

Om Veer Singh Vs. Additional District Judge and ors.

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Court : Allahabad

Decided On : Dec-10-2002

Reported in : 2003(1)AWC510

Judge : Sunil Ambwani, J.

Acts : [Constitution of India](#) - Article 226 and 227; [Code of Civil Procedure \(CPC\)](#) ,
[1908](#) - Order 39 Rules 1 and 2; [Specific Relief Act, 1963](#) - Sections 34

Appeal No. : C.M.W.P. No. 50197 of 2002

Appellant : Om Veer Singh

Respondent : Additional District Judge and ors.

Advocate for Def. : P.K. Jain, Adv.

Advocate for Pet/Ap. : B.D. Mandhyan, ;Satish Mandhyan, ;S.K. Vidyarthi and
;S.K. Gupta, Advs.

Disposition : Writ petition dismissed

Judgement :

Sunil Ambwani, J.

1. Heard Sri B. D. Mandhyan, assisted by Sri S. K. Vidyarthi for petitioner and Sri P. K. Jain for contesting respondents.

2. Petitioner has instituted Original Suit No. 155 of 1997 against respondent Nos. 3 to 7 for permanent injunction. An application for interim injunction was rejected by trial court. By the same order, an application for injunction in counter claim was allowed. Aggrieved, petitioner filed an appeal which has been dismissed by the appellate court.

3. Counsel for petitioner submits that petitioner was a tenant of the disputed property and that in any case, his possession was permissible. He was, therefore, entitled to interim injunction. The courts below have found that the rent receipts dated 31.12.1992, paper No. 9A, was issued by defendant Anil Kumar who is not owner of the property. He was neither authorised nor attorned to issue rent receipts by the owners, namely, Rajiv Kumar, Sanjiv Kumar and Smt. Aruna. The other rent receipts were also not executed by the owners. It was also found that petitioner is not in possession. He had taken the land for carrying on business of dairy. The Amin's report paper No. 18C, however, did not find any dairy in existence on the disputed site. Petitioner was, as such, not found to have any prima facie case, and that the balance of convenience and Irreparable injury was also not found to be in his favour. Appellate Court justified grant of injunction in favour of defendant as they were prima facie found to be owner of the property. Shri B. D. Mandhyan submits that a person in settled possession of the property, even if he has no right to remain on property, cannot be dispossessed even by true owner except by recourse to law, and even if petitioner is trespasser, if he has accomplished the taking over of possession, to the knowledge of true owner, the possession cannot be taken back except by authority of law. He has relied upon the Judgments In Ram Rattan v. State of U. P., AIR 1977 SC 619 ; Krishna Ram Mahale v. Shobha Venkat Rao, AIR 1989 SC 2097 ; Samir Sobhan Sanyal v. Tracks Trade (P.) Ltd.. AIR 1996 SC 2102 and Shama Prashant Raje v. Ganpat Rao and Ors., (2000) 7 SCC 522.

4. Sri P. K. Jain appearing for respondents has relied upon Full Bench judgment of this Court in Ganga Saran v. Civil Judge, Hapur Ghaziabad, 1991 (1) AWC 213 (FB) : AIR 1991 All 114, which has been followed by a Division Bench in Smt. Biran Devi v. Shechu Led, 2001 (4) AWC 2659 and a single Judge decision in Writ Petition No. 18241 of 2002, Abdul Haq and Ors. v. Additional District Judge,

decided on 21.5.2002, holding that a writ of mandamus against private individual is not maintainable, and that a writ against interlocutory orders of civil court under Article 226/227 of the [Constitution of India](#) would be maintainable only where a writ can be issued within the ambit of well established and recognised principles laid down by Supreme Court, as well as by various High Courts in that regard. It was held by Division Bench in Smt. Biran Devi (supra), that in such cases even a writ under Article 227 of the [Constitution of India](#) will not be maintainable save and except in rarest of rare cases.

5. The submissions made by counsel for petitioner challenging the finding recorded in the present case, by both the courts below do not come within the ambit of limited scope of interference of this Court as laid down in the aforesaid decisions.

6. For the aforesaid reasons, the writ petition has no merit and is dismissed.

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