

Mangat Vs. Delhi Development Authority

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Court : Delhi

Decided On : Nov-22-1991

Reported in : 46(1992)DLT151

Judge : Santosh Duggal, J.

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

Appeal No. : Civil Miscellaneous Appeal Nos. 363 and 1827 of 1991

Appellant : Mangat

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : Rajender Dutt, Adv

Judgement :

Santosh Duggal, J.

(1) This petition under Article 227 of the Constitution of India has been filed against the order dated 18th November, 1991 passed by the trial Court before whom a suit filed by the petitioner herein is pending. It appears from the perusal of the impugned order that the case stood adjourned to 27th November, 1991 when it came up on 14th November, 1991. Mr. Rajinder Dutt, learned Counsel for the petitioner, informs that while filing the suit, the petitioner had also moved an application under Order 39 Rules 1 & 2 Civil Procedure Code seeking an order of

interim injunction restraining the respondent (D.D.A.) from demolishing the structure on the property in suit or disposing the plaintiff. He has also filed a copy of the plaint and the main prayer in the suit is also for grant of a decree of perpetual injunction which is reproduced below:

'That the plain tiff prays that a decree for issue of perpetual injunction restraining the defendant from taking demolition action and/or from forcibly and illegally dispossessing the plaintiff from property bearing Municipal No. B-8, B-22, B-49 Radhey Shyam Park Extension as shown in red in the annexed plan constructed on Khasra No. 35/3/2 and Khasra No. 8/1, situated at village Khureji Khas, Delhi opposite to B-50, Radhey Shyam Park, Delhi may be passed in favor of the plaintiff against the defendants with costs of the suit.'

(2) The Court did not deem it fit to pass an interim order in the first instance and exercised discretion under Order 27 Rule 5 Civil Procedure Code granting time to the learned Counsel for D.D.A. to file written statement and documents, and then hear the matter after the pleadings are complete.

(3) The petitioner by a subsequent application which was disposed of by the impugned order passed on 18th November, 1991 pleaded that inspire of pendency of the suit, the D.D.A. has allegedly resorted to demolition of the property and the prayer was reiterated that pending further orders, the defendant should be restrained From forcibly dispossessing the petitioner. The learned Court, however, thought it fit to adjourn this application also, to 27th November, 1991, after written statement and documents had been filed by the defendant.

(4) I have heard the learned Counsel for the petitioner. On a totality of the facts and circumstances, I am of the view that after some new facts were brought to the notice of the Court by means o!' the application under Section 151 Cpc, the Court ought to have exercised its jurisdiction in an appropriate manner, and not just adjourn the consideration of the application to the date fixed. To that extent, there is failure on the part of the learned Court to exercise jurisdiction. It is understandable for the first application under Order 39 Rules 1 & 2 Civil Procedure Code to have been adjourned so that complete facts and documents could come on record but after the plaintiff complained of demolition during the pendency of

the suit, and prayed for some direction of the Court till the application was finally disposed of, it was fit case for the Court to take up the said application for consideration, and not just adjourn it. The case is now fixed for 27th November, 1991 when the trial Court is expected to hear the application under Order 39 Rules 1 & 2 CPC. This petition will become infructuous after the Court passes appropriate orders on merits in the light of the pleadings between the parties, and the documents filed.

(5) The present petition is, therefore, allowed to the limited extent that till the application under Order 39 Rules 1 & 2 Civil Procedure Code is disposed of on merits by an appropriate order, after hearing both the parties, the possession of the petitioner in the suit property be protected by directing the Delhi Development Authority, (respondent herein) not to dispossess the petitioner forcibly, till then. It goes without saying that if the D.D.A. has any authority under law or means of taking possession, they shall be free to do so, after observing due process of law.

(6) Both the petition and the application stand disposed of in the aforesaid terms.
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(7) Allowed subject to just exceptions. Mr. Rajinder Dutt undertakes to file the certified copy in the registry as and when the Sums is made available to him.
Order accordingly.

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