

(2012) 03 SHI CK 0289
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 41 of 2012

Jiwan Sikngh and Shamsheer Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 17-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Himachal Pradesh Land Revenue Act, 1954 — Section 163

Citation : (2012) 03 SHI CK 0289

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—Notice be issued to the respondent. Learned Additional Advocate eneral waives service of notice on behalf of the respondent. The plaintiffs are the petitioners herein who instituted a suit for declaration that they are owners of the land by virtue of the pleadings in the suit. Alongwith the suit, an application under Order 39 Rules 1 and 2 was instituted by the petitioners herein praying that during the pendency of the suit they (a) be not dispossessed from the suit land; (b) house standing on the land be not dismantled or demolished etc.

2. The learned trial Court on the material on record holds that the petitioners-plaintiffs are in possession of the land for which proceedings u/s 163 of the Himachal Pradesh Land Revenue Act for ejectment have been instituted against them which itself proves the possession of the petitioner herein. In the totality of the facts and circumstances of the case, the Court proceeded to grant a temporary injunction till the conclusion of the suit.

3. The State appealed against this order. The learned Appellate Court has reversed the order of the learned trial Court inter-alia holding that the pleadings on the point of possession are confusing. The learned Court also holds that ejectment proceedings u/s 163 of the Himachal Pradesh Land Revenue Act have been initiated and are pending against the petitioners herein. The learned Court

then comes to the conclusion that no injunction can be issued to protect a wrong doer and therefore, dismissed the application, as instituted by the petitioners, herein.

4. At this stage, it would not be open to the Court to preempt the claim on merits of either party. What was primary for adjudication before the Courts below was the fact as to whether the petitioners were in possession of land, the nature of such possession, whether they were dispossessed or not and the balance of convenience that is to say that prima-facie evaluation of the pleadings and documents on record and not to be swayed by mere fact of wrong doing of either party. The Court should also be aware of the fact that temporary injunction does not determine the rights of the parties to the suit. It does not vest any equity to any party but would enure till the decision of the suit and abide by the final decree. To hold a party to be a wrong doer only on the basis of institution of proceedings against him without anything more, also affects those proceedings. The petitioners have yet to lead evidence in support of their respective claims. This is not to say that a wrong doer is entitled to interim protection. In these circumstances, order of the learned Appellate Court is quashed and set aside and the order of the learned trial Court is restored. It is also directed that this order shall have no effect on any proceedings or order passed under 163 of the Himachal Pradesh Land Revenue Act and that order shall be enforced independently. Petition stands disposed of.