

**Ravishankar and anr. Vs. Viith Additional District Judge and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Jan-31-1994

**Reported in :** 1994(0)MPLJ783

**Judge :** R.C. Lahoti, ;B.C. Verma and ;K.M. Agrawal, JJ.

**Acts :** Code of Civil Procedure (CPC) - Sections 151 - Order 39, Rules 1, 2 and 4

**Appeal No. :** Misc. Petn. No. 245 of 1990

**Appellant :** Ravishankar and anr.

**Respondent :** Viith Additional District Judge and ors.

**Advocate for Def. :** R.C. Agrawal, Adv.

**Advocate for Pet/Ap. :** Ravish Agrawal, Adv.

**Judgement :**

ORDER

1. On the question of scope, applicability and ambit of Order 39, Rule 4, Civil Procedure Code, two learned Judges of this Court (B. C. Varma, J. and K. M. Agarwal, J.) having differed in their opinions, the matter has been placed before me for resolving the difference.

2. The plaintiff-petitioners have filed the present suit before the Court of Civil Judge Class I, Bhopal based on their title and seeking permanent injunction

against the defendant-respondents Nos. 3 and 4 for protecting their possession over the property and restraining the defendant-respondents from raising any construction thereon. According to the plaintiffs, the suit property was purchased by them under registered deed of sale dated 12-11-1948 from one Sikandar Mohammad Khan. Sikandar Mohammad Khan had acquired title under an Inayatnama (gift deed) dated 17-3-1947 executed by late Nawab Hanidullah Khan, the then ruler of Bhopal State.

3. The plaintiffs had also sought for an ad interim injunction protecting their possession over the suit land and restraining the defendant-respondents from raising any construction thereon.

4. The suit and the application under Order 39, Rules 1 and 2, Civil Procedure Code filed by the plaintiffs were contested by the defendant-respondents submitting that the suit land formed part of survey No. 90/1 area 1.40 acres of Dharampuri village which was given to the Capital Project Authority by the State Government and the defendants were constructing VI.P. guest house thereon.

5. The trial Court by its order dated 5-7-1989 rejected the application for grant of ad interim injunction as it was convinced that the plaintiffs had no prima facie case, the balance of convenience did not lie in their favour and they were the defendants and not the plaintiffs who would suffer irreparable injury by the interlocutory relief if allowed to the plaintiffs. The plaintiffs preferred an appeal to the District Court which was registered as Misc. Civil Appeal No. 54/89 and decided by the order dated 24-7-1989 (Annexure P/2). The appeal was allowed, followed by an order of remand. Vide para 13 of its order, the learned District Judge expressed an opinion that the matter in controversy could not have been satisfactorily decided unless and until there was a demarcation conducted and demarcation report brought on record so as to fix the identity of the suit land by reference to the survey number. The Court observed :

'It was, therefore, necessary to get it demarcated in the presence of the appellants according to Section 129 of the M.P.L.R. Code. How, without demarcation, one can confirmly say that the respondent No. 2 was placed in the possession of land bearing Khasra No. 90/1 area 1.48 acre only and not on the appellants plots which

are parts of Khasra No. 21/3 How, without demarcation, one can say that the suit land is the one allotted to the respondent No. 2 ?'

How the appeal was disposed of, it would be useful to reproduce and read from the operative part of the order :

'Accordingly, the appeal preferred by the appellants is allowed. The impugned order dated 5-7-1989 is set aside. The respondents are directed to maintain status quo in respect of all the work in progress at the site towards construction of State Guest House and to apply for demarcation of land before the authority competent to do so. On receipt of the demarcation report, the lower Court may be approached by the parties for appropriate order in that light.'

By way of abundant caution, it may be stated here itself that the appellate Court has not recorded any finding of its own touching the merits of the case as might thereafter have bound the trial Court.

6. On the matter being set at large before the trial Court, two important events happened which may now be noticed as they form the core of controversy arising for decision in this petition. On 29-8-1989, the defendants moved an application (Annexure R/10) under Order 26, Rule 9, Civil Procedure Code inviting attention of the trial Court to the observations made by the District Court and seeking demarcation of the suit land so as to determine whether it constituted part of survey No. 90/1 or of 21/3. The trial Court directed the commission to be issued. On 6-9-1989, the defendants moved yet another application (Annexure P/3) styled as one under Order 39, Rule 4, Civil Procedure Code. It was stated in the application that the plaintiffs had based their case on the Inayatnama (gift deed) dated 17-3-1947 following by deed of sale dated 12-11-1948 vesting title in them, but on a search and inspection made of the records of the Registrar of Deeds, Bhopal, it was found that the Inayatnama and the sale-deed were both fabricated documents as they were never executed and registered in the manner alleged in the plaint. Inasmuch as these facts were not in the knowledge of the defendants when the order of injunction was passed earlier, they prayed that the Court be pleased to take into consideration these facts supported by the documents which they were now placing on record and set aside the interim order maintaining status

quo passed by the appellate Court as it was causing serious and irreparable every day prejudice to the defendants. This application remained pending for consideration and in between the Commissioner appointed by the Court executed the commission and submitted its report dated 1-11-1989 (Annexure R/12), the conclusions of which report were against the plaintiffs and supported the defendants' plea that the land on which the defendants were raising construction had belonged to the State Government handed over to the defendants for the project.

7. After hearing the parties afresh, on 4-1-1990, the trial Court disposed of the matter as to the grant of ad interim injunction by passing an order afresh (Annexure P/5). The opening sentence of the order states the application under Order 39, Rule 4, Civil Procedure Code being disposed of by that order. The closing part speaks the interim order, directing status quo to be maintained, being vacated by that order in view of the subsequent changed circumstances. I may hasten to observe that it is the phraseology used by the trial Court which has really given rise to this serious controversy with which this Court is now seized. One need remind oneself of the well settled position of law that what has to be determined is the real jurisdiction exercised by the Court without regard to the label affixed.

8. The plaintiffs preferred an appeal to the District Court against the order of the trial Court dated 4-1-1990. Vide order dated 24-1-1990 (Annexure P/6), the appeal filed by the plaintiffs has been dismissed. On 29-1-1990, the plaintiffs have preferred this petition under Article 227 of the Constitution of India. Their grievances are mainly two : Firstly that on the facts stated in the application dated 6-9-1989 (Annexure P/3), the trial Court could not have exercised jurisdiction under Order 39, Rule 4, Civil Procedure Code, and secondly, that the order to maintain status quo having been passed by the appellate Court, it was the appellate Court alone and not the trial Court which was competent to entertain the application under Order 39, Rule 4, Civil Procedure Code.

9. Earlier, when the matter was heard by the Division Bench, B. C. Varma, J. was of the opinion that the order of the appellate Court directing status quo to be

maintained was certainly an order granting temporary injunction and when the application under Order 39, Rule 4, Civil Procedure Code was moved, an application for issuance of commission was not even made that is why it would be deemed that the trial Court had varied the order of the appellate Court in exercise of power conferred by Order 39, Rule 4, Civil Procedure Code. The documents relied on by the plaintiffs which were subsequently alleged by the defendants as forged and fabricated were considered by the Court while passing the earlier order and hence the prayer made by the defendants was incapable of being entertained under Order 39, Rule 4, Civil Procedure Code. According to him, the petition deserved to be allowed quashing the orders of the trial Court and appellate Court (Annexures P/5 and P/6) and rejecting the application under Order 39, Rule 4, Civil Procedure Code filed by the defendants. K. M. Agrawal, J. was of the opinion that the injunction passed by the appellate Court was passed for the suit and not for any appeal and hence the trial Court was not powerless to entertain the application under Order 39, Rule 4, Civil Procedure Code. He also held that discovery of such facts, as of which the defendants were not aware earlier, provided a ground for exercise of jurisdiction under Order 39, Rule 4, Civil Procedure Code. In addition, there was the report of the Commissioner. On such material available, the trial Court was competent to exercise jurisdiction under Order 39, Rule 4, Civil Procedure Code and hence its order dismissing the plaintiffs' application under Order 39, Rules 1 and 2, Civil Procedure Code and discharging the ad interim injunction maintaining status quo could not be found fault with.

10. Order 39, Rule 4, Civil Procedure Code provides as under :

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