

Shiv Narayan Vs. State Through D.C.Bhilwara and Anr

Shiv Narayan Vs. State Through D.C.Bhilwara and Anr

SooperKanoon Citation : sooperkanoon.com/66871

Court : Rajasthan Jodhpur

Decided On : Oct-28-2015

Appellant : Shiv Narayan

Respondent : State Through D.C.Bhilwara and Anr

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

S.B.CIVIL MISC.APPEAL NO.296/2014 Shiv Narayan versus State of Rajasthan & Anr.

Date of judgment : 28.10.2015 PRESENT HON'BLE Mr.JUSTICE VIJAY BISHNOI
Mr.N.K.Rastogi for the appellant.

Dr.

Sachin Acharya for the respondent.

Mr.Bhanwar Singh Bhati, Secretary, Gram Panchayat, Bijoliya, Bhilwara present in person.

BY THE COURT:- This misc.

appeal has been filed by the appellant being aggrieved with the order dated 21.11.2013 passed by the Additional District Judge No.1, Bhilwara (hereinafter

referred to as 'the trial court') whereby the application filed by the appellant under Order 39 Rule 1 and 2 read with Section 151 C.P.C. for granting temporary injunction against the non-petitioner has been dismissed.

The appellant preferred the said application for temporary injunction along with a suit filed before the trial court for granting decree of specific performance, declaration and permanent injunction under Order 7 Rule 1 and 2 C.P.C. In the suit as well as the application for temporary injunction, the appellant claimed that he purchased a plot measuring 90'x120' on 16.3.1992 from the respondent Gram Panchayat in an open auction for Rs.1,00,000/-.

It is claimed that after conclusion of the auction proceedings on 16.3.1992, the appellant deposited Rs.10,000/- and thereafter deposited Rs.90,000/- from time to time through various receipts in the Gram Panchayat, but no patta was issued to him.

It is further averred in the suit and the application for temporary injunction that a notice was sent to the Gram Panchayat through Advocate with a prayer that registered sale deed be executed in favour of the appellant for the plot purchased by him through auction on 16.3.1992, but the Gram Panchayat did not take any action.

The claim of the appellant raised in the suit and the application for temporary injunction was denied by the respondent Gram Panchayat and it is contended that no such auction proceeding, as claimed by the appellant, has taken place and there are discrepancies in 3 the receipts of deposits produced by the appellant as the file numbers mentioned in the said receipt are different.

It was also contended on behalf of respondent Gram Panchayat before the trial court that even if it is assumed that the appellant has purchased any such piece of land in the auction conducted by the Gram Panchayat, then also the claim of the appellant for execution of sale deed in respect of the said plot is not maintainable because the same is barred by limitation.

The respondent Gram Panchayat has contended that the notice issued on behalf of the appellant through Advocate is also contrary to the provisions of Panchayati Raj Rules.

The learned trial court, after taking into consideration the arguments advanced on behalf of learned counsel for the parties, has rejected the application filed by the appellant under Order 39 Rule 1 and 2 C.P.C. seeking temporary injunction against the respondents vide impugned order dated 21.11.2013.

Assailing the validity of order dated 21.11.2013, learned counsel for the appellant has argued that the appellant deposited the 4 amount of Rs.1,00,000/- from time to time with the respondent Gram Panchayat and despite request to the Gram Panchayat and various authorities, the sale deed has not been executed in his favour.

It is also argued that before the trial court various receipts regarding the deposit of amount to the tune of Rs.1,00,000/- have been produced, but the trial court has ignored the said receipts and has illegally refused to grant temporary injunction in favour of the appellant.

Learned counsel for the appellant has further argued that the appellant has deposited penalty amount on a demand notice issued by the Gram Panchayat for the late payment of auction amount and in such circumstances, the Gram Panchayat cannot deny the claim of the appellant.

On the strength of above arguments, learned counsel for the appellant has prayed that the impugned order dated 21.11.2013 may be set aside and the respondents may be restrained by way of temporary injunction from alienating the plot in question till disposal of the suit.

Per contra, learned counsel for the respondent-Gram Panchayat has argued that, in 5 fact, no such auction proceedings, as claimed by the appellant, has taken place on 16.3.1992 for any plot.

It is also contended that the Gram Panchayat has never demanded any amount from the appellant for any point of time and the receipts produced by the appellant

in support of his claim that he has deposited money in lieu of the plot are also not believable because the file numbers mentioned on the said receipts are different and on many receipts the file numbers are also different from file number of the plot mentioned in the suit and the application for temporary injunction.

Learned counsel for the respondent has also argued that the suit was filed by the appellant after the period of limitation.

On the strength of above arguments, learned counsel for the respondent has argued that there is no ground to interfere in the impugned order passed by the court below.

Heard learned counsel for the parties and perused the impugned order.

Pursuant to the directions given by this Court on 7.10.2015, the Gram Sewak of Gram Panchayat Bijoliya, Bhilwara is present before the Court along with record of the Gram Panchayat.

He has submitted that file No.129/89-90 has never been prepared by the Gram Panchayat at any point of time.

He has also submitted that file No.189/89-90 was prepared in the name of one Sharda Devi and not in the name of the appellant.

It is also submitted by Gram Sewak of Gram Panchayat Bijoliya that in the meeting dated 20.12.2004, no such resolution was passed that a notice be issued to the appellant for depositing the remaining the amount of plot and the contention of the appellant is false that the Panchayat in its meeting dated 20.12.2004 has resolved to demand amount from the appellant in lieu of any plot.

The photostat copy of the minutes of the meeting dated 20.12.2004 has been produced for perusal of the Court.

After taking into consideration the facts and circumstances of the case and the material produced by the Gram Panchayat, I am of the opinion that the appellant has failed to prove prima facie case in his favour and, therefore, the learned trial court has rightly refused to grant temporary injunction against the respondent.

Whether the appellant has purchased the plot in the auction proceedings and has deposited whole amount from time to time with the Gram Panchayat is the question to be considered and decided by the trial court after pondering over the evidence produced by the parties concerned during the couRs.of trial.

Hence, I do not find any merit in this misc.

appeal.

The same is, therefore, dismissed.

The stay petition is also dismissed.

[VIJAY BISHNOI].,J.

Babulal/ 60

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