

(2015) 01 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 3899 of 2013

Rajender Singh

APPELLANT

Vs

Gram Panchayat Village Bhogipur and Others

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227

Citation : (2015) 2 RCR(Civil) 352

Hon'ble Judges : R.P. Nagrath, J.

Bench : Single Bench

Advocate : Mahavir Sandhu, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.P. Nagrath, J.—The instant petition has been filed under Article 227 of the Constitution of India seeking to set aside impugned orders dated 01.02.2012 (Annexure P-7) and 08.05.2013 (Annexure P-9) passed by the trial Court and the Appellate Court, respectively. I have heard learned counsel for the respondents, perused the impugned orders and the paper-book. There is no representation for the petitioner.

2. The prayer made in the application for grant of ad interim injunction under Order XXXIX Rules 1 and 2 CPC was to restrain the respondents from blocking the passage from points "ABFG" and also from raising construction adjacent to the wall at point "AB" in the shape of a wall or any kind of hindrance over the property in question.

3. Respondent No. 1 is the Gram Panchayat of the village and respondents No. 2 and 3 impleaded in the suit being members of the Gram Panchayat. The courts below have found that there is no prima facie case made out for holding ownership and possession of the plaintiff. That question, however, has to be decided on merits after the parties adduce their respective evidence.

The learned Appellate court observed as under:-

"Admittedly towards eastern side of the house in question the land of respondent No. 1 is situated. The case of the appellant is that the land shown by yellow colour in the site plan is a rasta. The respondents several times threatened to block the Gali marked by letters ABFG and intend to raise the wall at point AB and to block the windows, door, ventilators as well as Patnala in the wall at point AB situated in the eastern side. The appellant has relied upon the Gift deed executed by Jai Lal in favour of Badlu Ram S/o. Ram Singh and contended that in the eastern side of the gifted property as well as southern side there is Rasta Sare Aam but he has not mentioned anything concerning the gift deed allegedly executed by Jai Lal in the plaint neither he has mentioned the fact regarding the existence of the house of Badlu S/o. Ram Singh in the site plan. So, in the circumstances, it seems that the appellant has failed to prove that he is owner in possession of the house in question and the alleged windows, doors, ventilators and Patnala were constructed in the year 1956, thus no interference is warranted in the order under challenge." 4. Learned counsel for the respondents, however, submits that there is Well existing at the spot which is being used by the residents of the village which was the reason behind the plaintiff-petitioner to file the suit. The learned counsel further submitted that Gram Panchayat was not raising in fact any construction during pendency of the suit. The above controversy about existence of the Well was not in fact raised in the written statement of the respondents. Anyhow, looking into the nature of submission made for the respondents, there is no ground to interfere in the orders passed by both the Courts below. The orders are based on the material available before the Courts below and the settled principles governing the subject.

There being no merit, the instant petition is dismissed.