

**(2000) 11 MP CK 0015**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Civil Revision No. 430/98

Jagannath and others

APPELLANT

Vs

Dharam Jeet

RESPONDENT

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**Date of Decision:** Nov. 17, 2000

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 115

**Citation:** (2001) 2 MPHT 298 : (2001) 1 MPLJ 503

**Hon'ble Judges:** R.B. Dixit, J

**Bench:** Single Bench

**Advocate:** Shri V.K. Bharadwaj, for the Appellant; Shri Balwant Singh Kushwaha, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

R.B. Dixit, J.

The revision has been preferred against order dated 16-3-1998 passed in Misc. Appeal No. 85/95 whereunder order dated 22-8-1995 passed in Civil Suit No. 265-A/95 of Xth Civil Judge, Class II, Gwalior was confirmed.

Respondent-plaintiff had filed a suit for declaration and permanent injunction against applicants-defendants to the effect that in north side of his house situated in Jagnapura, Gwalior, there is a land adjoining to the house of Sitaram and electric service line of his house is connected from electric pole installed at point "A" in the annexed map. There is some government land in front of the house of Sitaram through which water is supplied to the plaintiff from the pipe line. In this land at place "C" and "D" is situated "Sulabh-Shauchalaya" (latrine) and septic tank used by the plaintiff. Applicants-defendants are carrying on certain constructions on this open land in such a way that plaintiff has been obstructed in using water pipe line,

electric connection and his way to aforesaid latrine.

The learned Trial Court found that after institution of the suit and passing temporary injunction the applicants defendants had further made certain constructions which has caused obstruction to the plaintiff in using the aforesaid land. Applicants were, therefore, ordered to remove that part of the construction which was raised after passing of the temporary injunction. The learned Appellate Court has confirmed the order of the Trial Court by the impugned order against which the present revision has been filed.

The main contention of the learned counsel of the applicants-petitioners is that the Trial Court has made no inquiry regarding the construction on the spot because the alleged construction was already completed before filing of the suit. This construction has been made well within the area situated in the house and the land owned by the applicants. No mandatory injunction can be passed against a party without recording evidence on merits. Reliance is placed on Division Bench decision of this Court in case of Durg Transport Company Private Ltd. Vs. Regional Transport Authority, Raipur, reported in 1965 JLJ 583 and Yashpal Bhamari Vs. Ramesh, reported in 1991 (II) MPWN 97. However, the learned counsel for the respondent has contested the contention on the ground that where the construction has been made in violation of order and in breach of temporary injunction is liable to be removed by issuance of mandatory injunction. Reliance is placed on a decision of this Court in case of Munnilal vs. Jagdish Prasad, reported in M.P. Weekly Notes 1980 (I) 196 and Kailash Chand and another Vs. Rukam Singh and others, reported in 1998 (II) MPJR 94.

I am of the opinion, that from the perusal of the Trial Court's order it appears that the latrine had been used for long by the plaintiff is situated on the Government land and after passing of the order to maintain status-quo by the learned Trial Court that the defendants-applicants had constructed a door in such a way which has blocked the way leading to the latrine. This finding of the learned Trial Court is based on different photographs and the sale-deed together with notices issued by the Municipal Corporation to the plaintiff in the year 1970. The position is further clarified from the permission dated 30-7-1992 granted by the Municipal Corporation, Particularly blocking of the way by the defendants-applicants has resulted in such an inconvenience to the plaintiff which can not be avoided except by ordering removal of that part of the construction of the door which has blocked his way.

In the facts and circumstances of this case there is no infirmity or illegality in the orders of both the Courts below and, therefore, no interference is warranted by way of this revision. The revision therefore, fails and is dismissed.

Civil Revision dismissed.