

Surajmal Vs. Ramdayal and ors.

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Court : Rajasthan

Decided On : Aug-30-1978

Reported in : 1978WLN(UC)260

Judge : S.K.M. Lodha, J.

Appeal No. : S.B. Civil Revision No. 151/1978

Appellant : Surajmal

Respondent : Ramdayal and ors.

Advocate for Def. : Mr. S.N. Vyas

Advocate for Pet/Ap. : Mr. K.C. Samdariya

Judgement :

S.K.M. Lodha, J.

1. This is a plaintiff's revision directed against the order of the District Judge, Pali dated April 11, 1978 by which he dismissed die petitioner's appeal against the order dated April 6, 1978 passed by Munsiff Pali whereby maintaining the rejection of the petitioner's application under Order 39 Rules 1 & 2 read with Section 151 C.P.C. for the grant of temporary injunction.

2. The plaintiff instituted a suit for permanent prohibitory injunction in the court of Munsif, Pali. The case of the plaintiff, as unfolded in the plaint, is that he is a Godolia Luhar, that he was allotted a piece of land in the year 1956 and that on a part of the land so allotted, he constructed his house and left the land open marked ABCD shown in red colour in the plan appended to the plaint open. This portion is the subject matter of dispute in the suit. His case further is that he has been residing in the house so built and has been doing his work of ironsmith upon the land in suit since 1956. In order to show his possession over this disputed portion of land, it has been alleged that he has been keeping his tools and other materials upon it. His case is that when he came to know that the defendants have been accorded permission for construction on the land marked A B C D shown in red colour, it became necessary for him to institute the suit on March 29, 1978. The plaintiff-petitioner moved an application before the trial court Under Order 39 Rules 1 & 2 read with Section 151 C.P.C. praying that the defendants non-petitioners may be restrained from raising any construction on the land in suit and from dispossessing him. It was also prayed that the defendants may be directed not to interfere with the peaceful possession of the plaintiff on the land in dispute. In support of this application the plaintiff-petitioner filed an affidavit of Shri Banshilal & Bajranglal. This application was resisted by the defendants and they filed a reply dated March 30, 1978. An affidavit of Ram Dayal defendant was submitted in support of the reply on April 5, 1978. The learned munsiff appointed Shri Ramesh Chandra Advocate as the Commissioner for submitting the Report after inspection of site as to who is in actual possession of the land in suit. The Commissioner was directed to submit the report on the day of April 5, 1978. A perusal of this report of the Commissioner shows that he did not mention in it as to who is in actual possession over the land in dispute but he, however, clearly stated that on spot on the land marked ABCD some articles of the plaintiff made of iron were lying and they appeared to be old and rusted along with the plan the plaintiff submitted. The defendants submitted written statement on March 13, 1978 and along with the written statement they filed sale deed dated August 16, 1958 executed by the president Municipal Board Pali in favour of Bhuramal s/o Asulal representative of the entire khatri community of Pali original rent note dated Sawan Sudi 15, 2020 executed by the plaintiff petitioner in favour of the defendant Ramdayal in his

capacity as Mukhiya of the Khatri Panchayat copy of the notice was given by the defendants to the plaintiff in July 25, 1957, acknowledgment evidencing the service of the notice and certified copy of the objections filed by the plaintiff in the Municipality dated October 11, 1977 and order of Municipal Board, Pali dated March 9, 1978. The learned Munsiff after hearing the arguments of the learned Counsel for the parties dismissed the application of the plaintiff for the grant of temporary injunction.

3. Being dissatisfied with that order, the plaintiff went in appeal and the learned District Judge Pali by his order April 11, 1978 dismissed the appeal.

4. Aggrieved by the order of the District Judge, Pali, the plaintiff petitioned has filed the revision as aforesaid.

5. Learned Counsel for the defendant non-petitioners submitted an application dated 6-5-58 submitted by the plaintiff petitioner to the collection and the order dated May 13, 1959. A reply to this application was submitted in behalf of the plaintiff-petitioner on August 13, 1978. However learned Counsel for the non-petitioner before the commencement of the arguments in the revision petition stated that he does not press his application dated August 7, 1978 filed Under Section 151 CPC and therefore the document submitted along with this application were ordered to be ignored as prayed by him.

6. have heard Mr. K.C. Samdariya, learned Counsel for the petitioner, and Mr. S.N. Vyas, learned Counsel for the defendants non-petitioners and have also gone through the record of the case. A perusal of the plaint show that the case of the plaintiff is that he has been in continuous possession of the land in dispute marked ABCD & shown in red colour in the site plan submitted with the plaint & that defendants want to raise construction wrongfully dispossessing him, He has also stated that his peaceful possession may not be interfered with, and perpetual injunction be granted restraining them from dispossessing him. In the written statement it was stated by the defendants that the plaintiff was in possession of the disputed land as tenant from Samwat 15, Samwat 2020 to Asoj Sudi 15, Samwat 2024 and he delivered its possession back to them on Asoj Sudi 15 Sanwat 2024 and as such there is not adverse possession of the plaintiff against

the defendants. In reply to the application for the grant of temporary injunction in para 2 of the reply, it was stated that **izkFkh dk dCtk fooknkLin Hkwfe ij 22 lky ls iqjkuk ugha g SA**.

In para 5 of the reply it was reiterated that **izkFkh dk dCtk fooknkLin Hkwfe ij 22 lky ls iqjkuk ugha g SA vkSj u izkFkh dk ,Mo'kZ its'ku g SA** In these circumstances it is clear that there is a dispute between the parties as to who is in actual possession of the land marked A B C D shown in red colour in the site plan. The trial court as is clear from the order-sheet dated April 5, 1978 of Civil Misc. Case No. 6 of 1978 was quite aware of this fact and that is why it recorded the order **vkns'k fy[kokus ls iwoZ ge dfe'uj dks ekSds ij oknxzgr Hkwfe ij dCts ds ckjs esa fLFkfr dh fjiks VZ dk voyksdu djuk vko';d le>rs gSaA vr% odhy Jh jes'kpUnz dks dfe'uj fu;qDr fd;k tkdj ekSds ij fooknxzLr Hkwfe ij fdldk dCtk gS mlds ckjs esa fjiks VZ izLrqr djus dk vkns'k fn;k tkrk g SA**

The plaintiff will only be entitled for grant of temporary injunction, in case, he can satisfy the court that he is in possession of the land in suit. I asked the learned Counsel for the defendants-non-petitioners to point out from the order of the Munsiff, the finding on the question as to who is in possession of the land in dispute? He, in reply, pointed out the following extract from the judgment of the Munsiff **vr% bl izdkj ge ns[krs gSa fd oknh oknxzLr Hkw [k.M ij viuh izFkek n`Vok i{k vFkkZr Lo;a dk ,Mo'kZ its'ku fl) ugha dj ldk g SA

The learned Munsiff concluded that even on the basis of the report of the possession adverse possession has not been proved and. therefore, he did not find prime facie case in favour, of the plaintiff After considering balance of convenience & irreparable injury, he dismissed the application for the grant of temporary injunction. I also asked the learned Counsel for the non-petitioner to refer to that point of the judgment where in the learned District Judge has found that the plaintiff is not in possession of the land in dispute. He pointed out the following findings from the judgment under revision' mY foospu ds vk/kkj ij izFkok n`Vok vihykFkhZ fooknxzLr Hkwfe ij Lo;a dk foeq[kkf/kdkj gksuk izekf.kr ugha dj ldk gSaA** and on this basis the learned Judge concluded that there is no prima facie case in favour of the plaintiff.

7. The real point which was necessary for disposing of the application for the grant of temporary injunction, in the first place, was whether the plaintiff was in possession of the land in dispute as alleged by him on the date of the institution of the suit or for that matter of the day when the application for grant of temporary injunction was moved. Both the courts completely missed to record finding on this point. It is the finding on this point which is crucial for the disposal of the application. The three essential conditions for the grant of temporary injunction, namely prima facie case, balance of convenience and irreparable injury are to be considered in the light of the finding on the question as to whether the plaintiff is in possession or not. In these circumstances, I am constrained to hold that the learned District Judge has exercised his jurisdiction illegally and with material irregularity in maintaining the order of the Munsiff who rejected the application for grant of temporary injunction submitted by the plaintiff-petitioner. The approach of the lower court in hearing the appeal was, therefore, wrong. For the reasons mentioned above, it is necessary to remand the case to the lower appellate court for deciding the appeal of the plaintiff afresh after recording a finding on the point as to whether the plaintiff is in possession of the land in dispute or not. It is expected that the learned District Judge will take all relevant material placed on record into consideration for determining whether all the three conditions, referred to above, for the grant of temporary injunction exist or not.

8. The result is that I accept the revision application and set aside the order of the learned District Judge dated April 11, 1978 and remand the case for fresh decision in the light of the observations made above. In the circumstances of the case, I leave the parties to bear their own costs of the revision application.