

(2017) 03 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : 248 of 2015

SATYA DEVI

APPELLANT

Vs

JAGIR SINGH AND OTHERS

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Code of Civil Procedure, 1908, <a href=3859 — Order 26Rule
9>Order 26Rule 9

Citation : (2017) 03 SHI CK 0048

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : Dheeraj K Vashisht, Surender Saklani, Rahul Verma

Final Decision : Dismissed

Judgement

1. By way of this petition filed under Article 227 of the Constitution of India, the petitioner has challenged order dated 02.05.2015 passed by the Court of learned Civil Judge (Junior Division)-II, Amb in Civil Suit No. 306 of 2009, vide which learned Court below has dismissed an application filed by the present petitioner (who is plaintiff before the learned trial Court) under Order 26 Rule 9 of the Code of Civil Procedure for appointment of a revenue expert as Local Commissioner to carry out the demarcation of the land mentioned in the application so filed under Order 26 Rule 9 of the Code of Civil Procedure.

2. On record, as Annexure P-1 is the copy of the plaint filed by the present petitioner, which demonstrates that the suit stands filed before the learned trial Court praying for the following reliefs: "It is therefore prayed that decree for permanent injunction restraining the defendants from interfering in any manner, from raising any sort of construction, taking forcible possession, cutting and removing the Safeda trees, taking any demarcation, uprooted the old boundary and changing the nature of the land measuring 1-16- 89 Hects bearing Khewat

No. 200 min Khatoni No. 298 Khasra Nos. 2128, 2131, 2134, 2135, 2138, 2140, 2141, 2178, 2254 and 2257 Kitas 10 and old Khasra Nos. 747, 742 and 737 as entered in Nakal Jamabandi for the year 1998- 1999 situated in Village Kharoh, Tehsil Amb, Distt. Una (H.P.) may please be passed in favour of the plaintiff and against the defendants in the interest of justice."

3. Learned trial Court while dismissing the application so filed by the present petitioner under Order 26 Rule 9 of the Code of Civil Procedure has held that the petitioner/applicant has filed the suit for permanent injunction inter alia for restraining the defendants/respondents from interfering, raising any sort of construction, taking forcible possession, cutting and removing eucalyptus, dark trees and taking any demarcation of the suit land and on the other hand, the petitioner/applicant herself has filed an application for appointment of revenue expert for demarcation of the suit land. On these bases, it has been held by the Court below that the applicant in fact is estopped from filing the application in the present case as she has herself prayed for "not taking any demarcation over the suit land". Learned trial Court has further held that otherwise also it is well established principle of law that Court cannot create any evidence in favour of any of the parties.

4. I have heard the learned counsel for the parties and have also gone through the documents appended with the present petition.

5. It is settled law that in exercise of its jurisdiction under Article 227 of the Constitution of India, this Court primarily has to see as to whether learned Court below has committed any jurisdictional error by way of order which is under challenged under Article 227 of the Constitution of India. This Court is not to interfere in the order so passed by the learned trial Court on the basis of merit, if the learned trial Court whose order otherwise is under challenge is competent to pass the said order and the conclusion arrived at is borne out from records. During the course of arguments, learned counsel for the petitioner could not point out any jurisdictional error committed by the learned Court below while passing the impugned order. His contention is that in case the application so filed under Order 26 Rule 9 of the Code of Civil Procedure for appointment of a revenue expert as Local Commissioner is in fact allowed, this will settle the matter inter se the parties for all times to come.

6. Be that as it may, it is also well settled principle of law that one who seeks equity also has to do equity. In the present case, on one hand, the petitioner/plaintiff has prayed in the Civil Suit that the respondents/defendants be restrained from getting the suit land demarcated and by way of an application filed under Order 26 Rule 9 of the Code of Civil Procedure, the petitioner/plaintiff is calling upon the Court for appointment of a revenue expert as Local Commissioner for demarcation of the suit land.

7. In view of above discussion, I do not find any infirmity or jurisdictional error in the order passed by the learned trial Court in dismissing the application filed

under Order 26 Rule 9 of the Code of Civil Procedure. Accordingly, the petition is dismissed, so also the miscellaneous applications, if any. Registry is directed to forthwith send back the records of the case to the learned trial Court and the parties through their respective counsel are directed to appear before the learned Court below on 27th March, 2017.