

(2016) 03 SHI CK 0188
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 110 of 2015

Arjun Jain

APPELLANT

Vs

Ajay Kumar

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 11
Specific Relief Act, 1963 — Section 38

Citation : (2016) ILRHP 14

Hon'ble Judges : Sureshwar Thakur, J.

Bench : Single Bench

Advocate : Mr. Ashok K. Tyagi, Advocate, for the Petitioners; Mr. Anil God, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.(Oral)—The respondents herein are plaintiffs in Civil Suit No. 72/1 of 2013 instituted at their instance before the learned Civil Judge (Jr. Division), Nahan. The suit aforesaid instituted before the aforesaid Court, initially as apparent on a reading of a copy of plaint as stands appended with the petition ventilated therein the relief of permanent prohibitory injunction. The relief of permanent prohibitory injunction initially ventilated therein stands anchored upon threatenings of invasion or threatenings meted by the defendants/petitioners herein to the respondents herein/plaintiffs qua encroachment over/ upon the suit land whereupon the latter claim to be exclusive possession thereof as owners. A close reading of the plaint upsurges the prime fact of the petitioners herein/defendants in the civil suit intending to encroach or invade upon a portion of the suit land. The portion earmarked in the site plan appended to the plaint came to be purportedly subsequent to the institution of the suit subjected to construction at the instance of the petitioners herein. The respondents herein/plaintiffs in the civil suit hence were led to institute an application under Order 6, Rule 17 C.P.C. before the learned trial Court with a prayer therein for permission or leave being granted by it to them for

incorporating in the plaint para 4(a) besides prayed for leave from it for incorporation therein of the reliefs prayed for in the apposite application. The relevant paragraphs of the apposite application leave whereof from the learned trial Court for their incorporation in the plaint stood canvassed stand extracted hereinafter:

"4-A Despite the facts, narrated in the preceding paras above and despite subsistence of injunctory orders which were passed by this Ld. Court qua the suit land on dated 22/03/2014, the Defendants/Respondents have illegally and forcibly done construction over the suit land on the part as shown by the red ink in the site plan/layout plan attached with the Original Plaint. The same is required to be demolished and vacant possession thereof is required to be delivered to the Applicants/Plaintiffs".

(b-i) Despite the prayer in para above and in spite of injunctory orders passed by this learned Court which is still subsisting and in the light of construction raised by the Defendants/Respondents, now the order of mandatory injunction may kindly be passed directing the Defendants/Respondents to demolish their construction which they have raised illegally over the suit land comprised in Khasra No. 487/342/282, during the pendency of the suit and pendency of the injunctory orders qua the suit land, the construction to be demolished is depicted in red in the already appended site plan dated 28/10/2013 and after demolition, possession of the suit land may kindly be delivered to the Applicants/Plaintiffs."

2. The application aforesaid seeking the incorporation in the plaint of the herein above extracted amendments stood allowed by the learned trial Court. The defendants-petitioners herein stand aggrieved by the aforesaid order. The short submission addressed by the learned counsel for the petitioner in impugning the apposite order stands anchored upon the factum of the plaintiffs/respondents herein being, at the outset or at the stage prior to the institution of the suit, aware of the factum of encroachment by the defendants on over/upon the suit property depicted in the site plan/layout plan appended to the plaint. Hence, their omission to thereat incorporate the reliefs as embodied in the application under Order 6, Rule 17 now baulks them at this belated stage to seek leave of the learned trial Court for their incorporation in the plaint. However, the aforesaid submission neither has force rather is rudderless especially in view of the evident fact emerging from a close reading of the pleadings initially constituted in the plaint qua the petitioners/defendants merely threatening to invade the settled possession of the plaintiff over/upon the suit land denoted in the site plan/layout plan assertion whereof qua their possession thereof rests upon their exclusive title thereon. The construction at the instance of the petitioners herein/defendants over/upon suit land had not commenced at that stage. Commencement of construction over/upon the suit land at the instance of the petitioners herein occurred subsequent to the institution of the plaint, hence when the act of raising of construction on the land falling to the purported exclusive possession and title of the plaintiffs/respondents herein occurred

subsequent to the institution of the plaint, it obviously bars the learned counsel for the petitioners to canvass qua the fact aforesaid falling within the knowledge of the plaintiffs at the stage contemporaneous to the institution of the plaint, for as such theirs standing enjoined to at that stage incorporate the said fact in the plaint. Moreover, the learned counsel for the petitioners herein cannot also contend qua any omission thereof precluding the plaintiffs to now seek their incorporation in the plaint nor is it open for the learned counsel for the petitioners to contend with any force before this Court qua the factum of the plaintiffs/respondents herein standing thwarted to incorporate the subsequently occurred facts in the plaint for claiming concomitant reliefs in consonance therewith being prayed to be awarded /afforded in their favour. Moreover, any non-appending with the plaint of the apposite report of demarcation, if any, of the suit property is of no consequence as the site plan/layout plan depicting the site/place where the defendants/petitioners herein are threatening to encroach upon, stood appended with the plaint which site is the one whereon construction subsequently stands commenced by the defendants especially when proof thereof can stand elicited from the plaintiffs/respondents herein during the progress of or during the trial of the suit besides when the plaintiffs respondents herein may concert to adduce clinching proof qua an apposite issue cast thereupon, by theirs moving an appropriate application before the learned trial Court for the appointment of a Local Commissioner for demarcating the contiguous boundaries of the parties at contest. Consequently, the impugned order is affirmed and maintained and the instant petition stands dismissed. All pending applications also stand dismissed.