

***Before Tribhuvan Dahiya, J.***

**RAM PIARI—Petitioner**

*versus*

**VIJAY SINGH—Respondents**

**CR No. 3118 of 2022**

September 08, 2022

***Constitution of India, 1950—Art.227—Code of Civil Procedure, 1908—O.39, Rls. 1 and 2 — Plaintiff filed suit which was withdrawn without liberty to file fresh suit—In earlier suit Local Commissioner found no encroachment—No prima facie case made out for grant of temporary injunction—No likelihood of irreparable loss—Petition dismissed.***

*Held*, that pursuance to the order, demarcation was carried out by the revenue officials, wherein no encroachment as alleged by the petitioner/plaintiff could be established. Further, the earlier civil suit filed by the petitioner/plaintiff was withdrawn and no permission was granted to the plaintiff to file a fresh suit on the same cause of action by the trial Court. The order to that effect dated 26.3.2019 reads as under, Sh. Rajinder Sharma, Advocate has appeared and suffered statement that he withdraw the present suit due to some technical defects in the plaint with liberty to file the fresh suit on the same cause of action. In view of his statement, the suit filed by the plaintiff is hereby dismissed as withdrawn. However, no permission is granted to the plaintiff to file the fresh suit on the same cause of action as no technical defects has been shown by the plaintiff. Moreover, for that purpose that plaintiff was required to move an appropriate application to withdraw the suit, as per the provisions of Order 23 wherein the application would be decided on merits, after hearing the other party. So, no permission is hereby given to the plaintiff to file the fresh suit on the same cause of action. Accordingly, file be consigned to record room.

(Para 5)

*Further held*, that on the above analysis of facts, it is apparent that the petitioner/plaintiff has not been able to establish prima facie case in her favour. There is no likelihood of the petitioner suffering any irreparable loss either. The well reasoned impugned orders/judgments passed by the Courts below, therefore, do not call for any interference.

(Para 11)

Harsh Chopra, Advocate, and G.S. Bhandal, Advocate, *for the petitioner.*

S.S. Kanwal, Advocate, for the caveator.

### **TRIBHUVAN DAHIYA, J. (Oral)**

(1) This revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 7.3.2022 (Annexure P- 11), passed by the Additional District Judge, Hoshiarpur, dismissing the petitioner's appeal against the order dated 12.2.2021 (Annexure P-10), passed by the Civil Judge (Senior Division), Dasuya, declining the petitioner's application for *ad-interim* injunction under Order 39 Rule 1 and 2 CPC.

(2) The petitioner/plaintiff claiming herself to be exclusive owner of *khasra* No. 1313 (0-6) and 3319 (3-15), total land measuring 4 *kanals* one *marla*, as per *jamabandi* for the year 2015-16, has filed a suit for mandatory injunction for directing the respondent/defendant to remove the encroachment made by him from the portion shown in red colour in the site plan to the extent of 10 *marla* (8 *sashi*), as the defendant has raised construction of residential house over her land. It has further been pleaded that on southern side of aforesaid *khasra* No. 3319, there is *khasra* No. 3323, which is in joint ownership of the respondent/defendant and other co-sharers, as per *jamabandi* for the year 2015-16. The defendant has also raised construction of his house therein, but while raising construction, he has made encroachment to the extent of 10 *marla* 8 *sashi* on the plaintiffs' land. The respondent/defendant filed his written statement raising preliminary objections that the plaintiff's suit is barred under Order 23 Rule 3 CPC as she earlier filed **Civil Suit No. 529 of 2018**, titled as ***Ram Piari v. Vijay Singh***, with respect to the same property. On merits it was submitted that the plaintiff has covered whole of the property by raising construction towards South. Even in the earlier suit plaintiff was alleging encroachment which was found to be false as per report of the Local Commissioner appointed by the High Court. No encroachment has been made by the respondent/defendant in *khasra* No. 3319.

(3) The application for interim injunction filed by the petitioner under Order 39 Rule 1 and 2 CPC before the trial Court was dismissed vide order dated 12.2.2021. Appeal against the same was also dismissed by the lower Appellate Court vide judgment dated 7.3.2022, against which the petitioner has filed the present petition.

(4) A perusal of the case file shows that in the earlier civil suit also, a revision petition was filed by the petitioner, bearing **CR No. 834 of 2019** titled as ***Ram Piari vs. Vijay Singh***, which was decided on 7.2.2019 (Annexure P-3) by directing the trial Court to carry out demarcation of the property in question to establish as to whether there was any encroachment by the parties on each other's land. The relevant portion of the order dated 7.2.2019 reads as under, Consequently, it not being in dispute that the petitioner is the owner of '*Khasra*' no. 3319 and the respondent is the co-owner of '*Khasra*' nos. 3322 and 3323, in the revenue estate of village Dadial, Tehsil Dasuya, District Hoshiarpur, and the only issue being that as per the petitioner, the respondent has encroached upon '*Khasra*' no. 3319 by way of a construction which is stated to be still on-going, it is considered appropriate that the trial Court be directed to appoint a '*Kanungo*' from the Department of Revenue, to conduct a demarcation in the presence of both parties and their representatives, to determine as to whether each party is in possession of their entire holding as per the revenue record, or whether the respondent has encroached upon any part of '*Khasra*' no. 3319 owned by the petitioner; or whether there has been any encroachment by the petitioner on '*Khasra*' nos. 3322 and 3323.

Learned counsel for the petitioner, on instructions, has made a statement that if the petitioner is found to be encroaching any land owned/co-owned by the respondent, contained in '*Khasra*' nos. 3322 or 3323 (even though that is not a contention by the respondent before the trial Court), the petitioners would vacate the same.

Both parties are held bound to that statement.

Consequently, the impugned orders are set aside and this petition is disposed of in the aforesaid terms.

The petitioner having been shown to be 108 years old in the memo of parties, the trial Court is directed to ensure that the revenue official is appointed immediately and the demarcation is carried out within a period of 15 days.

The orders passed by the learned courts below, on the application under Order 39 Rules 1 and 2 CPC having been set aside by this Court, naturally, after the report of the Local Commissioner (*Kanungo*) is received by the trial Court, it would pass a fresh order on that application.

(5) Pursuance to the order, demarcation was carried out by the

revenue officials, wherein no encroachment as alleged by the petitioner/plaintiff could be established. Further, the earlier civil suit filed by the petitioner/plaintiff was withdrawn and no permission was granted to the plaintiff to file a fresh suit on the same cause of action by the trial Court. The order to that effect dated 26.3.2019 reads as under, Sh. Rajinder Sharma, Advocate has appeared and suffered statement that he withdraw the present suit due to some technical defects in the plaint with liberty to file the fresh suit on the same cause of action. In view of his statement, the suit filed by the plaintiff is hereby dismissed as withdrawn. However, no permission is granted to the plaintiff to file the fresh suit on the same cause of action as no technical defects has been shown by the plaintiff. Moreover, for that purpose that plaintiff was required to move an appropriate application to withdraw the suit, as per the provisions of Order 23 wherein the application would be decided on merits, after hearing the other party. So, no permission is hereby given to the plaintiff to file the fresh suit on the same cause of action. Accordingly, file be consigned to record room.

(6) On the above analysis of facts, it is apparent that the petitioner/plaintiff has not been able to establish *prima facie* case in her favour. There is no likelihood of the petitioner suffering any irreparable loss either. The well reasoned impugned orders/judgments passed by the Courts below, therefore, do not call for any interference.

(7) Dismissed.

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*Ritambhra Rishi*