
(2014) 10 SHI CK 0096
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 4137/2013

Carnoustie Eco-Resorts Pvt. Limited

APPELLANT

Vs

Sanjay Kumar

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2014) 10 SHI CK 0096

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : K.D. Sood, Sr. Advocate, Sanjeev Sood and Dalip K. Sharma, Advocate for the Appellant; G.D. Verma, Sr. Advocate, B.C. Verma, Advocate and Raman Parashar, Advocate and Parmod Thakur, Addl. AG, Advocate for the Respondent

Judgement

Rajiv Sharma, J.—This petition is instituted against judgment dated 31.5.2013 rendered by the Addl. District Judge, Sirmaur District at Nahan in CMA No. 18-N/14 of 2012 in Civil Suit No. 120/1 of 2012.

2. "Key facts" necessary for the adjudication of the present petition are that the petitioners-plaintiffs (herein after referred to as "plaintiffs" for convenience sake) have filed a Civil Suit against the respondents-defendants (herein after referred to as "defendants" for convenience sake) and proforma defendants. Plaintiff No. 1 has taken on lease property measuring 18-16 Bighas comprised in Khata Khatauni No. 20/34 Khasra No. 450/8, 10, 12/2, 14, 452/17, 333/12 Kita-6 total measuring 9-16 Bighas, Khata Khatauni No. 41/65 Khasra No. 3, 4, 7, 9, 11, 13, 131/2 Kita-7, total measuring 4-14 Bighas situated at Village Berh Jamolie Hadbast No. 86, Tehsil Rajgarh, District Sirmaur and Khata Khatauni No. 9 Min/20, Khasra No. 18 Kita-1, measuring 4-06 Bighas, situated at village Thandi Dhar, Hadbast No. 15, Tehsil Rajgarh, District Sirmaur, from Smt. Seema Devi i.e. defendant No. 3. Plaintiff No. 1 is constructing an Eco-resort on the suit property. Plaintiffs No. 2 and 3 are having agricultural land in both the villages.

Their properties are connected with road, namely, Surva Thandi Dhar via Kanera road. Road was constructed by the Forest Department through D.F.O. Rajgarh. A sum of Rs. 7.00 Lakh was spent towards construction of the road. Length of the road is 3 kms. Road was 14-15 ft. wide. Contesting defendants have no right, title or interest in any manner whatsoever to obstruct or block the road by putting any blockage or construction. Defendants are threatening to dig the road and close the same.

3. The suit was contested by defendants No. 1 to 3. According to them, plaintiff No. 1 i.e. Company has taken the permission in April, 2010 to construct an Eco-resort in a highly illegal manner. Plaintiffs No. 2 and 3 were hands in glove with plaintiff No. 1. They have caused damage to the fragile ecology of the area. There was no road known as Serva Thandi Dhar via Kanera road. There was a bridal path which starts from Serva and culminates at Kanera and Thandi Dhar. The bridal path was known as inspection path. Proforma defendants No. 4 and 5 in connivance with plaintiff No. 1 started making bridal path as a jeepable road. There are no documents to prove construction of the road. Defendants No. 1 and 2 have already constructed shed over the suit land possessed by them. According to the revenue record, land is possessed by defendants No. 1 and 2. Plaintiffs have no right, title or interest over the same. No portion of the road passes through Khasra No. 44, 45, 308/49, 309/49 and 313/59.

4. Plaintiffs have also moved an application under Order 39 Rules 1 and 2 of the Civil Procedure Code seeking interim injunction. Defendants filed reply to the same. It is averred by the proforma defendants that the road was constructed by the Forest Department in the year 2004-05 and a sum of Rs. 7.00 Lakh was spent. Learned Civil Judge (Junior Division) allowed the application vide order dated 6.11.2012 and defendant Nos. 1 to 3 were restrained from interfering or obstructing the Serva-Thandi Dhar road in any manner. The defendants feeling aggrieved filed an appeal bearing Civil Misc. Appeal No. 18-N/14 of 2012 before the Addl. District Judge, Sirmaur at Nahan. He allowed the appeal on 31.5.2013. Hence, the present petition.

5. Mr. K.D. Sood, learned Senior Advocate has supported the order passed by learned Civil Judge (Junior Division) on 6.11.2012.

6. Mr. G.D. Verma, learned Senior Advocate has supported judgment dated 31.5.2013 passed by learned Addl. District Judge, Sirmaur at Nahan.

7. I have heard the learned counsel for the parties and also gone through the order and judgment carefully.

8. Plaintiffs have not placed on record any tangible evidence to suggest specifically the Khasra numbers to pinpoint location of the road on the spot. According to the revenue record i.e. copy of Jamabandi for the year 2009-10, defendant Nos. 1 and 2 are joint owners of Khasra No. 308/49 and 362/49. The land is shown as Banjar Kadeem. There is no entry of any road on this portion of the land. In case there was any road constructed by the Forest Department, the

same ought to have been reflected in the revenue record. Presumption of truth is attached to the jamabandi, though rebuttable.

9. The plaintiffs have not led any evidence to rebut the revenue record i.e. Jamabandi for the year 2009-10. It is not the case of the proforma defendants that they have acquired the land of the defendants. Learned Addl. District Judge has rightly discarded the demarcation report dated 27.6.2012, the same being not in accordance with law. There is no survey report placed on record. In case, Forest Department has constructed the road, there would have been sufficient record including Survey Report.

10. What emerges from the facts placed on record is that there was a bridal path in existence. Proforma defendants could not construct road over the land of the defendants No. 1 and 2. Forest land could not be used for non-forest purposes without seeking permission under the provisions of the Forest (Conservation) Act, 1980. There is substance in the submission of Mr. G.D. Verma, learned Senior Advocate that effort has been made by the proforma defendants to help the plaintiffs by providing approach road to connect to the Eco-resort through forest. Public funds should be used for the public purposes and not for other purposes. There is neither any illegality nor irregularity in the judgment passed by learned Addl. District Judge, Sirmaur at Nahan.

11. In view of the discussion and analysis made hereinabove, there is no merit in the petition and the same is dismissed. However, it is made clear that the observations made herein above, shall have no bearing on the merits of the main case. Pending applications, if any, are also disposed of.