

Paramjit Kumar and anr. Vs. Prem Kumar and ors.

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Court : Punjab and Haryana

Decided On : Jul-17-2002

Reported in : (2003)133PLR430

Judge : M.M. Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 7 and 10

Appeal No. : Civil Revision No. 2818 of 2001

Appellant : Paramjit Kumar and anr.

Respondent : Prem Kumar and ors.

Advocate for Def. : T.S. Chauhan, Adv. for Respondent Nos. 1 to 3 and; Ashwani Kumar, Adv. for Respondent No. 5

Advocate for Pet/Ap. : Amarjit Markan, Adv.

Disposition : Petition allowed

Judgement :

M.M. Kumar, J.

1. By this common judgment both the revision petitions, namely, Civil Revision Nos. 2818 and 2845 of 2001 can conveniently be disposed of together as common questions of law and facts have been raised. The facts mentioned are from Civil

Revision No. 2818 of 2001.

2. Defendant-petitioners have filed this revision petition under Section 115 of the Code of Civil Procedure 1908 (for brevity, the Code) by challenging the order dated 14.5.2001 passed by the Additional Civil Judge (Sr. Division), Phagwara. The Civil Judge has allowed the application of the plaintiff respondent filed under Order XXXIX Rules 7 and Rule 18 of the Code directing the defendant-petitioners to deposit the sale proceed of the wheat crop in the Court subject to the condition that the defendant-petitioners would be entitled to the sale proceeds if after leading evidence, they would be able to prove that they have been in exclusive possession of the suit property.

3. The plaintiff-respondents have filed Civil Suit No. 45 on 24.3.2001 for declaration to the effect that plaintiff-respondents 1 to 3 alongwith their sisters are the owners in possession of the suit land and order dated 27.10.1999 passed by the Assistant Collector, IInd Grade directing correction of khasra girdawari of the suit land in the name of father of the defendant-petitioners is illegal and unlawful. A prayer for permanent injunction restraining the defendant-petitioners from interfering in their peaceful possession had also been made. Alongwith the suit, the plaintiff-respondents have filed an application under Order XXXIX Rules 1 and 2 of the Code which was contested by the defendant-petitioners taking the stand that the defendant-petitioners have become owners by way of adverse possession of the suit land and at the time of filing the suit i.e. 24.3.2001 they have been in possession. The application was disposed of by the Civil Judge on 2.5.2001 by directing the parties to maintain status quo with regard to possession over the suit land during the pendency of the suit. During the pendency of the application, plaintiff-respondents have also filed an application on 26.4.2001 under Order XXXIX Rules 7 and 10 of the Code with a prayer for appointment of a local commissioner for the purpose of preservation and detention of the suit land. The application was contested by the defendant-petitioner by filing their reply dated 27.4.2001 in which the stand taken was that they had sown wheat crop and they had every right to harvest the same, especially when the plaintiff-respondents were living abroad. The learned Civil Judge allowed the application on 14.5.2001 by recording the following order:-

'.....But in this regard, I am of the opinion that at the time of deciding the injunction application, it could not be ascertained as to whether the plaintiffs or the defendants are in actual possession of the suit property. The fact can be determined by way of leading evidence by the parties. As such when it is not clear at this stage that the defendants are in possession of the suit property. I think the defendants have no right to get the sale proceeds of the wheat harvested by them in the suit land. As such the defendants are directed to deposit the sale proceeds of the wheat approximately to the tune of Rs. 40,000/- in the court. If after leading the evidence, the defendants are able to prove their exclusive possession over the suit property then they will be entitled to this amount. Accordingly this application stands disposed off. The defendants are directed to deposit the said amount in the court within one week.'

4. I have heard Mr. Amarjit Markan, learned counsel for the defendant-petitioners, Mr. T.S. Chauhan, learned counsel for plaintiff-respondents 1 to 3. Mr. Ashwani Kumar, learned counsel for defendant-respondent No. 5 and with their assistance have perused the record.

5. Mr. Amarjit Markan, learned counsel for the defendant-petitioners has argued that the order directing depositing the sale proceeds does not fall within the provisions of Order XXXIX Rule 7 or 10 of the Code and as such the order is without jurisdiction. Learned counsel has further submitted that harvesting of the crop by the defendant-petitioners itself is a testimony of the fact that they have been in possession and they had sold the agricultural produce. In support of his submission, the learned counsel has placed reliance on a judgment of Gauhati High Court in the case of Smt. Lalbiakthangi v. Shri H. Duna, A.I.R. 1995 Gauhati 12 and argued that an order to deposit money in the Court could be passed by the Civil Judge in a suit for recovery of money but not in a suit where ownership and possession of the suit land is claimed. Another submission made by Mr. Markan is that the Civil Judge should have disposed of the application alongwith the application filed under Order XXXIX Rules 1 and 2 of the Code which was disposed of on 2.5.2001.

6. Mr. T.S. Chauhan, learned counsel for plaintiff-respondents 1 to 3 has argued that by order dated 2.5.2001 the Civil Judge has merely disposed of an application of the plaintiff-respondents filed under Order XXXIX Rules 1 and 2 of the Code and no conclusion could be arrived at as to who was in possession of the suit land. He has further submitted that it was on account of non determination of issue with regard to possession that parties were directed to maintain status quo. Therefore, he has prayed that the order being within jurisdiction of the Civil Judge does not warrant interference by this Court.

I have thoughtfully considered the rival contentions raised by learned counsel for the parties and have perused the impugned order. It would be appropriate to make a reference to the provisions of Order XXXIX Rules 7 and 10 of the Code and the same read as under:-

ORDER

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Temporary injunctions

1 to 6. xx xx xx xx

7. Detention, preservation, inspection, etc., of subject-matter of suit.- (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,-

(a) make an order for the detention, preservation or inspection of any relevant documents or other evidence or of any property which is the subject-matter of such suit or as to which any question may arise therein. (11,4.1975).

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purpose aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, mutatis mutandis, to persons authorized to enter under this rule.

8 to 9. xx xx xx xx

10. Deposit of money, etc., in Court.- Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, the Court may order the same to be deposited in Court or delivered to such last named, with or without security, subject to the further direction of the Court.'

7. A bare perusal of Rule 7 of Order XXXIX of the Code shows that it pertains to detention, preservation and inspection of the property which may be the subject matter of suit. Obviously, the provision is for inspection of property or for its detention and preservation. It has got nothing to go with the depositing of money in the Court. A perusal of Rule 10 of the Code shows that where the subject matter of suit is money like a suit for recovery of a particular sum, then if a particular amount is admitted to be due to the plaintiff, then the defendant admitting the claim could be asked to deposit the aforesaid amount in Court. In other words, this rule would apply in cases where a party making admission holds the property or other thing like a trustee. Therefore, in the absence of these two basic ingredients, the provisions of Order XXXIX Rule 10 of the Code would also not be attracted especially when the application under Order XXXIX Rules 1 and 2 of the Code has been decided directing the parties to maintain status quo.

8. The provisions of Order XXXIX Rule 10 of the Code also came up for consideration before the Gauhati High Court in the case of Smt. Lalbiakthangi (supra). The Gauhati High Court concluded that Rule 10 contemplates deposit of an amount in the Court when the subject matter is money or some other thing capable of delivery. The observations of Gauhati High Court read as under:-

'.....Rule 10 contemplates, deposit of money in the Court when the subjectmatter of the suit is money or some other thing capable of delivery. The second condition appears to be that the other party should admit that he holds such money or thing as a trustee for another party. In other words, the provision

contained under Order 39, Rule 10, C.P.C. shall be attracted when the subject matter of the suit is money or some other thing capable of delivery. It appears the further requirement is that it should be admitted by a party that the money or the thing which is the subject matter of the suit is held by it as a trustee for another party or it belongs or is due to another party. Unless these two conditions are satisfied, it appears no order in terms of Rule 10 can be passed.'

9. The principles enunciated in Order XXXIX Rule 10 of the Code as interpreted by the Gauhati High Court when applied to the facts of the present case, it becomes obvious that neither any suit for recovery of dues has been filed by the plaintiff-respondents nor any admission has been made by the defendant-petitioners with regard to any dues which may warrant issuance of a direction for depositing of the aforementioned amount of sale proceeds. It is also clear from the facts that according to order of status quo, defendant-petitioners would be deemed to be in possession as they had harvested the crop and have sold the same. Plaintiff-respondents 1 to 3 cannot achieve indirectly what they had failed to achieve directly as they failed in the application filed under Order XXXIX Rules 1 and 2 of the Code. Therefore, the order dated 34.5.2001 passed by the Civil Judge is without jurisdiction and if allowed to stand, it would cause manifest injustice to the defendant-petitioners.

10. These revision petitions are being decided without going into the question as to whether an appeal under Order XLIII Rule 1 of the Code is competent because under Sub-rule (r) of Rule 1 of Order XLIII of the Code, an appeal is provided against an order passed under Order XXXIX Rule 10 of the Code because the order appears to have been passed under Order XXXIX Rule 7 of the Code. Moreover, once the order is without jurisdiction and causes manifest injustice to the defendant-petitioner. I do not consider it appropriate to relegate the defendant-petitioners to the appellate jurisdiction at this stage merely because the impugned order might fall within the provisions of Order XXXIX Rule 10 of the Code.

11. For the reasons recorded above, these revision petitions are allowed. Order dated 14.5.2001 passed by the Civil Judge is set aside.

