

Kamla Kumar Thapar Vs. Vinod Kumar Thapar

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Court : Punjab and Haryana

Decided On : Feb-24-1996

Reported in : (1996)113PLR64

Judge : G.S. Singhvi, J.

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

Appeal No. : Civil Revision No. 3027 of 1995

Appellant : Kamla Kumar Thapar

Respondent : Vinod Kumar Thapar

Advocate for Def. : M.L. Sarin, Sr. Adv. and; Rahul Rathore, Adv. for Respondent No. 1

Advocate for Pet/Ap. : M.L. Sagggar, Adv.

Disposition : Revision allowed

Judgement :

G.S. Singhvi, J.

1. This petition is directed against the order dated 10.8.1995 passed by the learned Additional District Judge, Ludhiana, whereby he allowed the appeal filed by respondent No. 1 against the order dated 15.6.1994 passed by the learned Sub

Judge First Class, Ludhiana, dismissing his application for temporary injunction.

2. It would be appropriate to set out a few facts in order to appreciate the rival contentions.

3. Petitioner and respondent. No. 1 are real brother Sunil Kumar and their mother Smt. Sudarshan Kumari Thapar are engaged in the business of hosiery goods and were residing in the house situated in Mohalla Noghara, Ludhiana. Plot No. 63-B situated in Tagore Nagar, Ludhiana, in respect of which the parties have a dispute is said to have been purchased in the year 1988 and thereafter a building was constructed over it. On 6.5.1992, a compromise is said to have been arrived between the brothers. This was followed by an agreement to sell dated 11.5.1992 whereby the petitioner agreed to transfer his share in the house to the plaintiff-respondent for a sum of Rs. 7,25,000/-.

4. By alleging that the defendant-petitioner had failed to perform his part of the agreement and was still threatening the plaintiff-respondent to interfere with his possession and also threatening to alienate his share in the property to third party, the plaintiff-respondent filed a suit for possession by way of specific performance of the agreement dated 11.5.1992 and for permanent injunction restraining the defendant-petitioner from interfering into the possession of the plaintiff. He also filed an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure and sought temporary injunction to restrain the defendant from alienating the property to any body else or to interfere with the possession of the plaintiff.

5. Defendant-petitioner contested the suit by alleging that the plaintiff had failed to carry out his part of the agreement inasmuch as he did not take 'No Dues Certificate' from the Life Insurance Corporation of India and had also failed to pay the amount as per the terms of the agreement. He also pleaded that a fresh agreement had been arrived at between the parties on 25.7.1993 putting an end to the previous agreement and the parties agreed that they are in joint possession of the disputed Kothi and on that account no injunction order should be passed in favour of the plaintiff.

6. After hearing the parties, the learned Sub Judge First Class, Ludhiana, accepted the contentions of the defendant-petitioner and dismissed the injunction application. Against the order of the learned trial Court, the plaintiff-respondent filed an appeal and by the impugned order the learned Additional District Judge, Ludhiana, accepted the appeal. While setting aside the order of the learned trial Court, the learned Appellate Court restrained the petitioner from interfering in the possession of the plaintiff-respondent and further restrained him from alienating his share or creating any charge over the property.

7. Shri M.L. Saggar, learned counsel for the petitioner, argued that the order passed by the Appellate Court is wholly arbitrary and perverse inasmuch as the learned Appellate Court has not given any reason to interfere with the order of the learned trial Court. Elaborating his contention, learned counsel submitted that the learned Appellate Court has upset the findings recorded by the learned trial Court on the issues of prima facie case and absence of equity in favour of the plaintiff without assigning any reason and in this manner, the learned Appellate Court has exceeded its jurisdiction to interfere with the order of the learned trial Court. Learned counsel submitted that it was the plaintiff who had failed to make payment of Rs. 5,25,000/- on or before 30.10.1992 and also failed to get the 'No Dues Certificate' from the Life Insurance Corporation of India and, therefore; he was not entitled to get an order of injunction against the petitioner. Learned counsel submitted that the payment of Rs. 7,25,000/- by 31.10.1992 was essence of the agreement and as the plaintiff-respondent failed to make payment, he is not entitled to enforce the agreement against the defendant-petitioner. Learned counsel also argued that in any event, the respondent cannot get a restraint order against the defendant-petitioner from occupying the part of the property because it was a joint property and no order of injunction could be passed by the learned Appellate Court to interfere with the joint possession of the defendant-petitioner. Learned counsel submitted that his client is interested only to remain in occupation of the property and he is not intending to alienate the property to third party. He placed reliance on Smt. Chand Rani v. Kamal Rani, 1993(2)RRR 46.

8. Shri M.L. Sarin, learned counsel appearing for respondent No. 1, argued that the learned Appellate Court has reversed the order passed by the learned trial

Court because it was patently erroneous. By placing reliance on the terms of the agreement dated 11.5.1992, Shri Sarin argued that the petitioner had specifically agreed to the fact that the property was in physical possession of the plaintiff-respondent and, therefore, the injunction order passed by the learned Appellate Court does not suffer from any error. He placed reliance on the report of the Local Commissioner dated 3.5.1994 showing the exclusive possession of the plaintiff-respondent and also relied on the following decisions:-

- (1) Hindustan Aeronautics v. Ajit Prasad, A.I.R. 1973 S.C. 76;
- (2) Krishna Ram Mahaie v. Shobha Venkat Rao A.I.R. 1989 S.C. 2097;
- (3) Mohan Lal v. State of Punjab, 1971 P.L.J. 339; and
- (4) Mst. Parsini v. Mahan Singh, 1982 P.L.J. 280.

9. Perusal of the order passed by the trial Court shows that after making reference to the rival pleadings, the learned trial Court considered the arguments of both the parties and then observed that the plaintiff himself committed serious default inasmuch as he did not obtain 'No Dues Certificate' from the Life Insurance Corporation of India regarding his share of the property and he failed to pay the total balance consideration to the defendant No. 1 on or before 31.10.1992 and, therefore, he cannot claim relief in the form of temporary injunction which is essentially an equitable relief. The learned trial Court also referred to the fresh agreement dated 27.5.1993 and observed that no observation can be given in regard to that agreement in view of the dispute between the parties about its genuineness. The learned trial Court concluded that having failed to perform his part of the agreement, the plaintiff was not entitled to seek injunction against the defendant No. 1. The learned Appellate Court referred to the various contentions raised on behalf of both the parties and then observed that as per agreement dated 11.5.1992, physical possession of the property was with the plaintiff. In this context, the learned Appellate Court referred to para 4 of the agreement dated 11.5.1992 and held that the plaintiff cannot be dispossessed by the defendant No. 1 except in due course of law. The learned Appellate Court also took notice of the fact that as per the report of the Local Commissioner, the plaintiff-appellant was

living with his family in the entire property situated at 63-B, Tagore Nagar, Ludhiana. It further held that the vendor (defendant No. 1) had also failed to obtain a 'No Dues Certificates' from the Life Insurance Corporation of India and, therefore, the plaintiff cannot be held responsible for not executing the agreement. In regard to the agreement dated 27.5.1993, the learned Appellate Court observed that genuineness or otherwise of the agreement will be seen at the trial of case. It held that the plaintiff had been able to make out a prima facie case and balance of convenience was also in favour of the plaintiff.

10. No doubt, the Appellate Court has passed a detailed order running into 17 pages but there is nothing in the order passed by the Appellate Court to show that it found the order of the trial Court to be contrary to law, arbitrary or perverse. It has not been held by the Appellate Court that the trial Court ignored the settled principles of law which govern the exercise of power under Order 39, Rules 1 and 2 of the Code of Civil Procedure. Rather the Appellate Court has decided the matter as if it was dealing with the entire controversy in the first instance. This, in my opinion, is a wholly erroneous approach. The power of the Appellate Court to interfere with an order passed by the trial Court on an application filed under Order 39, Rules 1 and 2 of the Code of Civil Procedure is not unlimited. In a recent decision, this Court had occasion to examine the ambit and scope of the power of the Appellate Court in such like matters in *Guru Nanak Education Trust v. Balbir Singh*, (1995-2)110 P.L.R. 625. After making reference, to the judgment of the Rajasthan High Court in *Smt. Vimla Devi v. Jang Bahadur*, A.I.R. 1977 Rajasthan 196 and an earlier decision of this Court in *Krishan Kumar v. State of Haryana*, (1992-1)101 P.L.R. 607, it has been held that the Appellate Court cannot upset an order passed by the trial Court without holding that the trial Court has erred in recording findings on the issues of prima facie case, balance of convenience and irreparable loss or without holding that the conclusions recorded by the trial Court on these issues are perverse or against the settled principles of law.' The observations made by the Rajasthan High Court in *Smt. Vimla Devi's* case (supra) are very useful and, therefore, same are quoted below:-

'The order refusing temporary injunction is of a discretionary character. Ordinarily, Court of appeal will not interfere with the exercise of discretion by the trial Court

and substitute for it its own discretion. The interference with the discretionary order, however, may be justified if the lower Court acts arbitrarily or perversely, capriciously or in disregard of sound legal principles or without considering all the relevant records.

The mere possibility of the appellate Court coming to a different conclusion on the same facts and evidence will also not justify interference.'

Similarly, in Krishan Kumar's case (supra), this Court has held :-

'A perusal of the appellate Court's order shows that it has not assigned any cogent reason to set aside the discretion exercised by the trial Court. The lower appellate Court has not demonstrated as to why on admitted facts principles of law have been wrongly applied. I am, therefore, of the opinion that the lower appellate Court was not justified in setting aside the order and interfering in the discretion exercised by the trial Court.'

11. Since the Appellate Court has completely failed to keep in mind these principles, its interference with the order of the trial Court cannot be upheld. In my opinion, the Appellate Court has committed a material irregularity in the exercise of its jurisdiction by interfering with the order of the trial Court ignoring the settled principles of law which govern its jurisdiction in such like matters.

12. In view of the above conclusions, it is not necessary to refer to the various judgments on which both the learned counsel have placed reliance because none of them deals with the issue of jurisdiction of the Appellate Court to interfere with the order passed by the trial Court on an application filed for injunction under Order 39, Rules 1 and 2' or Section 151 of the Code of Civil Procedure.

13. For the reasons mentioned above, the revision petition is allowed. The order dated 10.8.1995 passed by the Additional District Judge, Ludhiana is set aside and the case is remanded to the Additional District Judge, Ludhiana for deciding the appeal afresh. Looking to the nature of the controversy, the lower Appellate Court is directed to decide the appeal within a period of two months of the receipt of a copy of this order. The Registry of this Court is directed to immediately send a

copy of this order to the Additional District Judge, Ludhiana.

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