BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Veer Singh .....Petitioner

Versus

Leela Devi .....Respondent

For the Petitioner : Mr. Arvind Sharma, Advocate.
For the Respondent : Mr. Nishant Khidtta, Advocate.

CMPMO No. 293 of 2022
Reserved on: 20.12.2022
Decided on: 30.12.2022

Constitution of India, 1950- Article 227- **Himachal Pradesh Land Revenue Act, 1954** – Section 107- The grievance is that by impugned order direction has been issued to the SHO, Police Station (West), Shimla to ensure the implementation of injunction order dated 15.7.2021 in letter and spirit and for such purpose, the assistance of local Revenue Official/officials for identifying the suit land- **Held-** The impugned order to the extent it granted the liberty to the SHO to take assistance of local Revenue Official/officials for identifying the suit land cannot be sustained-With availability of the demarcation report with it, learned trial Court was not justified in abdicating its powers to the SHO or any Revenue Officer-Order set-aside- Petition allowed. (Paras 16, 17)

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Aggrieved against order dated 02.07.2022 passed by learned Senior Civil Judge, Court No.1, Shimla in CMA No. 1349 of 2022 in Civil Suit No. 86 of 2021, petitioner has approached this Court with a prayer to set-aside the impugned order.

2. Brief facts necessary for adjudication of the petition are that Civil Suit No. 86 of 2021, titled Leela Devi vs. Veer Singh and another, is pending disposal before learned Senior Civil Judge, Court No.1, Shimla.

Petitioner herein is the defendant and respondent herein is the plaintiff in above noted suit.

3. The suit of the plaintiff is for grant of decree for permanent prohibitory injunction restraining the defendant from interfering and encroaching upon her land specifically by raising construction of retaining wall thereon. The land in respect of which relief has been claimed is comprised in Khata Khatauni No.113/193, Khasra Nos. 1553/1267,1555/1268, 1275 and 1557/1276, total measuring 188-38 hectares, situated at Mohal Panjari, Patwar Circle, Tutikandi, Tehsil and District, Shimla, H.P.

4. Alongwith the suit, the plaintiff also prayed for interim injunction by seeking relief in the aforesaid terms.

5. The defendant has contested the suit by denying the allegation of plaintiff. It is denied on behalf of the defendant that he is trying to interfere in any manner in the land owned and possessed by the plaintiff. The specific stand of defendant is that whatever construction is being done by him, is on his own land.

6. On the application for interim injunction, learned trial Court passed an order dated 15.7.2021 and restrained the defendant as under:

> "11. On the other hand, if respondent No.1 is restrained from raising construction upon the suit land, no loss will be suffered by him as he has no right over the same, neither he claims any right upon the suit land. Thus, balance of convenience also exists in favour of the applicant. Being owner in possession of the suit land a prima-facie case also exists in his favour. Thus, application is allowed to the extent that respondent No.1 is restrained from raising construction of retaining wall or causing any interference upon the suit land comprised in 113/193, Khasra No. 1553/1267, 1275 and 1557/1276, measuring 100-32 hectares, situated at Mohal Panjari, Patwar Circle, Tutikandi, Tehsil and District Shimla. However, findings made herein above shall remain confined to the disposal of the

> present application and shall not have bearing on the merits of the main case. Application is decided accordingly, after its due completion be tagged with the main file."

7. During the pendency of the suit, plaintiff moved another application being CMA No.1349 of 2022 with the allegations that despite the order of interim injunction, being operative against defendant, the same was being openly violated. Accordingly, a prayer was made for police assistance in implementing the injunction order dated 15.7.2021.

8. The defendant contested the prayer of plaintiff so made in CMA No. 1349 of 2022. Learned trial Court decided the application and passed the impugned order dated 02.07.2022, the operative part of which is as under:

> "9. The contents of application are supported with affidavit. The applicant has also produced photographs showing progress in construction work. Thus, the material on record amply demonstrates that construction activity has been started on spot. Though, the respondent has taken the plea that he is not raising any construction over the suit land, however, keeping in view the fact that injunction has been granted by this Court and the applicant has filed an affidavit that the respondent is raising construction over the suit land, application seeking police assistance is allowed. Accordingly, SHO, P.S. West, is directed to ensure the implementation of injunction order dated 15.7.2021 in letter and spirit. The SHO is at liberty to take the assistance of local Revenue Official/Officials for identifying the suit land. Report be called for 20.8.2022. Let necessary reference be issued to the concerned SHO, forthwith. Application stands disposed of. After due completion, it be tagged with the main case file."

9. The grievance as raised by the petitioner before this Court is only to a limited portion of the impugned order whereby direction has been issued to the SHO, Police Station (West), Shimla to ensure the implementation of injunction order dated 15.7.2021 in letter and spirit and for such purpose, the assistance of local Revenue Official/officials for identifying the suit land.

10. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

11. Learned counsel for the petitioner while assailing the impugned order has drawn the attention of this Court to the effect that there already exist two demarcation reports on the record of Civil Suit No. 86 of 2021. He contended that in the first instance, the demarcation was conducted by the Revenue Officer on the application of the plaintiff. The report of demarcation has been placed on record as Annexure P-7. Later, the plaintiff approached the learned trial Court by filing application under Order 26 Rule 9 of CPC for appointment of Local Commissioner to demarcate the disputed lands. The prayer of the plaintiff was allowed and demarcation was again conducted by the Revenue Officer/Local Commissioner. Thus, according to learned counsel for the petitioner, the respective boundaries of the properties of plaintiff and defendant have been ascertained more than once and there is no dispute as far as the identification of such boundaries is concerned.

12. The contention as raised on behalf of the petitioner, as noticed above, is substantiated on record. Annexure P-7 is the demarcation report prepared after conducting the demarcation on the application of plaintiff. Annexure P-10 is the second report of demarcation conducted by the Local Commissioner in pursuance to the order passed by learned trial Court.

13. In view of the fact that the demarcation has been conducted more than once, the plaintiff/ respondent should not have any misgiving about the boundaries of her property. In case the injunction order is being violated by the defendant or any other person, the same can easily be proved by pointing out towards the fixed boundary points of the respective properties of the parties as ascertained by the process of demarcation, from time to time.

14. The ascertainment of boundaries of the immoveable properties is the domain of the Revenue Officer in exercise of powers under Section 107 of

the Himachal Pradesh Land Revenue Act. Once, the demarcation is conducted by a competent Revenue Officer, fresh demarcation is not permissible, unless the earlier demarcation is set-aside in accordance with law.

15. Evidently, the plaintiff has not made challenge to any of the above noted demarcation reports. The report of demarcation placed on record by the Local Commissioner in pursuance to the orders passed by the learned trial Court, itself becomes a piece of evidence. Such evidence will be subject to scrutiny of learned trial Court at appropriate stage of the suit. Once, the demarcation reports are before learned trial Court as piece of evidence, its use can be made at appropriate stage for appropriate purposes. It is for the civil Court i.e. learned trial Court to decide on the evidentiary value of such reports. The disputed question as to whether there is violation of injunction order passed by the Court is also to be decided by learned trial Court in appropriate proceedings.

16. The power vested in learned trial Court under Section 151 of CPC, cannot be used beyond the scope justified by the context of dispute. The plaintiff came up with an allegation that interim injunction order granted by the learned trial Court was being violated. The defendant denied such allegation. Learned trial Court could pass the order to take the assistance of police in implementation of the order for limited purpose i.e. the police assistance could be allowed only to the justifiable extent. In view of the above observations, the impugned order to the extent it granted the liberty to the SHO to take assistance of local Revenue Official/officials for identifying the suit land cannot be sustained. Land can only be identified after demarcation and the demarcation is a quasi-judicial function and has serious consequence on the rights of the parties. With availability of the demarcation report with it, learned trial Court was not justified in abdicating its powers to the SHO or any Revenue Officer. The allowance of such practice will potentially cause

serious prejudice to the rights of parties which otherwise are subject to decision of the civil Court.

17. In view of above discussion, the petition is allowed. Impugned order dated 02.07.2022 passed by learned Senior Civil Judge, Court No.1, Shimla in CMA No. 1349 of 2022 in Civil Suit No. 86 of 2021, is set-aside to the extent it allowed the liberty to SHO, Police Station (West), Shimla to take assistance of local Revenue Official/officials for identifying the suit land.

18. The petition is disposed of accordingly, so also the pending application(s), if any.