

(2015) 09 P&H CK 0172
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1374 of 2015

Rap Media Limited

APPELLANT

Vs

Nirmal Singh

RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Citation : (2015) 09 P&H CK 0172

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Sunil Chadha, Senior Advocate and Pallavi Singh, for the Appellant;
Munisha Gandhi, Senior Advocate and Gourav Goel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

K. Kannan, J—The revision petitioner is the defendant in suit against whom the trial court and the appellate court granted an interim prayer for mandatory injunction for construction of retaining a wall to a length of about 900 feet along the boundary dividing the property of the plaintiffs and the defendant. The defendant was a purchaser of the land from the plaintiffs and had, in an attempt to dig foundation for a multiplex (complex of buildings) dug out soil that caused subsidence on the plaintiffs' property and the lateral support which the plaintiff was entitled to secure from the adjoining owner having been withdrawn, suffered serious soil erosion and damage to the crops raised upon their own property. The Local Commissioner, who had been appointed, noticed that there had been a digging of earth of approximately 30 to 40 feet along the entire property and there was soil erosion in the property of the plaintiffs due to the activities of the defendant. Finding a prima facie case available to the plaintiffs, both the courts have granted a relief of interim mandatory injunction.

2. The revision petitioner had obtained an order of stay but would claim that whatever damage had been done, had been on account of unprecedented rains that took place in the year 2009 and the damage to the plaintiff's property could not have taken as resultant to the defendant's action. However, without

prejudice to the contentions to be taken in defence, the petitioner-Company would contend that they have shored up the subsidence that was caused by sufficient embankment all along the boundary. As of now, there is no particular damage. At the previous hearing before the arguments got underway, I asked the Senior Counsel for the petitioner whether there could be a via-media that could satisfy the interest of the plaintiff so that the issue of whether the defendant's acts either constituted damage and whether any further damage to the property could be stopped, could be decided at the time of disposal of the case. The revision petitioner through its authorized representative has filed an affidavit setting out its contention that there is a well defined path approximately 10 to 15 feet along the boundary. The plaintiffs' own property is slightly at a lower level and the damage that has resulted cannot be attributed to the defendant Company. It is also contended that the defendant has spent about Rs. 9 lacs to fill up the soil to maintain good relations and subsequent to the defendant's acts of reparation, there has been no damage to the plaintiffs' property for a period of 6 years. It is contended in the affidavit that without prejudice to the stand taken by the defendant that if ever there is any abnormal or unprecedented rain and any seepage takes place from the side of the land of the defendant towards the plaintiffs' land through the pathway that exists between the respective lands, the defendant would restore the seepage so that no further damage is caused.

3. The learned Senior Counsel appearing on behalf of the respondents/plaintiffs would join issues on the affidavit filed and would state that the reference to existence of well defined path as set out in the affidavit is not in existence. The alleged expenses of about Rs. 9 lacs is also not admitted and the petitioner-Company cannot use it to its own advantage at the trial to contend that there has been a full-fledged reparation done and that the plaintiffs cannot secure any relief in suit. The respondents have also an objection that they could not be compelled to wait till a serious damage results in future by any unprecedented rain and then make demand on the defendant to carry out works to prevent any soil erosion in a still further future date.

4. There is no doubt in my mind that prima facie, as found by the court below, that the defendant's act of digging of foundation has caused subsidence and the lateral support which the plaintiff is entitled to has been withdrawn causing some damage. The relief of mandatory injunction is an extraordinary relief, for, it could result in securing for the plaintiff a relief even before the trial and can put serious prejudice to a defence that is taken. Courts have always thrown enormous caution and looked for special circumstances when such an extraordinary relief could be granted. There are at least two circumstances which have been addressed, one by the High Court of Kerala and yet another by the Himachal Pradesh High Court, providing for mandatory relief of lateral support when it had evidence that the subsidence of land had resulted in caving in of portions of the land of the adjoining owner. In the decision in *Dr. I.K.J. Jacob Vs. K. Nandagopalan and Others*, AIR 1983 Ker 177 : (1983) 2 ILR (Ker) 118 , the

Kerala High Court was upholding the right recognized by the appellate court for lateral support to the plaintiff but, while modifying the relief which was declined by the lower appellate court, the High Court held, any person, who is threatened with injury to his right of lateral support, could seek an injunction from a civil court to restrain such an act and in appropriate cases where the injury had already been caused, a mandatory injunction might also issue to restore the lateral support by any means that the court finds feasible. In the decision in the Himachal Pradesh High Court in Anjani Kumar Vs. Desh Raj and Others, (2013) 3 ShimLC 1577 , the court was allowing for a preventive injunction against the respondents from lowering the level of the land that could cause subsidence. The learned senior counsel for the respondents would cite some other decisions which I do not think necessary to refer, which are on general principles of law relating to interim orders.

5. I would rely on the affidavit filed by the petitioner- Company through a person claimed as an authorized representative that he is willing to abide by his own undertaking to make good any prospect of subsidence of soil and provide appropriate support in any unforeseen situation of heavy rains. I understand that it is not possible to literally predict any particular situation of when there could be such heavy rains for a repeat of what took place in the year 2009. The only manner of securing a proper conduct of such an act if there were to be a serious harm, could be to direct deposit of some sum to the credit of the court that could yield interest and which could be put to use if there is any imminent threat of subsidence of soil. As of now, I do not envisage any imminent problem and construction of a support wall of 900 feet could mean incurring costs of several lakhs and that a direction in that regard would literally prejudice an issue of what is required to be decided.

6. Taking note of the respective contentions, I give the following directions:-

i) The petitioner-defendant shall not dig trenches or do any act along the boundary that can cause damage or subsidence to the plaintiffs' property. Any act of digging shall be done upon its own property only after securing a technical clearance from an engineering expert and submitted to the trial court beforehand for approval. The trial court will examine the authenticity of the opinion and may seek any further clarifications to ensure that the acts of the defendant will not cause any damage and vouch for the safety of the plaintiffs' property;

ii) The petitioner shall cause a deposit of Rs. 10 lacs to the credit of the case and the court shall keep it any deposit account that may yield interest as well and will allow for money to be released on an application filed by the plaintiffs at any time if there is a proof offered that there had been any new damage in the plaintiffs' property on account of any action done by the defendant in the property without taking permission from the court in the manner referred to in clause (i) above or due to any natural calamities. The trial court will take a summary decision on the plea made after hearing the objections from the defendant;

iii) The parties are at liberty to approach the court for taking an inspection of any new event that takes place upon the property that can harm the quality or composition of soil in either one's property;

iv) The averments made in the affidavit filed on behalf of the defendant are to be taken only for the purpose of disposal of the revision petition and will have no bearing to the evidence that may be given by the respective parties and it will be open for the plaintiff to dispute any of the contentions raised in the affidavit;

v) The interim order already passed directing a support wall to be constructed shall be kept in abeyance till the disposal of suit and the final decision of the suit will prevail that can even make to any modification of the directions now given;

vi) The observations regarding the plaintiff's action as having resulted in subsidence are only for the purpose of disposal of the petition and will not bar the defendant from showing that there was no wrong that was committed by the defendant upon its land that was the cause for the plaintiffs' alleged damage to the property.

7. Since the order impugned is suspended in the manner referred to above, to allay the apprehension of the plaintiffs that the pendency of the case for a long time could expose the plaintiffs to serious damage to the property even by natural causes, if the defendants do not precipitate any action by further digging, I direct the trial court to take appropriate instructions from the respective counsel to elicit the number of witnesses that each one wants to examine, take also tentatively the number of hours that would be involved in the examination and accommodate the dates given by the parties beforehand and draw up a calendar to the satisfaction of both parties that would enable the conclusion of trial within a period of 2 months within the number of hours which the parties decide upon. The Presiding Officer may also take the assistance of the Court Manager attached to the District Court and prepare a plan of action for disposal, taking note of pendency of other cases and making possible to fit it in a schedule within the period stipulated. The time which I have given as 2 months is merely an estimate of number of hours which parties could get between themselves and I would leave it to the resourcefulness of parties and the court to conclude the trial within the time frame.

8. The order already passed stands modified and the revision petition is disposed of with the above directions.