

9. It is, however, made clear that any observations made herein shall not be treated as an expression of opinion on the merits of the case.

11.02.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No