

1 Sharda Devi & ors. Versus Vinod Kumar & ors.

**IN THE COURT OF ASHOK KUMAR, CIVIL JUDGE ANNI
DISTRICT KULLU, HIMACHAL PRADESH.**

CIS CNR No. : HPKI08-000326-2022
CIS CASE TYPE: Civil Misc. Application.
CIS Case No. : 198/2022
CIS Case Year : 02.09.2022
Date of Decision: 19.09.2022.

1. Smt. Sharda Devi, W/o late Sh. Mangat Ram,
2. Sh. Mordhwaj, S/o late Sh. Mangat Ram,
3. Sh. Bodh Raj, S/o late Sh. Mangat Ram,
4. Sh. Dinesh Kumar, S/o late Sh. Mangat Ram,
5. Sh. Parmod Kumar, S/o late Sh. Mangat Ram,

All resident of village Behna, Phati Dingidhar, Post Office Luhri, Tehsil Anni, District Kullu, H.P.

.....Applicants/Plaintiffs

Versus

1. Sh. Vinod Kumar, S/o Sh. Om Prakash, R/o Village Behna Phati Dingidhar, Post Office Luhri, Tehsil Anni, District Kullu, H.P.
2. Sh. Nagender Verma @ Lucky, S/o not known, presently working as an employee under defendant No. 1 and residing with him at Village Behna, Post Office Luhri, Tehsil Anni, District Kullu, H.P.

.....Respondents/defendants.

**APPLICATION UNDER ORDER XXXIX
RULES 1 AND 2 CPC.**

PRESENT:-

For the Applicants :- Sh. Akshay Sharma, Ld. Advocate.

For Respondents :- Sh. M.R. Dogra, Ld. Advocate.

2 Sharda Devi & ors. Versus Vinod Kumar & ors.

ORDER:

1. This order shall dispose of present application filed by the applicants against the respondents under **Order XXXIX Rules 1 and 2 CPC** seeking interim injunction for restraining the respondents from causing any sort of interference by way of cutting, levelling and excavating either by deploying JCB machine or manual labourer over and above the land of the applicants as comprised in Khata/Khatauni No. 574/668, Khasra No. 34 (Kalerra) land measuring 02-16-00 bighas situated at Village Behna Phati Dingidhar, Tehsil Anni, District Kullu, H.P. **(here-in-after referred to as “the suit land”)**.

2. Briefly stated the case of applicants is that the applicants are recorded owners in possession of the suit land. Respondent No. 1 is presently the Pradhan of Gram Panchayat Behna, Tehsil Anni, District Kullu, H.P. Respondent No. 1 is also owner of a JCB machine. Respondent No. 2 is an employee of respondent No. 1, and he is working under him as an operator of the aforesaid JCB Machine, which is being used by the respondent No. 1 with the help and assistance of the respondent No. 2 for doing cutting, excavations upon the suit land for his vested interest as the suit land is just adjoining to National Highway No. 305 making it valuable and commercial land. The respondents are quite stranger to the suit land and they have no right title and interest in the suit land and they have already succeeded in encroaching upon more than 00-05-00 bighas of suit land by doing illegal excavations at night by deploying JCB

3 Sharda Devi & ors. Versus Vinod Kumar & ors.

machine over the land of the applicants. Prior to this, in the first week of August 2022, the respondents No. 1 had also made an attempt to encroach upon the suit land by deploying his JCB machine over the land of the applicants and had started cutting and excavating the land of the applicants for his vested interest, but his attempts were foiled by the applicants. Respondent No. 1 stopped the illegal excavations and also assured the applicants that he will not do any sort of encroachment over the suit land. The applicant No. 1 has also filed a complaint in the C.M. Helpline number against the respondent No. 1 which complaint has been entertained and the same is being forwarded to the A.C. 1st Grade Anni for taking necessary actions and the said complaint is also pending for final adjudication. The applicants shall suffer huge, irreparable loss and injury in case the respondents are not restrained from doing illegal and forcible construction over the suit land as the illegal construction is in progress specially in late night hours. The applicants have requested the respondents to admit the claim of the applicants, but to of no avail. It is averred that prima-facie case and balance of convenience are lies in favour of applicants and an irreparable loss will be caused to them if injunction is not granted. It has been prayed that the application be allowed in the interest of justice.

3. Present application has been opposed by way of filing reply by the respondents wherein the respondents have raised preliminary objections regarding the maintainability of the application, suppression of material facts, no locus-standi and no

4 Sharda Devi & ors. Versus Vinod Kumar & ors.

cause of action and special cost. On merits, it is not in dispute that the respondent No. 1 is presently the Pardhan of Gram Panchayat Behna and is also owner of the JCB machine and respondent No. 2 is the employee of respondent No. 1. It is denied that the respondent are strangers to the suit land and they have no right, title and interest in the suit land. It is denied that the respondents have already succeeded in encroaching upon more than 00-05-00 bighas of suit land by doing illegal excavation at night by deploying his JCB machine over the land of the applicants. However, it is averred that the inhabitants of the village Behna has filed an application before the Pardhan of G.P. Behna in order to maintain the old road which leads through the Khasra No. 33 which is recorded under the State Government of H.P. in the revenue record. The G.P. Behna has passed a resolutions No. 11 on dated 13.07.2022 on the strength of the application filed by the local inhabitants. In the aforesaid resolution it has been made clear that the aforesaid road which leads through the Khasra No. 33 shall be maintained or constructed by the G.P. Behna, by the contributory funds of residents of village Behna for which a sum of Rs. 5,00,000/- has been collected/gathered by the villagers of Behna for the purpose of executing the work of aforesaid road. Thereafter the G.P. Behna has deployed the JCB machine on the spot on dated 25.07.2022. The road is already existing over the Khasra No. 33 shown as gair mumkin sadak. The respondents have started the work for repairing or constructing the aforesaid old road by the contributory funds of villagers of Behna. The construction of the

5 Sharda Devi & ors. Versus Vinod Kumar & ors.

aforesaid road is being carried out by the G.P. Behna who is also a government body and as such the applicants have no concern at all with the Khasra No. 34. It is averred that the aforesaid road is not to be constructed through Khasra No. 34 as such the applicants have filed a false and concocted suit/application in guise of Khasra No. 34 against the respondents of which they have no right, title or interest with the Khasra No. 33 which belongs to the State of H.P. Rest contrary allegations and submissions of the applicants has been got specially denied by the respondents. On these grounds prayed to dismiss the application.

4. I have heard the learned counsels for the parties and also gone through the entire case record with minute care and caution.

5. Before granting or refusing the temporary injunction which is purely within the judicial discretion based on well recognized principles, the following conditions must be satisfied:-

- i) That the applicant has prima facie case, that is to say, that he has raised a serious question which needs determination in the suit and on weighing material before the Court, the balance of probabilities would suggest that he is entitled to the relief prayed for by him.
- ii) That the balance of convenience is in favour of the petitioner in the sense that the comparative mischief or inconvenience likely to be caused in the event of the injunction being refused would be greater than that which is

6 Sharda Devi & ors. Versus Vinod Kumar & ors.

likely to arrive in case the same is granted.

iii) That the refusal of injunction prayed for would expose the petitioner to the risk of suffering some irreparable or substantial injury which cannot be compensated for any damages.

iv) There is no sufficient remedy open to the petitioner by which he protect himself.

6. It is only after all these four conditions are satisfied that the court can exercise its discretion in the matter after taking into account any other factor peculiar to the facts and circumstances of the individual case like delay, suppression of material facts, malafide and so on.

7. Perusal of the copy of Jamabandi for the year 2016-17 shows that the suit land is jointly owned and possessed by the applicant along with other co-owners. The perusal of jamabandi for the year 2016-17 reveals that land bearing Khasra No. 33 owned and possessed by the state of HP where the nature of the such land has been described as Gair Mumkin Sadak. Presumption of truth is attached with record of rights and there is nothing prima facie on record to rebut the same.

8. It has been submitted by the applicant that respondents are doing cutting, excavations upon the suit land with the help of JCB machine.

7 Sharda Devi & ors. Versus Vinod Kumar & ors.

9. On the other hand, the respondents have submitted that they are not doing anything upon the suit land but are repairing and maintaining the old road existing upon the land bearing khasra no. 33 belonging to State of HP. It has been further argued that respondent no. 1 is working in the official capacity hence, the present application and the suit of the applicant is bad for non service of notice under section 80 of CPC. They have also placed on record the resolution passed dated 13.07.2022 by the GP Behna and application dated 01.07.2022.

10. Thus, it is apparent from the record available that some work is proceeding on the spot. The case of the applicant is not based upon the apprehension but on the actual interference upon the suit land. However, there is no prima facie document placed on the record by applicant to show that the said work is being proceeded on the suit land. Similarly, respondents have not placed on record any such prima facie evidence before the court to show that their work is strictly within the boundaries of the khasra no. 33 and is on the repairment and maintenance of the road. The mere submission of the parties do not tantamount to cause of action.

11. The applicant has specifically stated that the work proceeded on the spot by the respondent no. 1 is not in the official capacity as a President of the GP Behna but ow. The respondent no. 1 has stated so. However, he has also not placed on record any such concrete facts and circumstances as well as evidence to

show the same. The applicant has disputed the said resolution and application on the various grounds. Therefore, resolution dated 13.07.2022 and application dated 01.07.2022, is yet to be proved and at this juncture cannot be taken into consideration. Apart from this there is nothing on record to *prima facie* show that the said disputed work is led on the spot by the respondent no. 1 in the official capacity.

12. Since both the parties are asserting their rights over the such disputed portion of suit land or khasra no. 33 hence, it cannot be said at this point of time that the who is having better right and title over the disputed piece of land as existing on the spot. It is also observable fact that the same is yet to be proved at the lateral part of the proceedings by bringing cogent, convincing and leading evidence by all the parties to the suit. Since both the parties are claiming their rights over the such portion of the disputed land, therefore, both the parties cannot be permitted to change the nature or character or possession or to create any charge upon the disputed land. It is the basic object of the Order 39 Rule 1 and 2 to preserve the suit land in its existing position/nature/ character/possession till final disposal of their rights over the same.

13. At this stage, as herein-above has discussed unless and until the rights are determined over the suit land irreparable loss to all of them will be caused and they should not be permitted to cause any loss to the other party who may succeed

9 Sharda Devi & ors. Versus Vinod Kumar & ors.

at the conclusion of trial.

14. Hence, it will be in the interest of the parties to the suit and in the interest of the suit land both the parties are required to maintain status quo over the suit land as such order would be most appropriate in the given facts and circumstances of the present case. The status quo will not harm any party and would preserve the property till determination of the controversy between the parties. Therefore, the order of status quo is granted where both the parties are directed to maintain status quo qua nature, construction and possession over the the suit land till final disposal of the main suit.

15. The observations made hereinbefore shall remain confined to the disposal of the application and will have no bearing whatsoever with the merits of the case. The present application stands disposed of which after needful be tagged with the main case file.

Announced and signed in the Open Court today on this 19th day of September, 2022 in the presence of counsels for the parties.

N.S/-

(Ashok Kumar)
Civil Judge Anni, District Kullu, H.P.