

**IN THE COURT OF DEEPIKA NEGI, CIVIL JUDGE, COURT NO.II, AMB, DISTT. UNA,
H.P.**

CMA RBT No. : 306/23/22
Registration No. : 1459/2022
CNR No. HPUN05-002114-2022
Filing year : 2022
Date of Institution : 20.10.2022
Date of Decision : 28.09.2024

Kamal Deen S/o Sh. Wazira, R/o village Tiai, Tehsil Amb, Distt. Una (HP)

.....Applicant/plaintiff

versus

Karim Bax S/o Wazira, R/o village Tiai, Tehsil Amb, Distt. Una (HP)

.....Respondent/defendant

Application under Order 39 Rule 1 & 2 CPC

For the applicant : Smt. Manju Thakur, Advocate.
For the respondent : Sh. Vikas Kashyap, Advocate.

ORDER

This order shall dispose of an application for issuance of temporary injunction restraining the respondent from raising any sort of construction, taking forcible possession by ousting the applicant, cutting and removing the valuable trees, interfering in any manner, whatsoever and changing the nature of the land measuring 00–01–96 hectares comprised in Khewat No.53 min, Khatauni No.77 min and at present Khasra No.1130/655 entered in jamabandi for the year 2018–2019.

2. It is stated in the application that suit land is owned and possessed by the applicant and respondent has no right, title or interest whatsoever in the suit land and is utter

stranger. It is further stated that respondent with his family members started extending illegal threats of interference in the peaceful possession and further threatening to reconstruct, taking forcible possession by ousting the applicant, cutting and removing the valuable trees and changing the nature of suit land. The applicant requested the respondent not to do so, but he is adamant. Hence, the present application.

3. Reply filed wherein it is denied that respondent is very head strong, clever, shrewd and skilful person in connivance with his family members started extending illegal threats of interference in the peaceful possession and further threatening to raise construction, taking forcible possession by ousting the applicant, cutting and removing the valuable trees and changing the nature of the suit land. It is stated that respondent is owner in possession of adjoining land and the applicant under the garb of adjoining land wants to grab the land of respondent. It is denied that respondent requested not to do so, but he is adamant. It is therefore prayed that present application be dismissed.

4. Rejoinder filed, wherein all the averments made in reply are denied.

5. Before advertng to the merits of the application, I am of the considered opinion that it would be just and material to pin point the triplicate test which applicant must satisfy in order to get relief of temporary injunction which are as under:

1. That the applicant has a prima facie case that is to say, that he has raised a serious question which needs determination in the suit and weighing the material before the court the balance of probabilities would suggest that he is entitled to the relief prayed for by him.

2. That the refusal of the injunction prayed for would expose the applicant on the risk of suffering some irreparable or substantial injury which cannot be compensated for in damage.

3. That the balance of convenience is in favour of the applicant 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 likely to arise in case the same is granted.

5. Heard. Record perused.

6. By the perusal of record i.e. copy of jamabandi for the year 2018–2019, suit land is owned and possessed by the applicant and respondent is utter stranger to the suit land having no right, title or interest over the suit land and it is stated by the applicant that the respondent is interfering over the suit land. On the other hand, respondent denied the fact that he is interfering over the suit land but admitted the fact that he is adjoining land owner. It is well settled law that an owner of the property has a right to protect it from interference by strangers. Hence as the applicant is owner of the suit land, he has all the right to enjoy the fruits of the suit property without any interference by the respondent, so in such circumstance, the applicant has proved prima facie case, balance of convenience and irreparable loss in his favour and at this stage, if the present application is not allowed and respondent succeeds in interfering and encroaching over the suit land being adjoining land owner, then the applicant will suffer irreparable loss which cannot be compensated in terms of money. Hence in this circumstance, as the applicant is exclusive owner in possession over the suit land and the respondent is utter stranger to the suit land, the respondent is restrained to interfere over the suit land in any manner whatsoever till final disposal of the main suit.

7. It is however, hereby made clear that observations made here in above are confined only for the disposal of this application, and shall have no bearing upon the merits of main case. Application stands disposed off. Papers be tagged with main case file.

Announced
28.09.2024

(Deepika Negi)
Civil Judge, II, Amb,
Distt. Una, H.P.