

Dalip etc. Vs. Netram etc.

CS-1192-2020

Present: Sh. S.S. Chauhan, Advocate for the applicants/plaintiffs.
Sh. D.D. Sharma, Ld. Advocate for the respondent/defendant no. 1.
Sh. Dalal Singh, Advocate for the respondent/defendant no. 2.

ORDER:-

1. By this order, I shall decide an application under Order 39 Rule 1 & 2 CPC moved by applicants/plaintiffs seeking relief of temporary injunction against respondents/defendants from interfering into their possession also with further relief from raising any other construction over part of khasra no. 192 in any manner and from alienating the encroached land of khasra no. 192 to any stranger.

2. Brief facts required for the adjudication of this application are that plaintiffs being co-owner/co-sharer of the several properties which also includes suit property i.e. killa no. 192 has knocked the door of this court stating that defendants have encroached khasra no. 192(0-9) by way of raising illegal and unauthorized construction over the said Khasra number and applicants has get the demarcation of the said number by DGPS machine and it has come out in the demarcation that respondent no. 1 has encroached an area of 29 square yards and respondent no. 2 has encroached upon an area of 51 square yards by raising illegal construction over the khasra no. 192 of plaintiffs. Thus, they have filed the suit for possession and temporary

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injunction and at this stage, the applicants are only requesting that respondent no. 1 be restrained from raising further construction over allegedly encroached 29 square yards and respondent no. 2 be restrained from raising further construction over allegedly encroached 51 square yards.

3. Upon notice, respondent no. 1 appeared and has filed reply of the application wherein all the claims mentioned by the applicants have been denied. It is denied that he had encroached any portion of killa no. 192(0-9). It is also submitted that the alleged demarcation by the applicants of killa no. 192 was not conducted in front of him nor any notice was served upon him. Thus, he denies that he has encroached an area of 192 square yards. It is stated that application is misconceived and he is residing over khasra no. 191/1(0-5) from last 30 years and any stay injunction would cause irreparable loss to him.

4. The reply of the respondent no. 2 also states that the application is time barred. It is not maintainable and the applicants have no cause of action and the applicants are estopped by their act and conduct and same is liable to be dismissed. It is further submitted that no such demarcation has ever been conducted by the applicants in his presence nor he has encroached any area of 51 square yards as alleged by the applicants. It is submitted by him that he is residing over khasra no. 191/2(0-6) from last 25 years and now no injunction can be passed against him.

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5. During arguments by both the counsels for the respondents no. 1 and 2, it was jointly prayed that application shall be dismissed and respondent shall not be given any direction to not to raise any construction and alienate any portion which is within their 'chardiwari' (four walls).

6. On the other hand, contradicting these averments, learned counsel for the applicants/plaintiffs stated that the word 'chardiwari' (four walls) used by counsel for respondents is misconceived and in order to prove their case they are admitting that they have encroached upon their land for killa no. 192. He submitted that applicants have prima facie case and they shall suffer irreparable loss if the injunction is not granted to them.

7. I have heard the rival contentions and have gone through the record present on case file.

8. In order to create a temporary injunction, the applicant has to prove three things. (1) A prima facie case (2) Irreparable loss (3) Balance of convenience. It is case of applicants that they are owner of khasra no. 192 which is admitted by both the parties. It is further alleged that they had suspicion that respondents have encroached upon some portion of their land and thus they got the same demarcated by AC 2nd Grade and as per that report respondent no. 1 was found having encroached upon 29 squareyards and respondent no. 2 was found having encroached upon 51 squareyards in khasra

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no. 192. Now, they have moved this suit for possession. The respondents have raised the question of illegality of the demarcation in report but in my opinion the same is subject to leading evidence and at this stage, we only have to see whether the applicants have a prima facie case. In my opinion, the applicants have proved their prima facie case as they are owners of khasra no. 192 and balance of convenience also lies in their favour as such if the respondents raise any construction over the alleged encroached land or sell it, it will change the nature of the suit property and respondents will get right of third parties involved there which will further complicate the case and execution of decree shall become more intricate. In fact, there would be no loss caused if the respondents are restrained from raising any construction over the said encroached land and they are stopped from selling the said property as such it is only 29 yards and 51 yards respectively. So, the stay application stands allowed.

9. Nothing mentioned herein above shall be deemed to be my expression on the merits of the case.

Announced in open Court :
29.10.2020

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Note : All the four pages of this order have been checked and signed by me.

Typed by:
Sonia Stenographer Gr. II

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