
(2019) 05 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 509 Of 2018

Hans Raj & Others

APPELLANT

Vs

State Of Himachal Pradesh & Others

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2019) 05 SHI CK 0012

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Sanjeev Kujthiala, Kamlesh Kumari, Hemant Vaid, Y. S. Thakur, Malay Kaushal

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The instant petition, is, directed against the concurrent verdicts recorded by both the learned Courts below, upon, the plaintiffs' application cast under the provisions of Order 39, Rules 1 and 2 of the CPC, wherethrough, they strived, for, rendition, of, an affirmative verdict thereon.

2. The afore application was constituted before the learned trial Court, during, the pendency, of, the plaintiffs' suit, wherethrough, they sought rendition of a decree, for declaration, and, had also strived, for, rendition of a decree for permanent prohibitory injunction, vis-a-vis, the suit khasra numbers. The afore renditions were espoused, on anvil, of the plaintiffs' claiming, the, exercising(s), of, an easementary right of passage, upon, the suit khasra number. The afore pleaded easement of right of passage, upon, the suit khasra number(s), and, passage whereof, holds, a, dimension of 18 feet wide, and, 175 feet long, (i) was anchored, upon, the afore passage being used continuously, uninterruptedly, and, to the knowledge of all concerned, since the time, of, the predecessors-in-interest of the plaintiffs/petitioners, and, uptill now, (ii) thereupon, reiteratedly,

the afore claim was rested, upon, a right of easement, hence, being sparked, by prescription, and, custom, and, it being exerciseable, vis-a-vis, the suit passage, as, stands embodied in the apposite suit khasra numbers. Consequently, the plaintiffs/applicants, claim that, if, during the pendency of the afore civil suit, the espoused ad interim injunction, is declined, and, hence, construction, if any, as proposed to be raised, upon, the suit passage, embodied in the suit khasra numbers, is permitted to be raised, upon, the suit khasra numbers, (iii) thereupon, hence irreparable loss or injury rather would be encumbered, upon, them, and, balance of convenience which otherwise stands loaded in their favour, rather would be disturbed, despite, theirs having a prima facie good, and, arguable case in their favour.

3. However, the afore averred claim, of the plaintiffs/petitioners, does lose its vigour, (a) given the classification made, vis-a-vis, the suit khasra numbers in the apposite jamabandi appertaining therewith, hence, making a clear reflection(s) qua it therein being entered as "gair mumkin Khad". Even if, the afore classification, donned by the apposite suit khasra numbers, may not beget, any inference qua thereupon, the plaintiffs' espousal, being benumbed, (b) yet the entire vigour of the afore submission addressed before this Court, by the learned counsel appearing for the aggrieved plaintiffs, is, aptly underwhelmed, rather by the more emphatic factum, qua the vestment of the suit khasra numbers, rather being made, vis-a-vis, the State of Himachal Pradesh, (c) importantly within the ambit, of, the mandate, of the Punjab Village Comm on Lands (Vestings and Utilization) Act, 1961, (d) and, when the afore vestment hence statutorily occurs rather free from all encumbrances, (e) thereupon, the effect, of, vestment of the suit khasra numbers, inclusive of the suit passage, in, the government of Himachal Pradesh, through, the apposite mandate encapsulated in the Punjab Village Comm on Lands (Vestings and Utilization) Act, 1961, is, concomitantly construable hence to be free from all encumbrances, (f) inclusive of the suit khasra numbers being free from any fetter, qua theirs serving, as, servient heritage, (g) nor hence, it can be concluded qua the espousal of the plaintiffs qua theirs, since, the time of their ancestors upto now, hence, exercising any right of easement of passage, upon, the suit khasra number, garners any weight or vigour. Conspicuously, also when no declaration, is strived in the plaintiffs/petitioners' suit, that, the afore order of vestment is nonest, and, hence therefrom onwards, it can also, be concluded, that qua the plaintiffs/petitioners acquiescing, vis-a-vis, the order vesting the suit khasra number, in the State of Himachal Pradesh, (h) wherefrom, the concomitant inference is sparked qua theirs visibly not resisting or raising objections, at the appropriate stage, vis-a-vis, the vestment of the suit khasra numbers, in, the State of Himachal Pradesh, preeminently, on anvil, of theirs, holding a right of passage, vis-a-vis, the suit khasra numbers. In aftermath, want of afore endeavours, being made, by the plaintiffs/petitioners, rather begets a firm, and, formidable conclusion from this Court, that, the plaintiffs, are, estopped to raise the afore espousal before this Court, (g) thereupon, it is concluded that all the

relevant afore triplicates tests, hence, governing the granting, of, relief of ad interim injunction, vis-a-vis, the petitioners/plaintiffs, rather remaining unsatiated by them, hence, this Court is constrained to uphold the orders recorded, upon, CMA No. 102/6 of 2016, by the learned trial Court, and, subsequently, upon, Civil Misc. Appeal No. 11-NL/14 of 2018, by the learned Addl. District Judge-I, Solan.

4. For the foregoing reasons, there is no merit in the instant petition, and, it is dismissed accordingly. In sequel, the order impugned before this Court are affirmed and maintained. The parties are directed to appear before the learned trial Court on 11th June, 2019. However, it is made clear that the findings recorded hereinabove shall have no bearing, upon, the merits of the case. All pending applications also stand disposed of.