2026:HHC:49212

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 148 of 2019
Decided on : 04.11.2026

Shivalaya Construction Company Pvt. Ltd. …Petitioner

Versus

Rahjesh Kumar & Others …Respondents

Coram
The Hon'ble Mr. Justice Virender Singh, Judge.
Whether approved for reporting?[1]

For the petitioner : Mr. Sameer Thakur, Advocate.

For the respondents : Mr. Malay Kaushal, Advocate for respondent No.1.

Name of respondent No.2 stands deleted vide order dated 20.07.2023.

None for respondents No.3 to 5.

Mr. H.S. Rawat & Mr. Tejasvi Sharma, Additional Advocates General, with Mr. Rohit Sharma, Deputy Advocate General for respondents No.7 and 8.

Virender Singh, Judge (Oral)

Petitioner-Shivalaya Construction Company Private Limited has filed the present petition under Article 227 of the Constitution of India, against the order dated

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

06.04.2019 passed by the Court of Learned Civil Judge (Junior Division), Court No. 3, Ghumarwin, District Bilaspur, H.P. (hereinafter referred to as 'the trial Court'), in Civil Miscellaneous Application No.159-6 of 2019, filed in Civil Suit No.640-1/17/13, titled as 'Rajesh & Others versus Shivalaya Construction Company'.

2. By way of the order dated 06.04.2019, the learned trial Court has allowed the application, filed by respondent No. 1-Rajesh, for appointment of local commissioner, for conducting the inspection of the suit land.

3. Parties to the lis, are hereinafter, referred to, in the same manner, in which, they were referred to, by the learned trial Court.

4. Brief facts, leading to the filing of the present petition before this Court, as emerged from the record, may be summed up as under:

4.1. Plaintiffs, Rajesh and Premi Devi, have filed a suit for mandatory injunction against the defendants, directing them to remove dumped material or to construct a retaining

wall, as well as, a decree for the payment of Rs.3,50,000 as rent (Rs.20,000/- per month from September 2011 to February 2013) and damages to the plaintiffs for destroying the crop and land, by throwing waste material, over the land bearing Khasra No.24, 26, Khata No.87/78, Khasra No.109/105, (hereinafter referred to as the suit land), during the widening of the National Highway from Nihari to Naswal.

4.2. The said suit has been filed by the plaintiff, on the ground, that the suit land is owned by them and the defendants had executed the work of widening National Highway No.88. The defendants have earmarked a dumping site, over the suit land of the plaintiffs, by throwing debris, and in that process, they have destroyed the suit land.

5. The suit has been contested by defendants No. 1 to 4, by filing a written statement, in which, they have taken the stand that the suit is not maintainable, in the present form; the suit is bad for want of better particulars, as the plaintiffs have concealed the material facts from the Court; the plaintiffs have not approached the Court with clean hands, as the

plaintiffs have concealed the fact that the suit land was not flat and was 10-25 feet below the road level, and when the defendants started the execution of the widening of National Highway-88, the plaintiffs approached them and requested them to dump the debris, so that the level of the suit land could be brought to the level of the road. On the request of the plaintiffs, the debris was dumped there. Other allegations have also been denied.

6. Thereafter, the issues were framed and when the lis was pending for arguments, the plaintiffs have filed the application, under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the CPC'), for the appointment of local commissioner, on the ground, that the defendants have taken a stand, in the written statement, as well as, led evidence to the effect that the suit land is improved, by dumping the debris, and due to the said fact, the market value of the suit land has been increased, whereas, according to the plaintiffs, due to the act of the defendants, the agricultural land has now been rendered unfit for cultivation.

7. In order to bring the above fact on record, the appointment of the local commissioner was sought.

8. This application has been contested on the ground that the application has been moved just to fill the lacunae with *mala fide* intention, as, the suit for mandatory injunction has been filed, and the application has been filed after the closure of evidence of both the parties, which is stated to be not maintainable.

9. The Learned trial Court, vide order dated 06.04.2019, allowed the application. The said oder has been assailed by way of the present petition before this Court.

10. Heard.

11. Learned trial Court has allowed the application under Order 26 Rule 9 CPC and appointed the Naib Tehsildar, Ghumarwin, as Local Commissioner to visit the suit land and report about the state of affairs existing there, more particularly, the alleged act of throwing debris by the defendants.

12. Operative portion of the order passed by the learned trial Court, is reproduced, as under:-

> *"...More particularly, the concerned Local Commissioner is directed to conduct inspection of the suit land and report, if by the alleged acts of throwing the waste material by the defendants, the value of the suit land and fields thereat, has been deteriorated. Needlessly, the Local Commissioner is strictly directed to conduct demarcation in accordance with Chapter 10 of the H.P. Land Revenue Act…."*

13. The provisions of Order 26 Rule 9 of the CPC are reproduced as under:-

> ***"Order 26***
>
> *xxx xxx xxx*
>
> ***9. Commissions to make local investigations**. —In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court: Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules."*

14. The local commissioner cannot be appointed to fill up the lacunae, in the case of the party, seeking the

indulgence of the Court, nor, the local commissioner can be substituted to act for the parties to prove their case. It was for the plaintiffs to prove that due to the act of the defendants, the value of their land has been diminished.

15. It is not the case of the plaintiffs that there is some dispute with regard to the measurement and demarcation of the subject matter of the lis.

16. Moreover, the learned trial Court has exceeded in its jurisdiction, by directing the Local Commissioner to act as the witness of the plaintiffs to report about the fact whether the act of the defendant has diminished the value of the suit land or not.

17. The said fact can only be proved or probabilized by the plaintiffs by leading cogent evidence, and the onus cannot be shifted upon the Local Commissioner to prove the fact.

18. Considering the above facts, the defendants are able to make out a case for interference, as, there is

apparent jurisdictional error, in the order, passed by the learned trial Court.

19. Consequently, the petition is allowed, the order dated 06.04.2019 is set aside, and the application, under Order 26 Rule 9 of the CPC, is ordered to be dismissed.

20. Any of the observations made herein above shall not be taken as an expression of opinion on the merits of the case, as, these observations are confined only to the disposal of the present petition.

(Virender Singh)
Judge

November 04, 2026*(ps)*