
(2009) 04 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5767 of 2008

Bheem Sain and another

APPELLANT

Vs

Arjun Singh and others

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2009) 3 RCR(Criminal) 248

Hon'ble Judges : S.D. Anand, J

Bench : Single Bench

Advocate : A.K. Chopra, with Mr. Rajnish Chauhan, for the Appellant; A.K. Khunger, for the Respondent

Judgement

S.D. Anand, J.—The learned Trial Court negated the plaintiff-respondent's plea for the restraint of defendants-respondents from demolishing a part of his house which allegedly obstructed the passage. It was held by the learned Trial Court that "the defendants are only trying to vacate the encroached portion of the passage leading to their land."

2. In appeal, however, the learned Additional District Judge reversed the finding and ordered the restraint of defendants-petitioners "from demolishing any part of the house of the plaintiff/appellant on the basis of the order dated 24.3.2006 passed by the SDM, Abohar forcibly and illegally, except in due course of law."

3. It is apparent from the record that the defendants-respondents had applied for the invalidation of the impugned order passed by the learned S.D.M. vide which the removal of the impugned encroachment had been ordered in terms of provision of Section 133 of the Cr.P.C. It is apparent from a perusal of the plaint (copy whereof has been shown at the time of arguments before this Court) that the factum of that order had not been called into question. It is only in the course of the presentation before this Court that the learned counsel for the plaintiff-respondent argues that the entire exercise is a political managed affair and that even the application, on the basis whereof the proceedings had been

taken is not available on the record. No such averment finds mention in the plaint. A plea to that effect cannot be allowed to be raised in revision in the absence of pleadings at the trial.

4. If the plaintiff-respondent has a grievance qua the validity of the impugned order (on an averment that provision of Section 133 Cr.P.C. had not been complied with), he may take recourse to the remedy available to him in the form of an appeal or revision. Sub Section 2 of Section 133 Cr.P.C. prima-facie appear to the filing of a suit to challenge of an order of that category. If the affected party has a grievance with regard to the validity of an order u/s 133 Cr.P.C., the challenge thereto has to be filed before the competent Court of law on the appellate or revisional side by that party. That party cannot validly file a civil suit against the order passed by the S.D.M. in the proceedings u/s 133 Cr.P.C.

5. In the light of foregoing discussion, the petition shall stand allowed. The impugned order passed by the learned Ist Appellate Court shall stand reversed. The order passed by the learned Trial Court shall stand restored.

6. However, in the circumstances of the case, it is deemed just and appropriate to order that the learned Trial Court shall dispose of the main suit itself within three months from the next date of hearing. The learned counsel for the parties state at the bar that the parties shall extend all possible cooperation in concluding their respective evidence at the trial at an early date.

Disposed of accordingly.