

Anita Kumari vs Gram Panchayat Piplu & Ors.**IN THE COURT OF SHAVIK GHAI, CIVIL JUDGE, COURT NO.2, UNA, H.P**

CMA Regd.No. :3660/2022

Civil Suit Regd. No. :408/2022

CNR No. : HPUN-03-004508-2022

Instituted on : 12.10.2022

Decided on : 19.04.2025

Smt. Anita Kumari W/o Late Onkar Singh, R/o Village Samma,
Tehsil Bangana, District Una(HP)

.... Applicant.

Versus

1. Gram Panchayat of Village Piplu, Tehsil Bangana, District Una(HP) through its Pradhan Mohinder Singh
 2. Avineet, Up Pradhan Gram Panchayat Village Piplu, Tehsil Bangana, District Una(HP)
 3. Ram Pal S/o Sh. Roshan Lal [Exparte v.o.d 24.11.2022)
 4. Raj Kumar [Exparte v.o.d 24.11.2022)
 5. Vipin Kumar Ss/o Amar Singh [Exparte v.o.d 24.11.2022)
- All R/o Village Samma, Tehsil Bangana, District Una(HP)

.... Respondents.

Application Under Order 39 Rules 1 & 2 of CPC.

P R E S E N T :

- ◆ For Applicant : Sh. M.K. Sharma, Ld. Advocate.
- ◆ For Respondent : Sh. S.K. Suman, Ld. Advocate.
no.1 and 2
- ◆ Respondent no.3 to 5 already exparte.

ORDER:

This order shall dispose of the present application under Order 39 Rules 1 & 2 read with Section 151 of CPC filed by the applicant/plaintiff for grant of ex parte ad-interim injunction restraining the respondent from causing any interference, making any encroachment by raising any sort of construction in any manner, changing the nature and character by carving any passage over the site marked with letters A B C D E F G H A shown red in colour in the attached site plan prepared by the draftsman at the spot being part and parcel of land measuring 0-02-63 hecets, comprised of Khewat no. 77 min, Khatoni No. 95 min, Khasra no. 192, as entered in Jamabandi for the year 2020-2021, situated Village Samma, Tehsil Bangana, District Una(HP), during the pendency of the suit.

2. Brief facts as stated by the applicant are that the site marked with letters A B C D E F G H A shown red in colour in the attached site plan prepared by the draftsman at the spot being part and parcel of land measuring 0-02-63 hecets, comprised of Khewat no. 77 min, Khatoni No. 95 min, Khasra no. 192, as entered in Jamabandi for the year 2020-2021, situated Village Samma, Tehsil Bangana, District Una(HP) is exclusively owned and possessed by the applicant/plaintiff. Further, the respondents have no right, title or interest with the suit land either proprietary or possessory and are stranger to the same. It is averred that the defendants are very clever and headstrong person and in connivance with each other are in hot haste to cause interference in the suit site/land and to carve out a passage over the suit site by making encroachment thereof and without the consent of the applicant. Further, the

Anita Kumari vs Gram Panchayat Piplu & Ors.

respondents have engaged labourer and collected raw material near the spot to materialize their illegal designs. Further, the suit land is very valuable in nature and if the respondents succeed in their illegal design then the applicant will suffer irreparable loss and legal injury. Cause of action accrued in favour of the applicant. Hence, the relief of permanent prohibitory injunction has been prayed.

3. Application was contested by respondents by filing reply wherein it is submitted that wrong site plan has been prepared by the draughtsman which is not prepared as per the spot situation and the site marked with letters ABCDEFGHA is not part and parcel of the suit land but it is the encroached portion by the applicant of passage. It is submitted that in the Jamabandi khasra number 87 and 193 are Shaare Aam Rasta which is used by the inhabitants of village to ingress and egress to their abadies as well their agricultural land as well leads to Village Rerku. But it is the applicant who has blocked the passage at the spot. It is further submitted that the previous Panchayat as well the present Panchayat have taken the demarcation of this passage and fixed the boundaries of the passage but it is the applicant who have dislocated the pucca bannas at the spot. Further, the people of the locality as well the persons of other villages always complaint to the panchayat to make the pucca passage at the spot, the panchayat officials have got sanctioned budget for the construction of the road at the spot as per the demarcation given by the revenue department but it is the applicant who is always creating obstacles in the construction of this passage and encroached on the same. It is submitted that Nature of Khasra number 193 is

Anita Kumari vs Gram Panchayat Piplu & Ors.

the Shamlat Deh and over this land, passage is existing since the long time which is recorded in the Jamabandi and Aks (having width 03 Meter). Respondents are not carving out any passage on the land of applicant. But it is the applicant who have encroached over the khasra number 193 and always quarrels with the panchayat. Further, the respondents are not raising any construction in the suit land. It is submitted that the defendant no.1 and 2 are the legal body of the Panchayat which has been constituted under the Panchayati Raj Act. It is stated that the respondents will suffer irreparable loss and legal injury if ad-interim injunction is granted in favour of the applicant. Cause of action also denied. Hence, dismissal of the present application has been prayed by the respondents.

4. I have heard learned counsel of the parties and have also gone through the entire documentary record carefully.

5. I have perused the case file carefully. Perusal of certified copy of the Jamabandi prima-facie shows that the applicant is exclusive owner in possession of the suit land, whereas respondents are strangers to the same having no right, title or interest over the same. Counsel for the respondents has taken the specific plea that no construction work or any interference has been done by the respondents over the suit land and counter allegations are being made by respondents that applicant had encroached portion of Khasra no. 193 recorded as shamlat and used as passage. But, apprehension of the applicant that the respondents have started illegal interference over the suit land by way of raising construction over the suit land can not be negated in toto, at this stage. The applicant

apprehends that the respondents may raise construction over the suit land during pendency of the suit. Given these circumstances, there exists a prima facie case in favour of the applicant for the grant of a temporary injunction, as applicant is absolute owner and respondents have no right in suit land. Moreover, no prejudice would be caused if the respondents are restrained from interfering over the suit land, as it is the case of respondents that respondents are not interfering in the suit land in any manner. As per Section 45 of H.P. Land Revenue Act, record of right has presumption of correctness unless rebutted and it shows applicant is owner in possession over the suit land and the respondents are strangers to the suit land. At this stage, there is nothing to rebut the presumption in favour of applicant. In view thereof, there appears a prima-facie case in favour of the applicant being exclusive owner in possession of the suit land and irreparable loss would be caused to him if any interference over the suit land is made by the respondents during pendency of the suit. Hence, at this stage, balance of convenience also lies in favour of the applicant. As respondents are claiming that no construction was raised by them, no prejudice would be caused to them if they are restrained from raising construction over the suit land which is solely owned by applicant. However the site plan produced by applicant is yet to be proved during trial and no finding regarding correctness or authenticity of site plan can be given at this stage.

6. In view of my aforesaid discussion and since the respondents are strangers to the suit land, as such, application is **allowed** and the respondents are restrained from causing any interference, making any encroachment by raising any sort of

Anita Kumari vs Gram Panchayat Piplu & Ors.

construction in any manner, changing the nature and character by carving any passage or otherwise over the suit land measuring 0-02-63 hecets, comprised of Khewat no. 77 min, Khatoni No. 95 min, Khasra no. 192, as entered in Jamabandi for the year 2020-2021, situated Village Samma, Tehsil Bangana, District Una(HP) till disposal of the main suit. However, it is clarified that observations made by me here-in-above, shall construe to be confined to the suit land only and for purpose of disposal of the present application and shall have no bearing on the construction if any over adjoining land and on the merits of the main suit. Application stands disposed of. It be tagged with main case file, after its due completion/ registration.

ANNOUNCED

19.04.2025

(Shavik Ghai)
Civil Judge, Court No.II
Una, District Una(HP)

Anita Kumari vs Gram Panchayat Piplu & Ors.

19.04.2025

Present: Sh. M.K. Sharma, Advocate for applicant.
Sh. S.K. Suman, Advocate for respondent no.1 and
2.
Respondent no.3 to 5 already exparte.

Vide my separate order of even date, application under Order 39 Rules 1 and 2 of CPC has been allowed. Application stands disposed of accordingly. It after due completion be tagged with the main case file for record.

ANNOUNCED

19.04.2025

(Shavik Ghai)
Civil Judge, Court No.II
Una, District Una(HP)