

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16551/2010

(From the judgement and order dated 22/03/2010 in
1398/2010 of The HIGH COURT OF RAJASTHAN AT JODHPUR)

SBCWP No.

KHEM CHAND

Petitioner(s)

VERSUS

SANJAY KUMAR & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and prayer for
interim relief)

Date: 31/05/2010

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE C.K. PRASAD
(VACATION BENCH)

For Petitioner(s)

Mr. B.D. Sharma,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Having failed to persuade the trial Court

and the lower appellate Court to entertain his
prayer for restraining the respondents from
raising construction at the disputed site, the
petitioner invoked jurisdiction of the High Court
by filing a petition under Article 226/227 of the

Constitution of India.

The learned Single Judge declined to

interfere with the concurrent findings of fact

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recorded by the two Courts by making the

following observations :-

"4. It is not in dispute that two courts have
refused to grant injunction to the plaintiff in
relation to subject matter of suit property and

hence, they are in writ against concurrent dismissal. Once, the two courts have declined to grant injunction in favour of plaintiff holding that plaintiff has failed to make out any prima facie case in his favour, so also balance of convenience and injury, in relation to suit property not having been made out in his favour, then such concurrent finding of facts on all the three issues necessary for grant/refusal of injunction are binding on the writ court. It is only when the finding so recorded is found to be dehors the pleading or evidence or is such that no judicial man can ever reach, a case for interference is called for. Such does not appear to be a case of that nature.

5. Mere perusal of the impugned orders would go to show that both the courts below did take into consideration all the three ingredients necessary for grant of temporary injunction namely - prima facie case, balance of convenience and irreparable loss in the context of facts of the case. In this view of the matter, the finding so recorded can not be faulted with. It is binding on this court calling no interference in my limited writ jurisdiction.

6. I do not, therefore, wish to go into third round of litigation denovo on facts for finding out as to whether any case much less prima facie case is made out, or not? In fact it is not made out."

We have heard Shri B.D. Sharma, learned counsel for the petitioner and carefully examined the records. We have also gone through the xerox copy of report dated 10.3.2008 prepared by the Court Commissioner Shri Ashu Prakash Parekh in the suit filed by the respondents, which was made available by the learned counsel for the petitioner during the course of hearing.

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In our view, the trial Court, the lower Appellate Court and the High Court did not commit any error by refusing to entertain the petitioner's prayer for injuncting the respondents from continuing with the construction at the disputed site.

With the above observation, the special leave petition is dismissed.

Sr. P.A.

Court Master