

Shamsher Vs. Rustam and ors.

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Court : Rajasthan

Decided On : May-06-1987

Reported in : AIR1988Raj188; 1987(2)WLN224

Judge : D.L. Mehta, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 2; [Evidence Act, 1872](#) - Sections 17

Appeal No. : Civil Misc. Appeal No. 346 of 1985

Appellant : Shamsher

Respondent : Rustam and ors.

Advocate for Def. : Jagdeep Dhankar, Adv.

Advocate for Pet/Ap. : H.C. Rastogi and; J.P. Goyal, Adv.

Judgement :

D.L. Mehta, J.

1. Heard learned counsel for the parties.

The plaintiff-appellant instituted a suit for specific performance on the basis of sale deed dated 12th July, 1985 and prayed that the sale deed may be got registered and the defendants may be directed to get it verified In the sale deed, there is a

reference that the possession of the disputed land has been delivered to the purchaser.

2. The purchaser plaintiff-appellant moved an application under Order 39 Rules 1 and 2 C.P.C. that an injunction may be issued prohibiting the defendants-respondents not to interfere with their lawful possession. The learned court below considering the provisions of Section 37 and the decision of the Madras High Court in a case of Krishnamoorthy v. Paramasive, AIR 1981 Mad 310 held that temporary injunction cannot be granted to enable the vendee to protect his possession. The Madras High Court was of the view that in a suit for specific performance of an agreement of sale by the prospective vendee, such vendee can-not be granted temporary injunction to enable him to protect his possession only on the basis of the terms of the agreement that he was given possession of the property on the date of agreement of sale unless the truth of delivery possession is established at the trial.

3. Provisions of Section 37 read with Section 53A of the Transfer of Property Act were considered by the Bombay High Court and the Bombay High Court was of the view that where the 'case of the plaintiff is that under an agreement of sale he has been put in possession of the suit land and prima facie when the agreement itself recites that the possession has been delivered to the plaintiff and the agreement is on stamp paper and execution thereof is admitted by the defendant then the plaintiff is entitled to the relief of injunction, in a suit seeking specific performance of agreement. The Bombay High Court has discussed the case of the Madras High Court in a case of Venkat Dharmaji v. Vishwanath, AIR 1983 Bom 413.

4. Order 39, Rule 1, C.P.C. provides that when the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may grant temporary injunction to restrain such act or make such other order for the purpose of preventing the dispossession of the plaintiff or for the purpose of preventing the causing of injury to the plaintiff in relation to any property in dispute. Thus, injunction is a preventive relief. If a party to the suit invades the right of possession of the other party in any manner

which results in causing obstruction to the peaceful legal enjoyment of that right, other party can invoke the provisions of Order 39 Rules 1 and 2, C.P.C. and can claim relief of injunction in the suit itself. Injunction is a preventive relief and is generally granted taking note of the equity. The right to enjoy peacefully the property is an important right attached to any interest which may be carved out as a title of the plaintiff or as a right to continue in possession. Section 53A of the Transfer of Property Act cannot be used as a sword but can be used as a shield. In the instant case the plaintiff has come with a case that under a sale deed dated 12th July, 1985 he has obtained the possession and he wants to protect the possession which he has acquired under the sale deed dated 12th July, 1985. He does not want to use the unregistered sale deed as a sword but he wants to use it as a shield and wants to get the benefit of provisions of Section 53A of the Transfer of Property Act. Admission of party can be used against the party making an admission of course, the party making the admission as a right to rebut the admission so made and can plead and can prove that the admission so made is not true. The burden shall be of the party who wants to show that the admission as made is untrue. In the instant case, there is an admission of the party executing the sale deed and that execution can be used against the party making it. At the same time on the basis of the pleadings and particularly of the plaint, the cause of action has accrued to the plaintiff to protect the right of possession if any and this cause of action is by way of shield and he wants to use this as shield by getting a preventive relief of temporary injunction. He does not seek any relief other than a preventive relief to protect his right, if any, accrued under Section 53A of the Transfer of Property Act. In such circumstances, the court cannot be helpless and should not be helpless and should pass necessary order which is just, proper and equitable in the facts and circumstances of each case. I agree with the view taken by the Bombay High Court that the temporary injunction can be granted by the Court even in such cases on the basis of the admission so made. If the court is satisfied that the admission so made, give the true picture of the case prima facie. It is for the parties to establish before the court below that who is in possession whether the recital in the document is correct or not and the burden lies on the party who wants to go back from his own admission to disprove this position that he has not correctly stated the recitals.

5. Apart from that, now we are running in the year 1987. The revenue record of the 'Kharif of 1985,'Ravi' of 1986 and subsequent revenue records may be helpful also for finding out the truth about the recitals relating j to the possession. None of the parties have produced the revenue records before this Court. In such circumstances, I consider it proper that the order dated 30th October, 1985 should be set aside. The case should be remanded back to the trial Court for decision according to law in the light of the observations so made in the order. The parties will be at liberty to produce further documentary material or affidavits before the trial Court. The appeal is accepted as indicated above and disposed of accordingly.

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