

Vinay Kumar Vs. Devi Lal and ors.

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Court : Rajasthan

Decided On : Mar-29-2006

Reported in : RLW2006(2)Raj1441; 2006WLC(Raj)UC483

Judge : Prem Shanker Asopa, J.

Appeal No. : S.B. Civil Writ Petition No. 1884 of 2005

Appellant : Vinay Kumar

Respondent : Devi Lal and ors.

Advocate for Def. : K.C. Sharma, Adv.

Advocate for Pet/Ap. : Nitin Jain, Adv.

Disposition : Writ petition allowed

Judgement :

Prem Shanker Asopa, J.

1. With the consent of parties, the case was heard for final disposal.
2. That by this writ petition the petitioner seeks to challenge the order of rejection of T.I. Application dated 27.10.1999 as affirmed by the appellate court on 3.3.2005 in a civil suit for permanent injunction as well as mandatory injunction along with temporary injunction application against the respondent-defendant No. 1.

3. The case of the plaintiff-petitioner is that he has been allotted a plot by the Gram Panchayat on 28.8.87 after confirmation of the bid on 13.9.86.
4. Further case of the petitioner is that he has paid full amount and he is in possession of the said plot. It was also pleaded in the plaint that the defendant interfered with the possession of the plaintiff over the plot in dispute and started to fill the plinth. Therefore, the aforesaid civil suit was filed along with T.I. Application.
5. The defendant filed his written statement as well as the reply to the application for Temporary Injunction, wherein he denied the contents of the plaint. It was pleaded by him that the plaintiff has mentioned the wrong description in the site plan annexed with the plaint. He has also submitted that the plot in dispute was allotted to him on 17.3.1990.
6. That after hearing both the parties Trial Court rejected the temporary injunction application on the ground that the boundaries have not been correctly shown in the map produced by the plaintiff. Further the Trial Court has also given a finding that boundaries of the plot of the defendant appears to be correct and ultimately held on 27.10.99 at the time of rejection of T.I. Application that there is no prima facie case. Balance of convenience is also not in his favour and no irreparable loss will be caused to the petitioner-plaintiff.
7. Against the said order, an appeal was filed by the petitioner and in appeal the Commissioner was appointed and the file of the Gram Panchayat was also summoned. Thereafter, the appellate court has also concluded that there is no prima facie case and the Trial Court has not committed any error in coming to the said conclusion and further gave the finding that balance of convenience, irreparable loss is also not in favour of the petitioner.
8. The submission of the counsel for the petitioner is that both the courts below have virtually decided the boundaries of the plot of the plaintiff-petitioner while deciding the issue of prima facie case. The further submission of the counsel for the petitioner is that in such kind of cases, if the boundaries of the plots are disputed then the same could only be effectively adjudicated by allowing the parties to adduce the evidence and till then the order of status-quo ought to have

been passed.

9. The counsel for the respondent has submitted that there is a concurrent finding in his favour so this Court under Article 227 Ought not to interfere with the said concurrent finding.

10. I have perused the record of the writ petition and considered the submissions of the parties.

11. I am of the view that from the stand taken by both the parties in civil suit, written statement, T.I. Application and its reply, it appears that both the parties are disputing the boundaries of their own plots. Therefore, there exists a bonafide dispute of boundaries. Under such circumstances, both the courts below ought to have passed the order of status- quo and then fixed the case for evidence of the parties. I am further of the view that in case the status-quo with regard to plots of both the parties is not maintained, and the matter is not decided finally at an early date, then it would be very difficult for the Court to restore the original position in case the petitioner succeeds in the civil suit.

12. In Anand Prasad Agarwalla v. Tarkeshwar Prasad and Ors. A.I.R. 2001 SC 2367, Supreme Court has held that the Court cannot hold mini trial at stage of grant of temporary injunction and examine various aspects of the case.

The relevant portion of para 6 is as follows:

It may not be appropriate for any Court to hold mini trial at the stage of grant of temporary injunction....

13. Both the courts below have committed an error of law in inquiring the matter in detail while deciding the issue of prima facie case, which is not permissible as per judgment of Supreme Court while deciding T.I. Application.

14. Thus the contention of the petitioner has merit whereas the contention of respondents are devoid of merit.

15. In the result, the writ petition is allowed. The judgments of both the courts below dated 27.10.1999 passed by Civil Judge Junior Division and Judicial

Magistrate I Class, Kekri Ajmer and 3.3.2005 passed by Additional District and Sessions Judge, Kekri Ajmer, are set-aside, parties are directed to maintain status-quo as exists today and the Trial Court is further directed to decide the civil suit finally within a period of six months from the date of production of certified copy of this order.

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