

Baga Ram Vs. Chandrakala Devi and anr

Baga Ram Vs. Chandrakala Devi and anr

SooperKanoon Citation : sooperkanoon.com/1101306

Court : Rajasthan Jodhpur

Decided On : Dec-03-2013

Appellant : Baga Ram

Respondent : Chandrakala Devi and anr

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER

: S.B.CIVIL WRIT PETITION NO.14078/2013 Baga Ram versus Chandrakala Devi & Anr.

Date of Order :: 03rd December, 2013 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.Nitin Trivedi, for the petitioner.

---- BY THE COURT: Heard learned counsel for the petitioner.

The petitioner is aggrieved against the grant of injunction in favour of respondents and the dismissal of his appeal by the appellate court.

The trial court while finding a prima facie case in favour of plaintiff-applicant and relying on the Commissioner report came to the conclusion that the petitioner had illegally raised construction of a wall and had put obstruction on a supposedly public way and has blocked a 15 ft.

wide way, which led to the land, which is in possession of the plaintiff and, consequently, granted mandatory injunction against the petitioner directing him to remove the said obstruction.

Feeling aggrieved, the petitioner filed an appeal before the appellate court.

The appellate court while relying on the material available on record found no case for interference and dismissed the appeal.

2 It is submitted by learned counsel for the petitioner that the land in question is a government land and the plaintiff has no right to seek injunction.

It is further submitted that there is alternative way available to the plaintiff, which is apparent from the Commissioner's report (Annexure-5) and, therefore, also the trial court was not justified in directing demolition of the wall constructed by the petitioner.

I have considered the submissions made by learned counsel for the petitioner and have perused the material placed on record.

It was a specific case of the petitioner that the wall in question was existing from before a year of filing of the suit, however, the Commissioner's report specifically pointed out that the wall was constructed only a day earlier; neither the petitioner remained present during the couRs.of the inspection by the Commissioner nor his counsel was present.

Further, no objections were filed to the said Commissioner report.

In view of the fact that the petitioner raised a plea, which is ex facie false, it is apparent that the petitioner had not approached the Court with clean hands.

So far as the plea regarding the land in question being government land is concerned, the counsel has failed to pointed out as to what right the petitioner has got to raise construction on the government land.

Apparently, the petitioner is seeking to further encroach on the land, which is admittedly in encroachment of both the parties, which cannot be permitted 3

through the agency of the Court.

Consequently, there is no substance in the writ petition and the same is, therefore, dismissed.

Stay application also stands dismissed.

(ARUN BHANSALI).J.

A.K.Chouhan/- 93

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com