
(2018) 05 SHI CK 0053
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 264 of 2016

Naresh Kumar	Vs	APPELLANT
Har Pal Singh and others		RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

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

Citation : (2018) 05 SHI CK 0053

Hon'ble Judges : SURESHWAR THAKUR

Bench : Single Bench

Advocate : Ashok K. Tyagi, Ramakant Sharma, Dinesh Kumar

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.

1.The instant petition is directed against the concurrent affirmative, orders, recorded by both the learned Courts below, upon, the plaintiffs'/

respondents' application cast under the provisions of Order 39, Rules 1 and 2, of, the CPC.

2. The plaintiff had instituted a suit for permanent prohibitory injunction, for, restraining the defendants either personally or through his servants or

assignees, from occupying, digging, and, raising construction over the land comprised in khasra No.892/2, measuring 7 biswas, situated in mauza

Bhagani, Tehsil Paonta Sahib. Also, during the pendency of the aforesaid Civil Suit, an application cast, under the provisions of Order 39, Rules 1 and

2, of, the CPC, was, preferred by the plaintiffs/applicants/respondents herein, before the learned trial Court, wherein, they sought relief of ad interim

injunction being pronounced vis-a-vis them, and, qua the suit land. Relief upon the aforesaid application, was afforded vis-a-vis them, by both the

learned Courts below. The defendant/petitioner herein being aggrieved therefrom, hence, has instituted the instant petition before this Court.

3. This Court with the able assistance of the learned counsel appearing for the parties, has traversed through the relevant records, appertaining to the

lis at hand. The short ground reared, before this Court, by the learned counsel appearing for the defendant/petitioner herein, for upsetting the

concurrent affirmative orders pronounced, upon the plaintiffs' application, is, grooved (a) in the factum of construction already existing at the site, of,

the suit khasra number. However, vigour, if any, of the aforesaid contention, (b) is repulsed by the trite factum, of the relevant records, rather making

candid clear disclosure(s), of the suit khasra number, being recorded in the revenue records, as gair mumkin abadi, (c) and, also after drawing, of,

apposite partition(s), it standing allocated vis-a-vis the plaintiffs, (d) besides the suit khasra number being vacant. The documentary evidence

comprised in the apposite revenue records, as, germane thereto, does at this stage, hence, hold a presumption of truth, and, when the presumption of

truth enjoyed by them, obviously, remains unreplused at this stage, (e) thereupon, it is to be concluded, of, the suit khasra number, upon, drawing, of,

the apposite partition(s) being allotted vis-a-vis the plaintiffs, also, it being vacant. Consequently, it is to be reiteratedly inferred qua the contention

reared, by the defendant, of, construction existing thereon, further standing completely belied. Further sequel(s) thereof, is that triplicate principles

governing the affording or declining, of, apposite relief, comprised in, (a) prima facie good arguable case being established by the plaintiffs; (b) balance

of convenience being loaded vis-a-vis the plaintiffs and (c) irreparable loss or injury being, causable to the plaintiffs, in case, ad interim injunction is not

granted, hence visibly begetting satiation.

4. The aforesaid discussion, unfolds, that both the learned courts below, in making, the affirmative concurrent pronouncement(s) vis-a-vis the

plaintiffs/respondents herein, have neither omitted to discard apposite material, from consideration nor both the learned Courts below have mis-

appraised the relevant material.

5. For the foregoing reasons, there is no merit in the instant petition and it is dismissed. In sequel, the impugned orders are maintained and affirmed.

The parties are directed to appear, before, the learned trial Court, on 23rd May,

2018. However, it is made clear that the observations made hereinabove shall have no bearings on the merits of the case. No order as to costs. All pending applications also stand disposed of . Records, if received, be sent back forthwith.