

Mrs. Durga Devi Vs. Ganeshi

Mrs. Durga Devi Vs. Ganeshi

SooperKanoon Citation : sooperkanoon.com/627873

Court : Punjab and Haryana

Decided On : Oct-01-1996

Reported in : (1997)115PLR441

Judge : R.L. Anand, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 39, Rules 1 and 2

Appeal No. : Civil Revision No. 2671 of 1996

Appellant : Mrs. Durga Devi

Respondent : Ganeshi

Advocate for Def. : Hari Om Sharma, Adv.

Advocate for Pet/Ap. : Pritam Saini, Adv.

Disposition : Petition dismissed

Judgement :

R.L. Anand, J.

1. This is a civil revision and has been directed against the judgment dated 8.6.1996 passed by the Additional District Judge, Kurukshetra who accepted the appeal of defendant Shri Ganeshi set aside the order dated 6.2.1996 passed by

the Court of Civil Judge (Sr. Division), Kurukshetra, who allowed the application of the plaintiff-petitioner Smt. Durga Devi under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

2. The brief facts of the case are that Smt. Durga Devi plaintiff-petitioner brought a suit for permanent injunction alleging that she is tenant of property No. 4 situated in Mohalla Majri, Shahbad, District Kurukshetra, as described in para No. 1 of the plaint under the Municipal Committee and has been paying the rent to the committee regularly but the defendant in collusion with the Municipal Committee forged and fabricated some documents regarding tenancy in his favour and wanted to dispossess her from the property without any lawful authority. She is using this property for residential purposes and also she is doing her business by ironing the clothes.

3. The claim of the plaintiff was opposed by the defendant Ganeshi who pleaded that the plaintiff is his sister-in-law (Sali). Defendant is the tenant of demised premises under the Municipal Committee. Since the plaintiff was not having any gainful employment, she was engaged as a servant on the condition that the plaintiff would pay to him a sum of Rs. 50/- per day. Further the entire apparatus including the iron are owned by him. The parties placed documents in support of their case before the trial Court which allowed the application under Order 39 Rules 1 and 2 of the C.P.C. vide order dated 6.2.1996 and the reasons for allowing the application are given in para No. 7 of the order which is reproduced as under :-

'Besides above, the defendant has himself admitted the possession of the plaintiff over the property in dispute. It is the case of the defendant that since plaintiff has no work, therefore, she was permitted to do ironing business in the property in dispute on certain terms and conditions. Plaintiff is related to defendant. Thus, if we go by the case of the defendant, the plaintiff is licensee on the property in dispute. Her possession is permissive possession. Under these circumstances, if the defendant wants to take back possession from the plaintiff, he cannot do so forcibly and illegally. He can well take recourse to law.'

4. Aggrieved by the said order defendant Ganeshi filed the appeal under Order 43 Rule 1 of the CPC in the Court of Additional District Judge, Kurukshetra who vide impugned judgment dated 8.6.1996 accepted the appeal of defendant and dismissed the application under Order 39 Rules 1 and 2 of the CPC. Smt. Durga Devi has filed the present civil revision challenging the order of Appellate Court.

5. This revision is being disposed of with the assistance of Shri Pritam Saini, Advocate, appearing on behalf of the petitioner Smt. Durga Devi and Shri Hari Om Sharma, Advocate, who appeared on behalf of respondent Ganeshi.

6. Learned counsel appearing on behalf of the petitioner submitted that the first Appellate Court has erred in dismissing the application of the plaintiff-petitioner who has been able to establish prima facie that she is in possession of the property. Mr. Saini submitted that even if it is assumed for the sake of arguments that the possession of the plaintiff is that of a trespasser or unauthorised, she cannot be evicted from the premises except in due course of law. It was also submitted by Shri Saini that the first Appellate Court committed an error in interfering in the well reasoned order of the trial Court in spite of the settled law that the Appellate Court should be slow in interfering in the well reasoned discretion once exercised by the trial Court.

7. On the contrary Shri Hari Om Sharma, Advocate, has supported the impugned order and has adopted the same reasons which have been advanced by the first Appellate Court.

8. After considering the rival contentions of the parties, I am of the considered opinion that this revision is devoid of any merit. The case set up by the petitioner before the trial Court was that she is a tenant with respect to the demised premises under the Municipal Committee and she has not been able to place any prima facie document to establish her possession either as a tenant or as a licensee of the Municipal Committee. On the contrary and during the course of arguments the learned counsel for the respondent has shown even to me many receipts issued by the Municipal Committees in favour of the defendant-respondent which prima-facie establishes that the demised premises were let out to the respondent or at least he is in possession of the premises as a licensee of

the Municipal Committee. I cannot lose sight of the fact that the plaintiff is none but the Sali (sister-in-law) of the defendant who might have employed the plaintiff as his servant to iron the clothes on behalf of the defendant. By such use of the premises by the plaintiff, she is not clothed with any right so as to claim a relief of injunction. When the discretion has not been properly exercised by the trial Court, the first Appellate Court would always be justified in interfering such erroneous order. Before granting the stay order in favour of party three basic fundamental ingredients are supposed to be proved by the litigant who seeks injunction i.e. prima facie case; balance of convenience and irreparable injury in case the injunction is not granted. In the present case, the petitioner Smt. Durga Devi has not been able to establish even a single ingredient. Her permissive possession in the shop in question is under the defendant and she cannot claim any interest adverse to the interest of a rightful person who is exercising possession in a legitimate manner.

9. The citations which have been relied upon by the learned counsel for the petitioner are not applicable to the facts in hand. The first citation relied upon by the learned counsel for the petitioner is 1990 P.L.J. 611, Ravi Chopra v. Jaipal Mahendru,. In this citation, the Hon'ble Bench was pleased to hold that no person can be deprived of possessory title except in accordance with the law. But it was in the present case the possession over the shop in question will be deemed that of the defendant and not of the plaintiff whose status is only a servant. The case pleaded by the plaintiff throughout was that she is a tenant of the Municipal Committee. Strange enough that no documents to prove her case or licence prima facie with respect to the shop in question has been brought on record. Strange enough even the Municipal Committee has not been added as defendant in order to clear the stand of the plaintiff. The second authority which has been relied upon by the counsel for petitioner is (1996-2) P.L.R. 64, Kamla Kumar Thapar v. Vinod Kumar Thapar, . This citation is also not applicable to the present case. The first Appellate Court has rightly remarked in para No. 5 of the judgment that both on law and facts the approach of the learned trial Court was totally misconceived and erroneous. I have also tried to highlight above how the Court fell in error in allowing the application under Order 39 Rules 1 and 2 C.P.C.

10. In (1996-2) P.L.R. 147, Maman Chand v. Smt. Kamla, this High Court has categorically held that the Appellate Court can interfere with the orders passed by the trial Court in such like applications if it is satisfied that the orders of the trial Court suffers from clear violation of law and that the balance of convenience and irreparable injury do not lie in favour of such party who has filed application under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

11. The next citation which has been relied upon by the learned counsel for the petitioner is 1971 P.L.J. 338, Mohan Lal and Ors. v. The State of Punjab and Ors., This citation is under Article 226/227 of the Constitution of India. Under the garb of a permissible use of the demised premises, the plaintiff cannot claim an injunction against a person in whose favour the licence/lease has been validly conferred by the Municipal Committee. Even the last citation reported as JT 1996(5) Supreme Court 74, Sri Samir Sobhan Sanyal v. Tracks Trade Private Ltd. and Ors., would not come to the rescue of the learned counsel for the petitioner being distinguishable on facts. The first Appellate Court has rightly held in paras No. 5 and 6 of the impugned order that the order passed by the trial Court was totally erroneous. At the cost of repetition I would like to reproduce these paras as follows :-

'Both on law and facts, the approach of the learned trial Court is totally misconceived and erroneous. The respondent has not placed on the record any document to show any tenancy over the shop in dispute or she had paid rent to the Municipal Committee. However, the receipts regarding payment of rent are in favour of the appellant. So, the observations made by the learned trial Court in para No. 6 of the order are palpably wrong.

6. The appellant had admitted that he gave the premises/shop in dispute to the respondent just for the purpose of ironing the clothes to eke out her existence and she was supposed to pay Rs. 50/- to the appellant for apparatus given to her for that purpose. The respondent came to the Court with the allegations that she is in occupation of the shop as tenant under the Municipal Committee and that the appellant had fabricated certain documents regarding tenancy in his favour and wants to oust her forcibly on the basis of the same. The appellant has Admitted that

the premises were given to the respondent for the sole purpose of running the business of ironing along with apparatus installed therein for that purpose but the respondent seems to be asserting his own lawful right to occupy the same as a tenant.

12. Resultantly, this Court is of the considered opinion that the present revision is devoid of any merit and the same is hereby dismissed leaving the parties to bear their own costs.

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