
(2003) 08 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 12305-CII of 2003 and Civil Revision No. 3009 of 1998

Dr. Bhupesh Mangla

APPELLANT

Vs

Dr. Ravi Chander Mangla and Others

RESPONDENT

Date of Decision : 11-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2004) 136 PLR 386 : (2003) 4 RCR(Civil) 657

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : Nipun Mittal, for the Appellant; Arun Jain, for the Respondent

Judgement

Viney Mittal, J.—The present appeal is for early hearing of the case.

2. With the consent of the parties, the main revision is taken up for hearing.

3. In view of the law laid down by the Hon''ble Supreme Court of India in the case of Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and Ors. J.T. 2003(4) S.C. 255, the present petition filed by the petitioners u/s 115 of the CPC is not maintainable.

4. Faced with this situation, Sh. Arun Jain, learned counsel for the petitioners, has submitted that the present petition may be treated as a petition filed under Article 227 of the Constitution of India.

5. Keeping in view the facts and circumstances of the case and request made by the learned counsel for the petitioners, the present is treated to be a petition under Article 227 of the Constitution of India.

6. The plaintiff has filed the present Revision Petition challenging the order dated February 18, 1995 passed by the learned Sub Judge, 1st Class, Palwal and the order dated May 23, 1998 passed by the Additional Sessions Judge, Faridabad in a suit for permanent injunction filed by the plaintiff. He filed an application under

Order 39 Rules 1 and 2 of the Code of Civil Procedure, with a prayer that the defendants be restrained from raising any construction over the property in dispute.

7. The learned Trial Court issued ad interim injunction. The learned 1st Appellate Court reversed the order of the Trial Court.

8. The plaintiff has filed the present Revision challenging the aforesaid orders passed by the 1st Appellate Court.

9. I have heard Sh. Nipun Mittal, the learned counsel for the petitioner and Sh. Arun Jain, the learned counsel for the respondents.

10. Sh. Arun Jain, learned counsel for the respondents, has specifically undertaken before this Court that the respondents would raise the construction at their own risk and responsibility and they would not claim compensation and would rather remove the malba in case suit is decided against them.

11. In this view of matter, the present Revision Petition is disposed of with the directions that the defendants or any other persons claiming under them would raise the construction during the pendency of the suit at their risk and responsibility and subject to the final outcome of the suit. In the event of the suit being decided against the defendants, they or any person deriving his title from them would remove the malba and shall not claim any compensation for the aforesaid construction.

Disposed of with the aforesaid directions.