
(2018) 09 SHI CK 0025

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition 117 of 2016

Dinesh Ranta & Another

APPELLANT

Vs

Pushpa Chauhan & Others

RESPONDENT

Date of Decision : 20-09-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2018) 3 SimLC 1518

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : V.S. Chauhan, Neeraj Gupta, Hemant Vaid, Y.S. Thakur, Vikrant Chandel, Anil Chauhan

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. In the instant petition, a challenge, is, cast upon the orders, rendered, by the learned Civil Judge (Junior Division) Court No. 3, Shimla, upon, RBT

No. 161Â?1 of 15//2013, whereunder, the, plaintiffsâ?? application, cast, under the provisions, of, Order 6 Rule 17, CPC, was allowed.

2. On an apt scanning of the plaint, it is discernable, qua the plaintiff, raising construction upon land bearing khasra No. 1154/1, and, the, construction

being raised, strictly in consonance, with, the map sanctioned, by the competent authority, and, (i) hers leaving set backs from all the sides, (ii)

however, the coÂdefendants No.1 and 2, while raising construction, upon, the adjoining khasra numbers, are, hence averred, to, raise construction

rather by flouting the approved plan, non adherence whereof, is, espoused in theirs, not, leaving the apt set backs, (iii) theirs raising projections, hence,

the latter encroaching the land, and, the set backs, left by the plaintiff upon her

land. The defendants instituted written statement, and, therein rather denied the aforesaid averments, and, contrarily contended qua the plaintiff hence not leaving the apt set backs, in her raising construction, upon the land, owned and possessed by her.

2. During the pendency of the suit, before the learned trial Judge, an application, cast, under the provisions of Order 6 Rule 17, was, instituted

therebefore, and, the apt leave of the Court was strived hence, for, incorporating, in the initially instituted plant, the, hereinafter extracted

amendments:Â?

â??i The applicant may be allowed to add the following word â??and for declarationâ? in the detail of the description of suit, after memo of parties,

after the word â??mandatory injunctionâ?? and before the word â??as detailed in the body of the plaintâ??.

ii. The applicant/plaintiff may be allowed to add the new para after para 14 as para 14 (a) as under:Â?

â??14(a). That the defendants No. 1 and 2 have submitted their revised building plan of one storey i.e. ground floor for the purpose of approval with

the defendants No. 3 and 4. This revised plan/map is submitted by defendants No. 1 and 2 despite the fact that they have not only covered their entire

set off area but they are also trying to encroach and to lay the over projection over the set off area and construction of the plaintiff. The defendant No.

3 and 4 without considering this aspect, so as to help the defendant No. 1 and 2 have approved/sanctioned the revised map of one storey i.e. ground

floor of the defendants No.1 and 2. This approval/sanction of the revised map/plan of the defendants No. 1 and 2, by the defendants No. 3 and 4

is against the procedure and against the H.P. Town and Country Planning Act and Rules framed thereunder and the building bye laws. This

sanction/approval of one storey i.e. ground floor of map/plan of defendant No.1 and 2 by defendants No. 3 and 4 is wrong, illegal and against the

procedure and is liable to be declared as null and void. The NOC issued by defendant No. 3 and 4 in favour of defendant No. 1 and 2 for installation

of electricity and water connection deserves to be withdrawn. The same is result of misrepresentation of facts and the conclusiveness of the

defendants.â??

iii. That similarly the applicant/plaintiff may be allowed to add new relief in the

prayer clause after para (II) and before para (III) as para (II) (a) as under:Â?

â??(II)(a). That the sanction/approval of the revised map/plan of defendant No. 1 and 2 by defendant No. 3 and 4 is wrong and illegal and the

sanction/approval of the revised map/plan of defendant No.1 and 2 is liable to be set aside and NOCs for meter and electricity connections deserve to be withdrawn.â??

3. As aforestated, the apt leave was granted to the plaintiff, and, coÂdefendants No. 1 and 2, being aggrieved therefrom, hence instituted the instant petition, before this Court.

4. The learned counsel for the petitioner, has, contended with much vigor before this Court, that, with an alternative statutory remedy being available

to the plaintiff, for redressing her grievance, hence the leave, as accorded, by the learned trial Court, being stained with, a, vice, of, gross infirmity.

5. With the plaintiff, in the initially instituted plaint, rearing the afore averments, and, with the approval standing granted by coÂdefendants No. 3 and 4,

to, the apt revised plan, instituted before them, by coÂdefendants No. 1 and 2, (a) thereupon the aforesaid approval, when, occurred subsequent to the

prior thereto instituted plaint, hence also when the construction, as stood raised, by coÂdefendants No. 1 and 2, was earlier canvassed, to, on the,

afore anvil, hence, infringe the mandate of law, (b) thereupon when, the, aforesaid purported encroachment, yet, not being meted an appropriate

adjudication, rather, with its purportedly constituting, a, continuing invasion, upon the land of the plaintiff, (c) thereupon even the validity, of, approving,

of, the revised plans, was, enjoined to be incorporated in the preÂinstituted plaint, and, the leave in respect thereof, as granted, was also permissible

under law.

6. Even though, there, is, an apt statutory mechanism hence available, (a) for recourse by the plaintiff, for hers redressing her grievance, yet, with

hence no mandate standing encapsulated, in, the H.P. Town & Country Planning Act, provisions whereof apply, visÂaÂvis, the area whereat the apt

construction exists, (b) thereupon for setting at rest, the afore competing contentions, raised, by the contesting litigants, the leave as granted is neither

grossly illegal nor hence is stained with any vice of any impropriety. Contrarily, the apt leave would facilitate, the, striking of apt issue(s) in consonance

therewith, and, also would enable the adduction, of, apt evidence thereon, and, rather would empower the learned trial Judge, to, clinch, the, entire gamut, of, the controversy, interÂ?se the parties at contest.

7. In view of the above observations, the instant petition stands dismissed, and, the impugned order is affirmed and maintained. All pending applications, if any, also stand disposed of.

8. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case, and, the learned trial Court shall decide the matter uninfluenced, by any observation made herein above.