

(2011) 03 SHI CK 0334

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 577 of 2008 and CWP No. 6350 of 2010

Bhupinder Singh

APPELLANT

Vs

Chander Shekhar
 Chander Shekhar Vs State of H.P.
and Others

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Citation : (2011) 03 SHI CK 0334

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—These two cases are being disposed of by a common judgment since common questions of law and fact are involved in the same.

2. This appeal is directed against the judgment and decree dated 9.7.2008 passed by learned District Judge, Bilaspur in Civil Appeal No. 51 of 2007 whereby he allowed the appeal filed by the Defendant and set-aside the judgment and decree of learned trial Court and consequently the suit of the Plaintiff was dismissed.

3. Briefly stated, the facts of the case are that the Appellant (hereinafter referred to as the Plaintiff) filed a suit before the learned trial Court. The Plaintiff and Defendant are neighbours in Up-Mohal Roura Sector-II, N.B.T. Bilaspur, H.P. According to the Plaintiff, approach to both the houses is through a road owned and possessed by the Municipal Committee, Bilaspur. The Plaintiff alleged that the Defendant had obstructed the road and thereby blocked air, light and main gate of the house of the Plaintiff. He, therefore, prayed that a decree for declaration be passed that the Plaintiff has got easementary rights to enjoy the facilities of road and a decree for mandatory injunction be passed directing the Defendant to dismantle the structure/construction raised by him over the said road.

4. The Defendant contested the suit and submitted that in fact the Plaintiff has

encroached upon the Government land thus causing inconvenience to the Defendant. He alleged that he had not raised any obstruction in the road in front of the house of the Plaintiff.

5. The learned trial Court decreed the suit of the Plaintiff. An Appeal was filed and the learned District Judge came to the conclusion that the report of the Patwari Ext. P.W.-1/A which was the basis of the decree passed by the learned trial Court could not be relied upon for various reasons. First of all, the Patwari is not entitled to carry out demarcation of the land, especially when the land belonging to the Government is involved then a Revenue official of higher rank i.e. Naib Tehsildar must carry out the demarcation. The learned lower Appellate Court also held that in the absence of the Municipal Council or the State of Himachal Pradesh, no decree could have been passed because easementary rights were being claimed on the road which belonged to the State and the Municipal Council. Further, the learned Lower Appellate Court was of the view that in case any encroachment had been done on Municipal/Government land, the same could only be removed in accordance with the Municipal Act and not by way of suit.

6. In my view, the learned lower Appellate Court was justified in holding that no reliance could be placed on the report prepared by the Patwari as he was not the competent official to carry out the demarcation. Further more, since easementary rights are being claimed on the road belonging to the State and the Municipal Council, no suit could proceed in their absence. Therefore, I find that no question of law much less a substantial question of law arises in this appeal which is dismissed.

7. This petition has been filed by Chander Shekhar who was Defendant/Respondent in RSA No. 577 of 2008 and the prayer made is that the notice dated 20.9.2010 be quashed and the proceedings for eviction of the Petitioner be cancelled.

8. It would be pertinent to mention that on 2.12.2010, this Court had passed a detailed order directing the Appellate Authority to decide the appeal filed by Chander Shekhar latest by 28th February, 2011. The State was also directed to file an affidavit as to whether any proceedings for eviction of Bhupinder Singh from the Government land have been initiated which he has allegedly encroached. An affidavit has been filed by the Deputy Commissioner in which it is stated that the appeal filed by Chander Shekhar has been allowed and the case was remanded to Assistant Collector, Sadar, Bilaspur on 7.1.2011. It is further stated on oath that the eviction proceedings against Bhupinder Singh were initiated under the H.P. Public Premises and Land Eviction Rent Recovery Act, 1971 which are pending disposal before the Sub Divisional Collector, Bilaspur.

9. Therefore, CWP No. 6350 of 2010 has virtually become infructuous since there is no eviction order against Chander Shekhar at this stage. Petition is accordingly disposed of but the Assistant Collector, Ist Grade, Sadar Bilaspur as well as the

Sub Divisional Collector, Sadar, Bilaspur, are directed to decide the proceedings against Chander Shekhar and Bhupinder Singh at the earliest and in any event not later than 30th September, 2011.

10. Both the RSA and CWP are disposed of in the aforesaid terms. No costs.