

**(2010) 09 P&H CK 0417**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 6029 of 2010

Gurdial Tanwar

APPELLANT

Vs

D.P. Goel and Others

RESPONDENT

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**Date of Decision:** Sept. 17, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151

**Hon'ble Judges:** Alok Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Alok Singh, J.

Present petition is filed challenging the order dated 23.07.2010 passed by learned Additional District Judge, Chandigarh, whereby the appeal filed by the defendants against the order passed by the learned Trial Court on an application under Order 39 Rules 1 and 2 read with Section 151 C.P.C. was allowed and injunction application was dismissed.

2. The brief facts of the present case are that plaintiff -petitioner has filed suit for permanent prohibitory injunction with the contention that he is a member of the Society -respondent No. 5 and is an allottee of the ground floor of the society. Further contention of the plaintiff is that portion behind the flat was allotted by the Society in favour of the plaintiff. Plaintiff sought injunction restraining the respondent-defendants not to interfere the possession over the open space i.e. disputed property on the ground floor. Initially, the learned Trial Court allowed the injunction application in favour of the plaintiff, however, the learned Additional District Judge, dismissed the injunction application by observing that disputed property is an open space, which can be used by all the members of the society. It is further held by the learned Appellate Court that allottees of the first floor and second floor have every right and amenities over the every inch of ground floor of the land.

3. Learned Counsel for the petitioner vehemently argued that society has allotted this land to the plaintiff -petitioner, hence, there is no question of any amenities in favour of the other allottees who are residing on the upper portion of the building. I do not agree with the contention raised by the plaintiff - petitioner. In the cooperative society every member of the cooperative society pays cost of the land as well as the construction in equal share. Every open space on the ground floor of the society can be used by each and every allottee of the society irrespective of the fact that they got allotment on the upper storey of the building. Open space on the ground floor can be used as one of the basic amenity by other allottees and no interference can be caused either by the society allotting open space in favour of one allottee or by the plaintiff as suggested by the petitioner - plaintiff.

4. At this stage, learned Counsel for the petitioner states that he may be permitted to withdraw this petition and hearing of the suit may be expedited.

5. Petition is dismissed as withdrawn. Learned Trial Court is requested to expedite the hearing of the suit and to decide the suit preferably within one year from the date certified copy of this order is placed before the Trial Court.