

Deva and ors. Vs. Godar and ors.

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SooperKanoon Citation : sooperkanoon.com/758311

Court : Rajasthan

Decided On : Nov-11-1978

Reported in : 1978WLN(UC)354

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Revision No. 342/1978

Appellant : Deva and ors.

Respondent : Godar and ors.

Disposition : Application dismissed

Judgement :

S.K. Mal Lodha, J.

1. This is a plaintiff's revision against the order of the learned District Judge, Udaipur dated September 14, 1978 by which he vacated the order of temporary injunction dated August 28, 1978 passed by the learned Munsiff, Kanor and arises out of an application filed by the plaintiffs-petitioners under Order XXXIX Rule 1 read with Section 151, C.P.C.

2. The plaintiffs-petitioners instituted a suit for declaration and permanent injunction against the defendants-non-petitioners in the court of Munsiff, Kanor alleging that they have been using the disputed land marked MN and the entrance

marked XY shown in the plan appended to the plaint for going to their fields bearing Khasras Nos. 363 and 361. It was also mentioned that for cultivation and for bringing the harvest & crop by bullock carts, the way marked MN has been continuously used by them and that is the only way for going to the plaintiffs' fields. It was prayed in the plaint that the defendants maybe restrained by means of permanent prohibitory injunction from interfering with their right of way as stated by the plaintiffs. The suit was based on acquisition of easement right of way by prescription. The alleged right of way has been claimed through the field bearing khasra No 359 of the defendants. Along with the plaint, an application under Order XXXIX Rule 1 and 2 read with Section 151, C.P.C. was submitted on July 21, 1978. praying for issuance of a temporary injunction. It appears that on this application, an ex parte Order was made. On July 25, 1978, the plaintiffs submitted an application that after the issuance of the ex parte interlocutory injunction the defendants had raised a sand wall 2' high at the entrance marked XY whereby obstructing the way by which the plaintiffs used to take their bullock carts to their fields. It was, therefore, prayed that mandatory injunction, be issued for the removal of the aforesaid sand wall. This application for the issuance of the interlocutory mandatory injunction was opposed by the defendants stating that the application has been filed by suppressing true facts in as much as on a portion of khasra No. 359, Jawar had been sown and the crop of duration of 20 days has been standing on it. It was also stated that the plaintiffs have another way near the railway crossing between Kanor and Pit pure and it was therefore submitted on their behalf that status quo, as it existed on the date of the suit and subsequent thereto may be allowed to be maintained. In view of the allegations & the counter-allegations in this regard made by the parties, the Commissioner was appointed by the court for site inspection and the Presiding Officer of the court also inspected the site. After arguments, the learned Munsiff found that all the three conditions necessary for the grant of the temporary injunction were satisfied and, therefore, he directed that the sand wall be removed and the defendants should not interfere with the plaintiffs' alleged right of way marked MN through the entrance XY for going to their fields. He gave certain other and liary directions in this regard. Being dissatisfied with the order of the learned Munsiff granting interlocutory injunction in mandatory and prohibitory forms, the defendants went in appeal and the learned

District Judge, by his order dated September 14, 1978 accepted the appeal and set aside the order of the learned Munsiff dated August 28, 1978 & dismissed the plaintiffs' application under Order XXXIX Rules 1 and 2 read with Section 151, C.P.C.

3. Aggrieved by this order of the learned District Judge, Udaipur dated September 14, 1978, the plaintiffs have come up before this Court in revision. It may be stated here that while disposing of the appeal, the learned District Judge found that so far as the condition of prima facie case is concerned, it exists in favour of the plaintiffs. As regards the balance of convenience and irreparable injury, the learned Judge observed as under,

vxj oknhx.k dh nwljk jkLrk miyC/k u gks rks bl jkLrs esa :dkoV gksus ls ml ds [ksr 363 o 361 dks Qly ds fy, mls vikj {kfr gksuk ugha ekuk tk ldrk gS ,slh ifjfLFkfr esa lgqfy;r Hkh oknhx.k ds gd esa gksuk ekuk tk ldrk g SA ,slh lwjr esa ;g ns[kuk vko';d gS fd D;k oknhx.k dks vius [ksr ua- 363 o 361 @& esa tkus ds fy;s vkSj dksbZ lk/ku jkLrk miyC/k gS ;k ughaA

It is therefore clear that the learned Judge was not satisfied that all the three conditions for the grant of interlocutory injunction existed in favour of the plaintiffs. It is well established principle that a person seeking temporary injunction has to satisfy (i) that he has a prima facie case, (ii) that the court's interference is necessary to protect him from that species of injury which the court calls irreparable before his legal right is established by the trial court and (iii) that the comparative mischief or inconvenience which is likely to ensue from withholding the injunction will be greater than that which is likely to arise from granting it. The second reason given by the learned District Judge is that temporary mandatory injunction could not be granted to restore the status quo ante.

4. I have heard learned Counsel for the petitioners as well as learned Counsel for the non-petitioners and have carefully gone through the order under revision & the material that has been placed by the parties on record in this revision.

5. The learned Judge of the court below after examining the material on record found that there is in existence an alternative way available to the plaintiffs for

going to their fields and on the basis of this conclusion, he was of the opinion that it cannot be said that the plaintiffs would be put to irreparable injury. In *Girdharilal v. Smt Mahudeoi Sharma*, it has been held that it is the duty of the court while considering the grant of temporary injunction under Order XXXIX, Rule 2, C.P.C. to see whether its interference is necessary to protect the parties applying for it from the particular kind of injury which the court could call irreparable, before the legal right of the party is established at the trial. It was further held in that case that what would be comparative mischief and inconvenience resulting from the refusal of such an injunction in relation to one resulting to the other side in the event of it being granted and it is only after a careful comparison between the convenience of two sides that the court should arrive at its judicial verdict. The learned District Judge was not satisfied that all the three conditions which are necessary for the issuance of an interlocutory injunction were satisfied in this case & this was based on the appreciation of the material on record which consisted of the maps, affidavits and the agreement on which reliance was placed by the plaintiffs. Apart from that, the learned District Judge also found that the allegation of the plaintiffs that the defendants have changed the situation of the way after the institution of the suit is wrong. This was based on the certified copies of the complaint that was filed by Deva's son Gokal and his statement. As regards issuance of mandatory injunction during the pendency of the suit for restoring the status quo ante, it was observed by Shinghal, J. as he then was, in *Ramchandra Tanwar v. Ram Rakhmal Amichand and Anr.* AIR 1971 Raj. 292..there could be no question of granting an injunction under Order 39 Rule 1 or 2 C.P.C. so as to permit the plaintiff to restart that business, for it is well settled that the trial court could no more than restore the position as it stood on the date of the suit....

The learned Judge relied on the decision reported in *Landan Pictures Ltd. v. Act Pictures Ltd. and Ors.* : AIR1956 Cal428 wherein it was observed,-

It is only in very rare cases that a mandatory injunction is granted on an interlocutory application and instances where such an injunction is granted by means of an ad interim order pending the decision of the application itself are almost rare.

It is, therefore, clear that mandatory injunction can only be granted to restore the possession as it existed on the date of the suit and not that which existed before the institution of the suit. As the learned Munsiff while granting interlocutory prohibitory injunction and ad interim order of mandatory injunction, acted in disregard of the well established principles for the issuance thereof, in my opinion, the learned District Judge did not at arbitrarily or perversely or capriciously in vacating that order and dismissing the plaintiffs' application. It has not been contended by the learned Counsel appearing for the petitioners that the first appellate court had no jurisdiction to make the order that it made. Learned Counsel for the petitioner could not satisfy me that any illegality or material irregularity has been committed by the lower appellate court in making the order under revision.

6. For the reasons mentioned above, no case for interference with the order under revision is made out. Before parting with the case, I shall make one direction in this case. Since the suit itself is for grant of declaration and injunction in respect of alleged right of way the trial court shall expedite the trial of the suit and complete it within four months. Learned Counsel for the petitioners undertakes to produce in the trial court the original documents of Smt. 1925, the reference of which has been made in para 16 of the memo of revision on or before November 27, 1970, if not already filed.

7. The result is that this revision application has no force and it is accordingly dismissed without any order as to costs. The parties are directed to appeal before the trial court on November 27, 1978.