
(2016) 04 SHI CK 0133
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 174 of 2012

State of Himachal Pradesh

APPELLANT

Vs

Narinder Chand

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2016) ILRHP 1282

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Mr. Parmod Thakur, Additional Advocate General, for the Petitioners; Mr. B.C. Verma, Advocate, for the Respondent No. 3; None, for the Respondent Nos. 1 and 2

Final Decision : Disposed Off

Judgement

Rajiv Sharma, J.(Oral)—This petition has been filed by the State against the Judgment dated 8.2.2011 rendered by the learned District Judge, Hamirpur, Himachal Pradesh in Civil Misc. Appeal No. 34 of 2010.

2. "Key facts" necessary for the adjudication of the present petition are that an application under Order 39 Rules 1 and 2 CPC along with a suit for permanent prohibitory and mandatory injunction was filed by the respondents-plaintiffs (hereinafter referred to as "plaintiffs" for convenience sake). According to the plaintiffs, they have a right of passage shown as ABCD through land comprising Khasra Nos. 455 and 456 in Khata No. 120 min, Khatauni No. 166 min, area 0-22-19, as per Jamabandi for the year 1999-2000 situate in Tikka Dhaneta, Tappa Hathol, Tehsil & District Hamirpur. Plaintiffs' land is situate over Khasra No. 454 in Tikka Dhaneta. Petitioners-defendants (hereinafter referred to as "defendants" for convenience sake) have no right to cause obstruction to path marked ABCD.

3. Application was contested by the defendants. According to them, no passage

exists on the spot or over any portion of the suit land and also that a boundary wall in Government Girls School Dhaneta was constructed in the year 2008. This school is situate over Khasra No. 456, which along with other land in Khasra No. 455 of suit land is owned and possessed by the State of Himachal Pradesh. Plaintiffs, thus, could not be granted any passage through the suit land.

4. Trial Court dismissed the application on 31.7.2010. Plaintiffs filed an appeal before the District Judge, Hamirpur, against order dated 31.7.2010. He allowed the application on 8.2.2011. Hence, this petition.

5. According to the plaintiffs, there was a passage shown in the site plan marked ABCD, about 2 metres in width, which was being used by them since the time of their predecessors-in-interest for the purpose of cultivation of their land in Khasra No. 454 and other adjoining fields. Plaintiffs approached the District Education Officer and requested him not to create any hindrance in the passage which was used by the plaintiffs. On the application, even the Headmaster issued letter No.2903 dated 20.10.1993 and right of passage was duly recognised. However, now the defendants have started raising construction and have forcibly raised certain construction in spite of objections.

6. School is situate on Khasra No. 456. Khasra No. 455 is owned by State government. Plaintiffs have no right to have passage through the Government Girls High School, Dhaneta and there is nothing on record to suggest that State Government has authorised the Headmaster to issue letter dated 20.10.1993. Government have also constructed boundary wall of Government Girls High School, Dhaneta to secure the school premises. It was also necessary for the school to construct gate to restrict the ingress and egress to the school. The learned appellate Court below has erred in law by ordering opening of gate from 7 AM to 7 PM. It has also come on record that the Headmaster of the School who was present in the appellate Court has specifically stated that the plaintiffs have alternative path available to them. School gate was constructed on AB and there was a toilet on the other side. Learned District Judge committed error of law by ordering demolition of boundary wall to the extent of two metres on the basis of letter dated 20.10.1993. Letter dated 20.10.1993 has no force of law since the Headmaster was never authorised by the competent authority to issue said letter. Moreover, whether the conditions imposed in letter dated 20.10.1993 are to be complied or not by the parties, is subject matter of trial. The safety of girl students is of paramount consideration. Plaintiffs have neither made out any prima facie case in their favour, nor any balance of convenience is in their favour.

7. The present petition is allowed. Judgment dated 8.2.2011 rendered by the learned District Judge, Hamirpur, Himachal Pradesh in Civil Misc. Appeal No. 34 of 2010 is set aside. Order dated 31.7.2010 passed by the Civil Judge (Senior Division), Nadaun, District Hamirpur in CMA No. 414/2009 is upheld. Since the civil suit was instituted in the year 2009, learned trial Court is directed to decide the same within six months from today.

8. Pending applications, if any, are disposed of. No order as to costs.