
(2024) 03 SHI CK 0060
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 537 Of 2022

Arjun Ram

APPELLANT

Vs

Sohan Singh & Ors

RESPONDENT

Date of Decision : 16-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2
Code Of Criminal Procedure, 1973 — Section 133, 139

Citation : (2024) 03 SHI CK 0060

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : H.S. Rangra, K.D. Sood, Sanjeev Sood, Het Ram Thakur

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Learned Trial Court allowed the application of the plaintiff-petitioner under Order 39 Rules 1 & 2 of the Code of Civil Procedure vide order dated 22.06.2022. The respondents-defendants were restrained from causing any interference over the suit land comprised in Khasra Nos.2829/1491 & 1510, measuring 05-01-05 bighas situated in Muhal Mahadev/10, Tehsil Sundernagar, District Mandi, H.P. The order was set aside by the learned First Appellate Court on 11.10.2022, hence the plaintiff has invoked the supervisory jurisdiction under Article 227 of the Constitution of India.

2. Facts.

2(i) The petitioner instituted a civil suit for permanent prohibitory and mandatory injunction against the respondents with the pleadings that he was owner in possession of the suit land. No road passes through the suit land. The respondents did not own any land adjoining to the suit land, however, with a view to grab the suit land, the respondents started up-rooting the pole and

barbed wire of the plaintiff on 25.11.2018. Alongwith the plaint, an application under Order 39 Rules 1 & 2 CPC was also moved. Plaintiff sought to restrain the defendants from causing any interference over the suit land, on the strength of his title.

2(ii) The defendants contested the suit as well as the application moved under Order 39 Rules 1 & 2 CPC. The defence was that there already exists a public path over part of Khasra No.1510. The said path was constructed in the year 2011. The construction was executed by Gram Panchayat Mahadev through MANREGA funds. The said public path was obstructed by the plaintiff concerning which proceedings under Sections 133 of Criminal Procedure Code were instituted against him. The Sub Divisional Magistrate Sundernagar, passed an order requiring the plaintiff to remove the obstruction. The order was affirmed in a revision petition moved by the plaintiff before the learned Additional District Judge Sundernagar. The defendants strongly objected to the conduct of plaintiff in not disclosing these facts in his pleadings. The allegation of up-rooting of barbed wire and pole from the suit land were also denied by the defendants.

2(iii) Learned Trial Court vide order dated 22.06.2022, restrained the respondents from causing interference over the suit land. The basis for passing this order was the revenue record, the jamabandi for the years 2012-13 and 2017-18, where the plaintiff was shown as owner in possession of the suit land. Learned Trial Court also gave importance to the fact that Khasra No.1510 was not recorded as path in the jamabandis.

2(iv) The defendants feeling dis-satisfied with the injunction order passed by the learned Trial Court, assailed the same before the learned First Appellate Court on 03.08.2022. Learned First Appellate Court on 11.10.2022 set aside the order passed by the learned Trial Court on the grounds that;- The evidence on record at that stage prima-facie proved the existence of public path over Khasra No.1510; The path was constructed by Gram Panchayat Mahadev using MANREGA funds during the years 2010-2011; The plaintiff did not object to the construction of the path carved out in Khasra No.1510 at the relevant time; The plaintiff obstructed to the use of this path in the year 2017; The Sub Divisional Magistrate exercising powers under Section 133 of the Code of Criminal Procedure (Cr.P.C.) ordered him to remove the blockades created by him on the said path. Learned Appellate Court also took strong exception to the concealment of these facts by the plaintiff in his plaint/application.

3. Having heard learned counsel on both sides and after considering the case on record, I do not find it a case calling for any interference in the impugned order passed by the learned First Appellate Court. This is for the following reasons :-

3(i) The plaintiff had prayed for equitable relief of injunction against the defendants on the strength of his title over the suit land consisting of Khasra Nos.2829/1491 & 1510 measuring 05-01-05 bighas. He specifically pleaded that no path existed over the suit land.

3(ii) The facts & events noticed in the impugned order prima- facie reflect that the averments made by the plaintiff-petitioner were factually incorrect to his knowledge. The path had already been constructed over portion of suit land by Gram Panchayat Mahadev under MANREGA Scheme after utilizing seizable public funds in the year 2011. Path remained operational for 4-5 years without any obstruction or objection from the plaintiff. It was in the year 2017, that plaintiff objected to the use of the path by the villagers and obstructed it. As a result, the Sub Divisional Magistrate Sundernagar, taking recourse to Sections 133/139 Cr.P.C deputed the Tehsildar Sundernagar, to inspect the spot. The Tehsildar visited the spot on 20.09.2018 and furnished his inspection report, which demonstrated the facts mentioned above. On receipt of the report of Tehsildar, the Sub Divisional Magistrate passed a conditional order. The order passed by the Sub Divisional Magistrate was assailed by the plaintiff before the learned Additional District & Sessions Judge. Learned Additional District & Sessions Judge dismissed plaintiff's revision on 22.08.2020 inter-alia holding as under:-

".....Thus, it can not be believed that there exists no road on the spot as the respondent wanted the court to believe. It was for the respondent to explain as to under which circumstances this road was carved out through Khasra No. 1510. He did not plead any such fact in the reply. He rather denied the existence of the road throughout, whereas, the existence of the road is proved from the report of Tehsildar, statement of the villagers recorded by him and through the statement of witness of the respondent namely HC Dinesh Kumar. No material has been placed on the record by the respondent to show that he has either filed a civil suit at any point of time to restrain the villagers to carve out a road through his land or he has filed the suit for the possession of the land over which road was forcibly carved out. He has not filed any document on the record to show that he has lodged his protest with the BDO Office with the request to not to release the funds as the road was being carved out forcibly through his land by the Gram Panchayat. It can not be presumed that the Gram Panchayat constructed a link road without taking every owner of the land in confidence and the office of BDO also released huge funds without examining the matter. In case the respondent had objected for the road at the very beginning, no road would have been carved out upto village Riyanh or its route could have been diverted through some other land. Had the respondent not consented to the carving out of the road, the respondent would not have permitted the villagers to take their vehicles from the road on khasra No. 1510 for 4-5 years. The respondent did nothing for many years. He has now come with multiple stands before the Sub Divisional Magistrate. Sometimes, he denies the existence of the road and sometimes he states that road was to be carved out through some Khasra number which he had donated for the purpose of road. When the existence of the road is proved and it is also proved public funds were utilized for the construction of the same and it remained operational for many years and was used by the public of the village, the revenue entries to the contrary are immaterial. In such a situation, the respondent has failed to lead reliable evidence to show that no public right

existed on the Mahadev water tank to village Riynah. It may be stated here that public right is not to be confused with the ownership rights. Ownership rights are immaterial where a particular piece of land is once surrendered by a person for being put to public use and public funds are invested on the same. The Learned Magistrate has, therefore, rightly examined all these facts and has come to the right conclusion by giving a finding to the effect that respondent has failed to lead reliable evidence to deny the existence of the public right through the road. The findings of the learned Magistrate are therefore, neither illegal nor incorrect but based upon proper appreciation of material before him.”

3(iii) To succeed in an application under Order 39 Rules 1 & 2 CPC, the plaintiff-petitioner has not only to prove existence of a prima-facie case, balance of convenience in his favour alongwith irreparable loss & injury in case of denial of the temporary injunction but he is also to come with clean hands by disclosing all relevant facts. The equitable and discretionary remedy under Order 39 Rules 1 & 2 will not be available to a person, who is found guilty of concealing material facts from the Court. The facts noted by the learned First Appellate Court in the impugned order have not been disputed before me. That being so, plaintiffs’ endeavour to keep the material facts under cover is writ large. The conduct of the plaintiff dis-entitles him to the relief of temporary injunction. Even otherwise, the documents on record as considered by the learned First Appellate Court prima-facie establish that public path passes through the suit land comprised in Khasra No.1510 and is in existence for the last many years. Ingredients for grant of discretionary relief are not met out in the instant case.

4. For the foregoing reasons, no interference is called for in the impugned order dated 11.10.2022 passed by the learned Additional District Judge, Sundernagar, District Mandi, H.P. Resultantly, the present petition is dismissed. Pending application(s), if any, shall also stand disposed of. It is, however, clarified that adjudication of application under Order 39 Rules 1 & 2 shall have no bearing on merits of Civil Suit.