
(1997) 09 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1708 of 1995

Harish Kumar

APPELLANT

Vs

Minta Engg. Work and Others

RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:

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

Citation : (1998) 2 CivCC 93 : (1998) 119 PLR 308 : (1998) 1 RCR(Civil) 1

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : Ramesh Kumar, for O.P. Hoshiarpuri, for the Appellant; M.L. Sagar and H.N.S. Gill, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—Plaintiff-respondents filed a suit for permanent injunction restraining defendant-Harish Kumar from raising any construction in the portion of the property shown red in the plan, stated to be a part and parcel of 110 feet wide Sodal Saipur Road situated in the Industrial Area, Jalandhar City. Plaintiffs moved an application under Order 39 Rules 1 and 2 read with Section 151 of the CPC for the grant of temporary injunction, Trial Court on a consideration of the matter, by its order dated 20.8.1994 directed the parties to maintain status quo regarding the existing construction at the site, regarding the property in dispute detailed in the head note of the plaint. Defendant No. 1 felt aggrieved by the order passed by the trial Court and consequently filed appeal which was assigned to the Court of Shri A.K. Sharma, Addl. District Judge, Jalandhar. Learned Addl. District Judge, by his order dated 3.2.1995 finding no merit in the appeal dismissed the same. Hence this revision at the instance of defendant-petitioner.

2. At the time of hearing of this revision petition, Mrs. (Dr.) Sarojnei Saksena, J. came to pass the following order on 19.7.1996 :-

"Arguments heard at length. After hearing the arguments, in my considered

view, there is only this dispute as to whether this property purchased by the petitioner is situated of Khasra Nos. 14456 of 14457. In the paper-book, there is report of demarcation submitted by Kanungo and Patwari Halqa of demarcation, which was done under the orders of the Deputy Commissioner, Jalandhar, who got it done through Tehsildar, Jalandhar.

Respondents objection is that the petitioner is trying to construct his building on the part of the road, which is just in front of their factory. Both the Courts below have passed orders to maintain status quo, the construction work is stayed.

If the land is demarcated as per the sale deed dated 27.1.1994 by which the petitioner has purchased 10 marlas of aforementioned Khasra Nos., the whole controversy can be resolved.

Considering this aspect of the matter, the Tehsildar, Jalandhar is hereby directed to go personally on the spot and get the demarcation through Kanungo and Patari Halqa in view of the sale deed dated 27.1.1994 by which the petitioner has purchased 10 marlas of these Khasra Nos. Petitioner is directed to produce the copy of the sale deed before Tehsildar, Jalandhar for doing the needful. The Tehsildar is hereby directed to get the land demarcated in the presence of both the parties. For that purpose, parties be noticed well in advance. Along with report, site plan and filed book be also submitted.

To come up on 21.8.1996.

Copy of the order be given dasti to both the learned counsel for the parties under the signatures of the Bench Secretary."

3. In pursuance to the above order the Tehsildar Jalandhar visited the site alongwith the staff and in the presence of the parties, he after carrying out demarcation has submitted a detailed report dated 16.9.1996. One of the conclusion arrived at by him in his report is that no portion of Khasra No. 14457/1 has been encroached by the petitioner, Harish Kumar-defendant No. 1 and area shown in the site plan in yellow colour, measuring 11 marlas is lying vacant out of which the petitioner Harish Kumar Claims to be the owner of only 10 marlas by virtue of sale deed dated 27.1.1994 executed in his favour.

4. After hearing learned counsel for the parties, I see no ground to differ with the conclusion arrived at by the Tehsildar, Jalandhar in the matter of carrying out measurement at the site. Objections to the report have also not been filed though a period of one year has passed. I thus accept this report. Thus there remains no doubt that the petitioner Harish Kumar has not encroached upon any portion of the property as alleged by plaintiff-respondents. In that view of the matter, the orders passed by the Courts below directing the parties to maintain status quo are vacated. The revision petition is allowed as indicted above and plaintiffs' application under Order 39 Rules 1 and 2 of the CPC Code is dismissed. Parties are left to bear their own costs. However, anything said herein shall not be taken as an expression of opinion on the merits of the controversy

raised in the suit.