

JUDGMENT

M.L. Singhal, J.

1. This is a revision against the order dated 19.9.2000 of Additional District Judge, Rohtak whereby he dismissed the defendant's appeal against the order dated 25.8.2000 of Civil Judge (Jr. Division), Rohtak, whereby the latter had allowed the application of plaintiff-Bhoop Singh Jain filed by him under Order 39 Rules 1 and 3 read with Section 151 of the Code of Civil Procedure restraining Atul and Sarupwati-defendants from interfering in his lawful possession of the suit property as detailed in para No. 1 of the plaint and causing any interference in raising construction thereon.

2. Facts:

Bhoop Singh Jain-plaintiff filed suit for permanent injunction against Atul son of Tara Chand and Sarupwati w/o Tara Chand son of Mai Dhan-defendants restraining them from interfering into his peaceful possession over the shop from the ground of sky and also from causing any interference in the raising of any construction by him in or over the suit property detailed in para No.1, 3 and 5 of the plaint shown in red in the site plan attached to the plaint. It is alleged in the plaint that he is owner in possession of shop bearing No. 1370/29 situated at Model Town, Medical Maur, Rohtak bounded as

East: Shop under the name of Aggarwal Medical Store

West: Shop of Sarupwati in possession of tenant Sharda Medical Hall;

North : House of Late Tara Chand;

South : Main Delhi Road and door of the shop.

The aforesaid shop was purchased by the plaintiff from Sarupwati-defendant by means of a registered sale deed bearing No.6634 registered in the office of Sub-Registrar, Rohtak on 18.11.1998. It is alleged in the plaint that he has purchased four walls of the shop also from defendant No.2 by virtue of aforesaid sale deed besides the area/shop detailed in para No.1 of the plaint. The shutter of the shop is installed in the southern wall of the shop of the plaintiff. The owner of the shop under the name of Aggarwal Medical Hall situated towards the Eastern side of shop of the plaintiff has also his own separate western wall of his shop. The shop was also purchased by the owner of Sharda Medical Hall from the aforesaid defendant No.2. The plaintiff purchased the shop and the walls detailed above from the bottom to sky from defendant No.2. Plaintiff intended to raise construction over the shop. A part of the construction was raised. As the work was in progress, defendants No.1 and 2 in collusion with each other threatened him to dispossess him from the suit property detailed above and also threatened him to interfere in the progress of the construction of the first floor of the shop. It is alleged in the plaint that the threatened acts of the defendants are illegal and unauthorised. Building material collected by him is going waste. Alongwith the suit, plaintiff made an application for the grant of temporary injunction to the desired effect.

Vide order dated 25.8.2000 Civil Judge (Junior Division), Rohtak allowed temporary injunction to the plaintiff as prayed for. Atul son of Tara Chand-defendant No.1 went in appeal which was dismissed by the Additional District Judge, Rohtak vide order dated 19.9.2000.

3. I have heard the learned counsel for the petitioner (defendant No.1), learned counsel for the plaintiff-Bhoop Singh Jain and have gone through the record.

4. Sarupwati w/o Tara Chand s/o Mai Dhan filed suit No.526 of 1993 for declaration against her husband Tara Chand son of Mai Dhan to the effect that she is owner in possession of commercial shop bearing Nos.1370/29, 1371/29 and 1372/29. The said suit was decreed by Senior Subordinate Judge, Rohtak vide order dated 1.9.1993, Sarupwati was given declaration that she is the owner of shops No.1370/29, 1371/29 and 1372/29 situated at Rohtak Delhi Road. Sarupwati sold shop No.1370/29 measuring 22-2/9 Sq. yards - 200 sq. feet.

East: 20' shop in the name of Aggarwal Medical Store

West : 20' shop No.1371/29 under the name of Sharda Medical Hall owned by Sarupwati.

North : 10' House No.1374/29 of Tara Chand

South : 10" Road thoroughfare situated in Model Town, Medical More, Rohtak

5. It was submitted by the learned counsel for the petitioner that Sarupwati sold shop No.1370/29 measuring 200 sq. feet to Bhoop Singh Jain vide sale deed dated 15.11.1998. It was submitted by the learned counsel for the petitioner that while raising construction Bhoop Singh Jain-plaintiff cannot be permitted to go beyond 200 sq. feet area i.e. 20'-East, 10'-South, 10'-North and 20'-West. It was submitted that if he means to raise any construction on the northern or western wall, he has to purchase half of the site beneath that wall from its owner because that half of the wall was not purchased by him. In the sale deed, alongwith the area, boundaries have also been given. It is quite settled that when there is dispute between the area and the boundaries, the boundaries prevail.

6. Bhoop Singh Jain purchased shop No.1370/29 with the following boundaries:

East : 20' shop in the name of Aggarwal Medical Store,

West : 20' shop No.1371/29 under the name of Sharda Medical Hall owned by Sarupwati.

North : 10' House No.1374/29 of Tara Chand.

South : 10' Road thoroughfare

While raising construction, Bhoop Singh Jain can go up to the point where Aggarwal Medical Store commences in East. He can go in West up to the point where shop No. 1371/29 commences. Similarly, he can go in North up to the point where House No. 1374/29 commences. In South he can go up to the point where road commences. He can thus raise construction which he means to raise on the area circumscribed within the limits of those boundaries. In the sale deed, it is recited that Bhoop Singh Jain shall be the sole owner of the Eastern, Northern and Southern Walls of shop No. 1370/29 but the Western wall shall be shared by him.

7. It was held in Kali Charan v. Hari Ram and Ors. (1957)59 P.L.R. 419 that where in a decree there is a conflict between the description of the property and measurements indicated therein, the former is to prevail. Thus the description of the property as given in the sale deed shall be deemed to be accurate and the defendants are bound by the same.

8. It is, thus, clear that the plaintiff could arise construction on the Southern, Eastern and Northern walls. If he is to raise construction on the Western wall, he will have to purchase half of the Western wall from the owner of shop No.1371/29 i.e. Sarupwati. Even otherwise, the grant temporary injunction is in the discretion of the Court. High Court in the exercise of its

revisional jurisdiction will not interfere with the exercise of this discretion vesting in the courts below provided they have exercised this discretion judiciously on well defined principles governing the grant of temporary injunction.

9. For the reasons given above, this revision fails and is dismissed with costs. Counsel fee Rs. 1100/-