

(2010) 10 SHI CK 0189
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 82 of 2010

Kusum Lata and Another

APPELLANT

Vs

Vijay Kuamr

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Citation : (2010) 10 SHI CK 0189

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This petition is directed against the order dated 14.1.2010 passed by the learned District Judge, Una, whereby he allowed the appeal filed by the respondent here-in-after referred to as the plaintiff and set-aside the order of the learned Civil Judge (Jr. Division), Court No. 3, Una, whereby she had dismissed the stay application filed by the plaintiff.

2. Briefly stated the facts of the case are that the plaintiff filed a suit claiming that the defendants were raising construction on Khasra No. 100/1 Up Mohal Shiv Nagar (Una). The case of the plaintiff was that this land formed part of a public street and therefore the defendants had no right to raise construction thereon. The learned trial Court rejected the application mainly on the ground that the Settlement Collector vide his order dated 16.6.2008 had come to the conclusion that the earlier record showing the width of the path at 9 meters of the southern end appears to be incorrect and he reduced the path to 5 meters at the southern end.

3. The learned lower appellate Court came to the conclusion that when the Jamabandi Misal Hakiat has clearly recorded the width of the path 9.5 meters at the southern end the order of the Settlement Collector which was subject to the appellate jurisdiction of the Commissioner did not appear to be correct. Here, I am concerned with a case where the plaintiff alleges that the defendants raising construction not on the land of the plaintiff but on a public path. As held by the learned Court below public paths must be maintained in a proper manner.

4. At this stage, this Court is not required to go into the merits of the respective contentions of the parties which have to be decided on the basis of the evidence led before the trial Court. However, it cannot be said that the plaintiff has not made out any prima facie case whatsoever. A perusal of the record shows that in fact earlier the path was shown as 12-1/2 meters which by the earlier order of the Settlement Collector was reduced to 9 meters at the southern end. The question which arises for consideration is whether thereafter the Settlement Collector could have passed another order further reducing the width of the public street. These questions are important questions which have to be decided at the stage of final hearing. Therefore, I find no merit in the petition and the order of the learned District Judge restraining the defendants from encroaching upon public street described in Khasra No. 100/1 Up Mohal Shiv Nagar (Una) is upheld and the petition is dismissed.

5. It is obvious that the petitioners-defendants have raised any construction on the public street the same can only be demolished after following the due course of law.

6. It is made clear that any observations made here-in-above have been made only for the purpose of deciding this petition and shall have no bearing on the merits of the case. The parties who are present before me are directed to appear before the learned trial Court on 30th November, 2010. The Registry is directed to ensure that the record of the case is sent back so as to reach well before the said date. The learned trial Court shall make an endeavour to decide the case as early as possible and in any event not later than 31st October, 2011.