

(2014) 01 P&H CK 0108

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 367 of 2013

Gurmail Singh

APPELLANT

Vs

Baljit Kaur

RESPONDENT

Date of Decision: Jan. 28, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151
- Constitution of India, 1950 - Article 227

Citation: (2014) 175 PLR 436**Hon'ble Judges:** Mehinder Singh Sullar, J**Bench:** Single Bench**Advocate:** P.S. Brar, Advocate for the Appellant; P.S. Dhaliwal, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Mehinder Singh Sullar, J.

Concisely, the facts & material, which require to be noticed for the limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record are that, initially respondent-plaintiff Baljit Kaur wife of Manmohan Singh (for brevity "the plaintiff") has instituted the civil suit for a decree of permanent injunction, restraining petitioners-defendants Gurmail Singh and Baldev Singh sons of Sadhu Singh (for short "the defendants") from causing any sort of obstruction in her peaceful enjoyment over the street, in question. She has also filed an application for ad interim injunction under Order 39 Rules 1 & 2 read with Section 151 CPC. The defendants contested the suit, filed the written statement, stoutly denied all the allegations contained in the plaint and prayed for dismissal of the suit. The trial Court dismissed the injunction application of the plaintiff, by way of impugned order dated 29.02.2012 (Annexure P-2).

2. Aggrieved thereby, the appeal filed by the plaintiff was accepted and the Appellate Court restrained the defendants from making any sort of encroachment over the street, in question, which is likely to cause obstruction in using the small gate of the plaintiff, by virtue of impugned judgment dated October 17, 2012 (Annexure P-1).

3. The petitioners-defendants did not feel satisfied and preferred the present petition, invoking the superintendence jurisdiction of this Court under Article 227 of the Constitution of India.

4. After hearing the learned counsel for the parties, going through the record with their valuable assistance and after considering the entire matter deeply, to my mind, there is no merit in the instant petition in this context.

5. Ex facie, the argument of the learned counsel that, the trial Court has rightly dismissed the stay application of the plaintiff, but the Appellate Court erred in granting stay against the defendants, sans merit.

6. As is evident from the record, the plaintiff has filed the civil suit claiming that the defendants have tried to raise construction of ramp in the street in front of her house, without any legal right. It has been specifically pleaded that the construction of ramp in the main street would obstruct the gate causing great inconvenience to her. On the contrary, the defendants have admitted that they are constructing ramp in the street to enter into their house. It is not a matter of dispute that there is a public street in between the houses of the parties. The defendants intend to construct ramp in the street, which would naturally obstruct the free ingress to the house of the plaintiff. Otherwise also, the defendants have no legal right to construct ramp in a public street.

7. Therefore, the Appellate Court has correctly granted injunction in favour of the plaintiff, by means of impugned judgment dated October 17, 2012 (Annexure P-1), the operative part of which is as under:-

"In view of my above brief discussion, this court has reached to the conclusion that the impugned order passed by the learned lower court is not a legal order in the eyes of law and is liable to be set aside. Consequently, the appeal filed by the appellant is allowed and the impugned order passed by the learned lower court is set aside and the defendants-respondents are restrained from making any such encroachment over the street, which is likely to cause obstruction in using of the small gate by the plaintiff on the western side and not to raise any illegal construction in the street in dispute forcibly and illegally, till the final decision of this case. However, any observation made herein while disposing of this appeal shall not effect the case of either parties on merits of the suit."

8. Meaning thereby, the Appellate Court has examined the matter in the right perspective and recorded the cogent grounds in this relevant connection. Such

judgment, containing valid reasons, cannot legally be set aside, in exercise of, superintendence jurisdiction of this Court, as contemplated under Article 227 of the Constitution of India, unless the same is perverse and without jurisdiction. As, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioners, therefore, the impugned judgment(Annexure P-1) deserves to be and is hereby maintained in the obtaining circumstances of the case. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the main suit, as, there is no merit, therefore, the instant petition is hereby dismissed as such. Needless to mention that, nothing observed here-in-above, would reflect, in any manner, on merits of the case during trial, as the same has been so recorded for a limited purpose of deciding the present petition only.