

State of Rajasthan and ors. Vs. Smt. Sohani Devi and ors.

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Court : Rajasthan

Decided On : Nov-19-1998

Reported in : AIR1999Raj126; 1999(2)WLC435

Judge : Mohd. Yamin, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96 and 151 - Order 39, Rules 1 and 2

Appeal No. : Civil Revision No. 156 of 1997

Appellant : State of Rajasthan and ors.

Respondent : Smt. Sohani Devi and ors.

Advocate for Def. : D.S. Sisodia, Adv.

Advocate for Pet/Ap. : Prakash Tatia, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Mohd. Yamin, J.

1. A civil suit was filed by Smt. Sohani Devi and Smt. Kamla Devi for permanent injunction. According to the suit the plaintiffs owned plots of land. There was a way

leading to their plots. There was an old way on the western side of the civil courts at Shahpura. This was the only way leading to their plots bearing Khasra No. 2368 to 2373. There was no alternate way leading to these plots. The defendants in order to close this way started construction of a building. Many a time it was requested not to close the way in this way and ultimately a notice under Section 80 CPC was given. Then a suit was filed.

2. The case of the defendants was that Treasury Office was constructed and the boundary wall of the office was being constructed. The plaintiffs had no right or authority to stop it. The way was denied. It was further pleaded that the agricultural land was not being used by plaintiffs for the purpose of agriculture instead it was converted into 116 residential plots of 40' x 25' each and sold to 62 different persons. Instead an alternative way was pleaded which was existing since long. The trial Court after discussing the evidence in a very elaborate manner dismissed the suit. An appeal was preferred before the learned District Judge, Bhilwara which was transferred to Additional District Judge No. 1. Since no stay was granted during the appeal the petitioners' way was closed during the night of 24th and 25th October, 1996 by the respondents State Government and others. Then during the pendency of appeal the petition under Order 39, Rules 1 and 2 read with Section 151, C.P.C. was submitted by the appellants before the appellate Judge and he after hearing both the parties ordered the petitioners to remove the obstruction and keep the site in the manner it was lying on the date of presentation of the suit. It was further ordered that the obstructions raised by the petitioners be removed within a period of 15 days. It is against this order that this revision petition has been submitted.

3. I have heard the learned counsel for both the parties at length.

4. I have to see what irregularity or error of jurisdiction has been committed by the first appellate Court in passing this order.

5. There is no doubt about it that during the pendency of suit there was an order of status quo and the petitioners after suit was dismissed, in hot haste during the pendency of appeal closed the way. It is on record that the suit was dismissed on 11-10-96 and within a short period of 10-15 days the way was obstructed by the

petitioners. The appeal is pending since 1996 and is not being disposed of by the first appellate Court. The proper course for the petitioners, who are respondents before the first appellate Court would have been to request the appellate Court to decide the appeal early instead of coming in revision before this Court. In such cases, when the things are done in such a way the Courts have not to sit as mere spectators. In 1993 DNJ (Raj) 86, Satya Narain v. Shantilal, there was a question of easementary right in a suit which was pending. Bathroom was removed during the pendency of the suit. The trial Court restored the position as on the date of filing of the suit. It was held to be a correct order.

6. In AIR 1984 Guj 10, Bhupatlal Govindji v. Bhanumati Dayalal, plaintiffs suit was for declaration her status as tenant of suit godown and for injunction restraining defendant from interfering with her possession. The suit was dismissed. Defendant put his own locks to godown before filing of appeal. It was held that an appeal is a continuation of the suit and as the defendant is shrewd enough to over reach the legal process, the Court should put its foot down and see that this shrewdness does not stand rewarded and the Court should restore the legal position which would have continued had the defendant not taken benefit of that intervening period. It was held that the appellate Court was correct in granting mandatory injunction coupled with delivery of possession without there being any formal prayer. These citations should be an eye opener for the petitioners. What the petitioners did was in hot haste and I am of a clear view that there is no error of jurisdiction committed by learned Additional District Judge in passing the impugned order dated 28-11-96.

7. Consequently, the revision petition is hereby dismissed. Learned Additional District Judge No. 1, Bhilwara is directed to decide the appeal No. 8/96 within a period of four months from today and report to this Court that he has complied with this order. No orders as to costs.