

Subhash Satya and Others Vs. Ram Narain and Others

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Court : Allahabad

Decided On : Apr-30-1992

Reported in : AIR1994All120

Judge : K.C. Bhargava, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151- Order 39, Rules 1 and 2

Appeal No. : F.A.F.O. No. 59 of 1990

Appellant : Subhash Satya and Others

Respondent : Ram Narain and Others

Judgement :

ORDER

1. This appeal is directed against the order dated 28th March, 1990 passed by Sri M.A. Khan, Civil Judge, Bahraich. The facts which are relevant for this appeal are that the plaintiff-respondents filed a suit for permanent injunction against the appellants of this appeal. In that suit application for temporary injunction under Order 39 Rules 1 and 2 read with S. 151 of the Code of Civil Procedure was also moved by the plaintiff-respondents. According to the plaintiff-respondents they have groves in village Belha Raghav and village Tilakpur. The defendant-appellants are owners of plot No. 5 M in village Belha Raghav and they are making preparations and digging for installation of one brick kiln. They are trying to

give fire to the brick kiln. The groves of the plaintiff-respondents are situated at the distance of one kilometer from the alleged brick kiln. If the fire is induced in the brick kiln then on account of the smoke coming out of the chimney the mango crop belonging to the plaintiff respondents will suffer and a lot of damage will be caused to the grove which will adversely affect their income from the grove. They prayed that the defendant-appellants should be stopped from starting their brick kiln.

2. Against this application objection was filed by the defendant-appellants alleging therein that the plaintiffs 7 to 17 have a brick kiln quite near to the brick kiln of the defendant-appellants and on account of business of the plaintiffs this suit has been filed. The plaintiffs 7 to 17 apprehend that the brick kiln of the defendant-appellants will cause losses to their brick kiln. According to them there is no remedy existing in favour of the plaintiff-respondents as no irreparable injury or damage will be caused to them and therefore no injunction be granted to them.

3. Learned trial court after considering the entire evidence on record which the parties had produced before the court, came to the conclusion that on account of the brick kiln of the defendant-appellants irreparable loss will be caused; hence allowed the application for temporary injunction restraining the defendant-appellants from operating the brick kiln. Aggrieved against this order the defendants have come up in this appeal and have challenged the findings recorded by the trial court.

4. Learned counsel for the parties have been heard. Learned counsel for the defendant-appellants has argued that in the present case the plaintiff-respondents have failed to show that they have got a prima facie case in their favour and that any irreparable loss will be caused to them. According to him if no irreparable loss can be caused to the plaintiff-respondents then no injunction can be granted and at the most they can claim compensation for the damage which might be caused to the grove of the plaintiff-respondents.

5. In the light of the settled principles of law it has to be seen as a fact whether the existence of the brick kiln of the defendant-appellants will cause irreparable loss to the plaintiff-respondents for which no compensation will be adequate remedy, meaning thereby that the plaintiff-respondents cannot be compensated in terms of

money on account of the damage which may be caused to the plaintiff-respondents. It is the settled principle of law that if damages can be awarded to compensate the loss caused to its party then no injunction should be granted and the damages shall be the adequate relief which can be granted to the plaintiff.

6. It will be better first to analyse the case law on the subject on which reliance has been placed by the learned counsel for the parties, (i) *Hansaraj v. 2nd Addl. District Judge, Gorakhpur*, (1981 A11LJ 183). This was also a case of damage to the mango crop from the fumes emitting from the chimney of brick kiln. In that case, on the facts of that case, it was held that no injunction can be granted in favour of the plaintiff because damage to the mango crop can be adequately compensated with damages. In that case the trial court had ordered for giving a security of Rs. 10,000/- to compensate the plaintiff if any loss is caused to his grove. This order of the trial court was upheld by the High Court, (ii) Writ Petition No. 809 of 1985, *Ram Jivawan Lal Verma 1st Addl. District Judge*, decided by this Court at Lucknow on 5-4-1985 -- In this case also the question arose as to whether an injunction can be granted for stopping the brick kiln near a mango grove as the smoke emitting from the chimney of the brick kiln was damaging the mango crop. After considering the facts of the case and considering the booklet on *Mango Cultivation* Published by Indian Institute of Horticultural Research Bangalore, 1983 Edition and the Government Order of 1974 dated 28th February, 1974 the Court came to the conclusion that no injunction can be granted in favour of the plaintiff because the plaintiff can be compensated by money if any damage is caused to the crop by the fumes of the brick kiln. It was also observed in that judgment that security should be taken from the defendant for compensating the plaintiff if any loss is caused to the plaintiff by the operation of the brick kiln which is near the mango grove, (iii) *Dalpat Kumar v. Prahlad Singh* (1992) 1 All Rent Cases 300: (1992 AIRSCW 3128). In this case the principles for grant of ad interim injunction and guidelines for exercise of judicial discretion by the court which are necessary were outlined, (iv) *Wonder Ltd. v. Antex India Pvt. Ltd.* (1991) (9) LCD 290. Similar principles were also laid down in this case. It was also observed that relevant consideration whether defendant has yet to commence his enterprise or already being doing so is somewhat different in the latter case. In the present case the defendant-appellants have yet to commence their enterprise.

(v)M/s. Ganga Bricks Udhyog v. Jai Bhagwan Swamp, AIR 1982 All 333. In that case the case Hansraj v. 2nd Addl. District Judge, Gorakhpur (supra) was distinguished because in that case the grove was situated at a distance of about 790 feet from the brick kiln and further because the plaintiff of that suit was realising yearly damages from other owners of the brick kiln in the locality. In that case the facts were that the brick kiln was in the adjoining plot and the trees were at a distance of about 20 yards from the brick kiln itself. Under these circumstances it was held that the working of the brick kiln would not merely cause damage to the plaintiff's grove but it was bound to destroy it altogether. Therefore the facts of that case were entirely different because, as mentioned in the early part of the judgment, the brick kiln of the defendant-appellants is at a distance of about 3/4 kilometer from the groves of the plaintiff-respondents.

7. In the present case the trial court has found as a fact that the distance of the brick kiln from the grove of the plaintiff-respondents 1 to 3 is about 3/4 kilometer. If this distance is taken by air then it will be somewhat less. The plaintiff-respondents 7 to 17 have another grove in village Tilakpur and this grove is situated slightly less than three kilometers from the brick kiln in dispute but by air the distance would be somewhat less. These observations have been made by the learned trial court on the basis of the Commissioner's report which went to the spot and submitted its report. It has also come in the evidence that the grove of plaintiffs 1 to 3 is situated on the east and the grove of plaintiff respondents 7 to 17 is situated towards south-east of the brick kiln. It may also be mentioned here that plaintiff-respondents 7 to 17 have moved an application before the trial court that they withdraw from the suit. Hence now the controversy is between the plaintiff-respondents 1 to 3 and 7 to 17 on one side and the defendant-appellants on the other side. The learned trial court has also considered the Indian Journal of Agricultural Science (July, 1988 Edition). On the basis of the documents which have been filed on the record the learned trial court came to the conclusion that on account of the gases emanating from the chimney of the brick kiln damage is caused to the mango crop and the trees are also damaged. According to the learned trial court the crop of the grove which is situated at a distance of three kilometers from the brick kiln is also damaged. According to the learned trial court this damage is very severe in dry season from April to June and up to 8

kilometers. It is common knowledge that during the period from April to June before rains the direction of the winds is from west to east and that causes more damage to the mango crop situated towards east of the brick kiln. From the evidence on record and from the case law cited by the parties it is clear the damage to the mango crop may be caused by the gases emanating from the chimney of the brick kiln. In such cases where damage is caused it can be ascertained by producing evidence of experts by the plaintiffs. In cases where damages are ascertainable and there is no danger to the grove the courts should be reluctant to issue interim injunction and damages may be awarded. In the present case there is no evidence at present to show that damage to the trees standing in the grove has been caused or is likely to be caused by running of the brick kiln. Unless the trees are damaged or likely to be damaged and they are unable to bear the fruits on account of the brick kiln, injunction should not be granted by the courts below. In the present case also the facts of the case, as they are at this stage, go to show that upto now no damage has been caused to the trees of the grove and only damage is likely to be caused to the mango crop. As mentioned in the earlier part of the judgment damage to the mango crop is ascertainable and damages can be claimed by the plaintiff-respondents by means of a suit. Grant of interim injunction is not the appropriate remedy in the present case because no irreparable loss is caused to the plaintiff-respondents by running of the brick kiln by the defendant-appellants. The finding of the trial court that the plaintiffs have succeeded in proving a case for issue of a temporary injunction cannot be sustained and is liable to be set aside. But before parting with the judgment it will be desirable to observe that the defendant-appellants should furnish adequate security within two months to the satisfaction of the trial court in order to compensate the plaintiff-respondents in the event if it is found that any damage is caused to their crops on account of the running of the brick kiln of the defendant-appellants. The trial court should also expedite the case and it is hoped that the defendant-appellants will co-operate with the trial court in getting the suit decided. The trial court will try to dispose of the suit within a period of six months.

8, The result is that the appeal is allowed and the order dated 20th March, 1990 passed by the learned trial court on application for temporary injunction is set aside. There will be no order as to costs.

9. Appeal allowed.

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