



125

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

**CR No.900 of 2021
Date of decision : 19.08.2025**

BALJIT KAUR AND ANOTHER

....Petitioners

Versus

BALWINDER SINGH BATRA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. J.S. Bhinder, Advocate
for the petitioner.

Mr. Deepak Bhardwaj, Advocate
for respondents No.1 to 3.

PANKAJ JAIN, J. (ORAL)

Present revision petition is directed against order dated 22.03.2021 passed by District Judge, Patiala whereby appeal preferred by defendants against order dated 23.09.2020 passed by Trial Court allowing the application under Order XXXIX Rule 1 & 2 read with Section 151 CPC filed by the plaintiffs, was allowed.

2. Plaintiffs filed suit seeking decree of permanent injunction restraining defendants from raising construction of basement in a residential property. Prayer was also made for decree of mandatory injunction seeking



restrain against defendants No.1 to 3 from digging the basement in adjoining plot.

3. Plaintiffs and defendants are owners of adjoining plots. Defendants started constructing basement. The same led to filing of the present suit. Along with the plaint, application under Order XXXIX Rule 1 & 2 CPC was filed whereby the plaintiffs prayed for grant of *ad interim* injunction against the defendants from digging plot and constructing basement.

4. Trial Court allowed the application and restrained defendants from constructing, blocking, causing any kind of hindrance and from running/working of the construction of basement till the disposal of the suit.

5. Dissatisfied with the order, defendants preferred appeal.

6. In appeal, Lower Appellate Court recorded that by the time the order of restrain under Order XXXIX Rule 1 & 2 CPC was passed, the basement had already been constructed by the appellants/defendants. The court held that the issue as to whether the basement has been constructed prior to passing of the order or thereafter, shall be adjudicated during the course of trial.

7. Petitioners/plaintiffs are aggrieved of the said order.

8. During the course of arguments, counsel for the parties do not dispute the fact recorded by the Appellate Court w.r.t. basement having already been constructed.



9. In view thereof, this Court finds that no exception can be taken to the order passed by the Appellate Court. It is made clear that the plaintiffs shall be at liberty to seek issue as to whether the construction was raised before passing of the order under Order XXXIX Rule 1 & 2 CPC or not.

10. With the aforesaid observations, the revision petition is disposed off.

August 19, 2025

(Pankaj Jain)
Judge

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No