

Mangilal Vs. Ichku Devi and ors.

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Court : Rajasthan

Decided On : Apr-27-1998

Reported in : AIR1999Raj6

Judge : P.C. Jain, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 39, Rule 2A

Appeal No. : Civil Revision Petition No. 942 of 1995

Appellant : Mangilal

Respondent : ichku Devi and ors.

Advocate for Def. : B.M. Bohra, Adv.

Advocate for Pet/Ap. : K.C. Samdariya, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.C. Jain, J.

1. This is defendant-petitioner's revision petition filed against the order dated 4-8-1995 passed by the learned Civil Judge (Junior Division), Sojat in Civil Misc. Case No. 70/95.

2. The dispute between the parties is with regard to a 4-5 ft. wide land existing between their houses. The case of the non-petitioners-plaintiffs is that the above land is meant for discharge of rain water. The plaintiff also uses his gate 'X' for going into his nohra for the purpose of keeping his cattle, fodder etc. The gate 'X' is situated towards the north of the lane. The plaintiff alleged that the defendant wanted to usurp the land and in order to achieve the above object, has created the disturbances. He has erected a thorn fence and also collected stones and made a kachha wall in order to obstruct the above gate of the plaintiff. Along with the suit, the plaintiff-non-petitioners also filed an application under Order 39, Rules 1 and 2 C.P.C. Notice of the application was issued to defendant-petitioner. The trial Court also appointed a Commissioner to inspect the site and submit a report. The Court passed an order on 21-12-1994 for maintaining the status quo. The plaintiffs moved an application on 21-2-1994 under Order 39, Rule 2-A read with Section 151, C.P.C. in which a complaint was made that the defendant-petitioner has disobeyed the order passed by the Court on 21-2-1994 for maintaining the status quo. It was alleged by the plaintiff that after passing of the order dated 21-12-1994, the defendant-petitioner has erected a thorn fence and also a temporary wall of stones and obstructed the gate through which the plaintiffs used to enter into his nohra. On 2-8-1995, the plaintiffs also moved an application under Section 151, C.P.C. praying for the removal of the above obstruction. In other words, the plaintiffs prayed for injunction in the mandatory form. The plaintiffs prayed that the above obstruction-be removed with the help of the police. The defendant-petitioner was given notice. The defendant denied to have created any obstruction as alleged by the plaintiffs. It was further stated by the defendant-petitioner that the plaintiffs never used the nohra gate inasmuch as the plaintiffs has got a separate gate of his use. The thorn fence ,was erected by the plaintiffs himself. The Court again appointed a Commissioner who inspected the site and submitted his report on 26-2-1995. In the report, the Commissioner has stated that he tried to give notice to the defendant-petitioner but the latter refused to receive the same. The Commissioner has stated in the report that near the gate 'X', a temporary wall or chabutra has been erected with stones and at place 'Z', in-front-of the gate of the plaintiff, a thorn fence was also found. According to the report of the Commissioner, the gate 'X' of the nohra of the plaintiff has been obstructed. After

considering the report of the Commissioner and taking stock of the whole situation, the Court felt persuaded to allow the application of the plaintiff and made an order to the Assistant Nazir to remove the above obstructions with the help of the police. In compliance of the above order, the Assistant Nazir, with the help of the police, removed the obstructions and submitted his report dated 7-8-1995. According to the report submitted by the Assistant Nazir, he found a kachhachabutra on the land as also the thorn fence. He removed the above obstructions with the help of the police.

3. I have heard learned counsel for the petitioner and the learned counsel for the non-petitioners.

4. Learned counsel for the petitioner has assailed the above order on the ground that the learned Civil Judge has committed jurisdictional error in passing the impugned order for removal of the chabutra which was not a new one but an old one and was existing even at the time of filing of the suit by the plaintiffs. The learned trial Court ought to have made a complete and satisfactory inquiry about the allegations made by the plaintiffs regarding the obstruction created by the defendant. Only a notice was given to the petitioner-defendant and no inquiry was made. The report of the Commissioner is also partisan and prejudicial to the interest of the petitioner inasmuch as the petitioner was not associated with the inspection made by the Commissioner. It was not at all proved that the petitioner erected the chabutra and the thorn fence in defiance of the status quo order passed by the Court on 21-12-1994. The gate 'X' shown in the site plan annexed with the plaint was never used by the plaintiffs. The plaintiffs have been using another gate. Hence the allegations made by the plaintiffs for causing obstructions was not tenable and no irreparable loss was caused to the plaintiffs by the alleged obstructions. The learned trial Court further erred in entertaining the application moved by the plaintiffs under Section 151, C.P.C. when the application filed by the plaintiffs under Order 39, Rules 2-A, C.P.C. was pending decision.

5. Learned counsel for the non-petitioners has supported the impugned order on the ground that from the two reports of the Commissioner, it was apparent that after passing of the status quo order by the Court on 21 -12-1994, the petitioner

erected a stone platform and also thorn fence in-front-of the gate of the plaintiffs. The learned trial Court did not commit any error in acting on the report of the Commissioner and giving prompt relief to the plaintiffs which was necessitated in the facts and circumstances of the case inasmuch as the gate 'X' was totally obstructed by the acts of the defendant-petitioner. He has placed reliance on Mr. Thakur Das v. Harijan Sudhar Samiti, 1995 Civ Cr 337 (P & H) in which the Punjab and Haryana High Court has laid down that when respondent was trying to obstruct petitioner's right under injunction order, the petitioner moved trial Court for police help but his request was declined by the trial Court. It was held that the learned Judge should have issued instructions to the police to help the petitioner to act in terms of injunction order.

6. I have considered the rival contentions. It is not disputed that the Court passed an order maintaining the status quo on 21-12-1994. The above order was passed by the Court after taking into consideration the report of the Commissioner that was appointed by the Court before issuing the above order. Thereafter the plaintiffs made a complaint of defiance of the Court order and moved an application under Order 39, Rule 2-A, C.P.C. against the petitioner. That application is still pending decision. Shortly thereafter, the plaintiffs also moved an application under Section 151, C.P.C. praying for removing the obstructions which were placed by the petitioner-defendant obstructing the paces of the plaintiffs. The trial Court again appointed a Commissioner. In the report, the Commissioner has stated that he tried to associate the petitioner with the inspection but the latter refused to take notice. The Commissioner, therefore, had to inspect the site and submit the report. From the report of the Commissioner, it is apparent that he found Kachha stone platform. When the Court considered the two reports of the Commissioners, it was apparent that the above obstructions were placed after the issuance of the Court order maintaining the status quo. The existence of gate 'X' which opens in the nohra of the plaintiffs is not denied. When the plaintiff has got a gate 'X' in his nohra, he has got every right to use the same and if any obstruction has been placed, he can also pray the Court for its removal if necessary even with the help of the police, which was exactly done by the trial Court. The trial Court, in my opinion, has not committed any error because the impugned order was passed on the basis of the reports of the Commissioners. I agree with the view of the

Punjab and Haryana High Court that in such a situation, the Court, under Section 151, C.P.C., can order removal of obstructions even with the help of the police. I do not find any substance in the objection of the learned counsel for the petitioner that such an action under Section 151, C.P.C. could not have been taken when the application under Order 39, Rule 2-A, C.P.C. was pending. The matter covered by such an application is entirely different and the relief given invoking the powers conferred by Section 151, C.P.C. is entirely different. The exigency of the situation justified the exercise of the powers conferred by Section 151, C.P.C. for removing the obstructions even with the help of the police.

7. For the above reasons, I do not find any substance in the revision petition and the same is hereby dismissed.

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