

(2009) 01 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : CR No. 229 of 2009 (O and M)

Suresh Kumar and others	Vs	APPELLANT
Gram Panchayat Village Noorwala		RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151

Citation : (2011) 7 RCR(Civil) 1170

Hon'ble Judges : Rakesh kumar Garg, J

Bench : Single Bench

Advocate : Sher Singh Rathore, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—By way of this revision petition, the petitioners have challenged the order dated 13.8.2008 (Annexure P-3) and order dated 17.12.2008 (Annexure P-5) passed by Civil Judge (Sr. Division), Panipat and Additional District Judge, Panipat respectively dismissing their application filed under Order 39 Rules 1 and 2 read with Section 151 CPC for grant of ad interim injunction restraining the defendant from digging and constructing the pucca Nala from point EF in place of CD for flowing the water from Northern side to Southern side and then from Western to Eastern side as shown in the site plan marked by letters EF, CD and AB.

2. Brief facts of the case as per the petitioners are that the defendant chalked out a programme to construct drain thereby telling the plaintiffs that the water will pass through the drain on both sides of the street and the water flow of the said drain towards Western side will be diverted from Point C to D as shown from the site plan. However, later on the defendant changed the programme to construct the drain from Point EF in place of Point CD and if defendant succeeded in constructing the drain from Point EF, water will flow in front of the houses of the plaintiffs and may also enter their houses as also the other neighbours. The plaintiffs requested the defendant not to take law in its hands but in vain. Thus,

the suit for permanent injunction restraining the defendant forever from digging and constructing the pucca Nala, as detailed above, was filed. Along with this suit, the petitioners filed an application under Order 39 Rules 1 and 2 CPC for grant of ad interim injunction restraining the defendant from digging/constructing Nala during the pendency of the suit.

3. Upon notice, the defendant filed written statement and reply to the application taking preliminary objections. It was further submitted that defendant had already constructed drain from Point B of the site plan to the Northern side and now defendant constructed the drain from opposite corner of mark B to the Southern side. On merits, it was submitted that the defendant had already constructed the drain in the street from Northern side to Southern side up to the opposite of Mark AB and estimate had been prepared for the same. It was further submitted that the plaintiffs had no right, title or interest to interfere in the construction work of the defendant.

4. After hearing learned counsel for the parties and after appraisal of record available on file, the trial Court vide order dated 13.8.2008, dismissed the application under Order 39 Rules 1 and 2 read with Section 151 CPC. The appeal filed by the petitioners against the said order was also dismissed by the Additional District Judge, Panipat vide order dated 17.12.2008.

5. There is no doubt that this Court can interfere in the ad interim orders passed under Order 39 Rules 1 and 2 CPC where such orders suffer from clear violation of law or where a findings recorded by the Courts below on the issue of prima facie case, balance of convenience and irreparable injury are perverse or when the Courts below have not applied the settled principle of law for appreciation of the pleadings and evidence produced by the parties. In the light of the above said observations and examining three ingredients for the grant of temporary injunction i.e. prima facie case, balance of convenience and irreparable injury, I find that there is no error of law or facts from which the impugned orders suffer.

6. From the facts of the case, it is clear that the Nala is being constructed as per Scheme approved and prepared by the concerned departmental Engineers and estimate of the same has already been approved. As per the submission made by the learned counsel for the defendant before the Lower Appellate Court, the whole work of construction stood completed except the construction of Nala in front of houses of the petitioners which is causing a great hardship to all the inhabitants of the village. The petitioners have no right to suggest to the technical Authorities as to in what manner the Engineers of the Govt. Department are to construct the Nala, the construction of which is being carried out by the respondent for the implementation of Scheme of a project under the Haryana Rural Development Work, estimate and construction work of which has been approved by the Sub Divisional Engineer of the Rural Development Department and the grant of which has been received by the respondent for the said construction. It is for the departmental officials/Engineers to see the feasibility regarding the drainage of the water keeping in view the slope and

scheme of the village. When the estimate has been proved by the concerned Authorities as per site plan, then it does not lie in the mouth of the petitioners to say that the respondent is carrying out construction work with any mala fide towards the petitioners.

In view of the above discussion, in my considered view, no illegality and irregularity has been committed by the Courts below while not finding prima facie case in favour of the petitioners. Therefore, the impugned orders call for no interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

Accordingly, the present revision petition being without any merit is hereby dismissed.