

Babu Lal Vs. Kishore Lal

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Court : Rajasthan

Decided On : Nov-18-1992

Reported in : 1992WLN(UC)580

Judge : B.R. Arora, J.

Appeal No. : S.B. Civil Revision Petition No. 485 of 1992

Appellant : Babu Lal

Respondent : Kishore Lal

Disposition : Petition dismissed

Judgement :

B.R. Arora, J.

1. This revision petition is directed against the order lited May 28,1992, passed by the Civil Judge, Jalore, by which the learned Civil Judge dismissed the appeal filed by the defendant-petitioner Babu Lal and maintained the order passed by the learned Munsif and Judicial Magistrate, Bhinmal.

2. Plaintiff Kishore Mal filed a suit for mandatory injunction against the defendant Babu Lal in the Court of the Munsif and Judicial Magistrate, First Class, Bhinmal. Alongwlth the suit, an application under Order 39 rules 1 and 2 C.P.C. for the grant of temporary injunction was, also, moved by the plaintiff Kishore Mal. It was

averred in the application that the plaintiff and the defendant obtained 2004.4 square yards of land by way of registered Gift Deed dated July 29, 1980, from their maternal uncle and since that day, they were in possession of the plot in question. They got the boundary walls constructed on all the four sides of the plot and the land was entered in the Khatedart of both these brothers. Half of the Western part of this land came to the share of the plaintiff and half of the Eastern part of this land came to the share of the defendant. On April 15, 1992, both the brothers applied for the conversion of this agricultural land for non-agricultural purposes. The competent authority ordered for the conversion of this land and granted Pattas in favour of both these brothers. The defendant was granted the Patta for the area 1002.2 square yards of the land while the plaintiff's land measuring 990.2 square yards was ordered to be converted as non-agricultural land and the remaining about 12 square yards of the land was not got converted. The plaintiff tried to raise the walls in between the plots of land of the plaintiff and the defendant, which the defendant obstructed and, therefore, it was prayed that the defendant may be restrained from obstructing the plaintiff to construct the walls in between the plots of the brothers. The defendant opposed this application. The case of the defendant was that the land was actually gifted by his maternal uncle in favour of their mother, but because the agricultural land could not be entered in the name of a lady and, therefore, he gifted the land in favour of both these brothers. It was further mentioned that the possession of the land was never given to the plaintiff and it always remained with the defendant as the income derived from this land was to be used for the purpose of giving 'Mayra' in the marriage functions of the sisters of the plaintiff and the defendant. It was specifically averred that the plaintiff is not in possession of the land in question and, therefore, no injunction can be granted In favour of the plaintiff. The learned trial Court, after giving an opportunity of hearing to both the parties, came to the conclusion that the plaintiff was in possession of the land in question and he, also, came to the conclusion that the plaintiff has got a strong prima facie case in his favour. He, also, decided the questions of balance of convenience and irreparable injury in favour of the plaintiff and granted temporary injunction in favour of the plaintiff, directing the defendant not to interfere in the use and occupation of the plaintiff and, also, not to make any interference in the construction of the walls by the plaintiff by himself or through

any other person. Dissatisfied with the order dated December 14, 1989, passed by the learned Munsif and Judicial Magistrate, Bhinmal the defendant preferred an appeal before the learned District Judge, Jalore, which was transferred to the Court of the learned Civil Judge, Jalore, who, by his order dated May 28, 1992, dismissed the appeal filed by the defendant-appellant. It is against this order that the present revision petition has been filed by the defendant-petitioner.

3. Heard learned Counsel for the petitioner and perused the order passed by the learned lower Courts.

4. The main contention, raised by the learned Counsel for the defendant-petitioner is that the plot in question remained in the possession of the defendant and, therefore, in absence of the possession of the plaintiff over this plot, the temporary injunction could not have been granted. His further contention is that both the Courts below have observed that the possession over the plot in question was with the plaintiff on the basis of the Patta, granted in favour of the plaintiff, while the Patta granted in favour of the plaintiff cannot finally show that the plaintiff was in possession of the land in question. It is not in dispute that both the brothers got 2004.4 square yards of land by way of registered Gift Deed dated July 29, 1980, and thereafter got the boundary walls constructed on all the four sides of the land. Both the brothers applied for the conversion of this agricultural land on April 15, 1992, and in those application, they specifically averred that they are the owners of the land and they are in possession of the land. The plaintiff, in his application, shows the possession over 1002.2 square yards of the Western part of this land while the defendant, in his application, showed the possession over 1002.2 square yards of land on the Eastern side. The Tehsildar made inspection of the site and after the inspection, made a report that the plaintiff is in the possession over 1002.2 square yards of Western part of this land and on the basis of that report and the enquiry made by the competent authority, the Patta was granted in favour of the plaintiff. Both the Courts below, thus, were right in holding, for the purpose of determination of the prima facie case, that the plaintiff is in possession over this part of the land. The question of balance of convenience and irreparable injury were, also, rightly decided by the learned lower Courts in favour of the plaintiff. The discretion exercised by the learned lower court cannot be said to be, in any

way, arbitrary or unjust. The order, passed by the learned lower Court, is based on the proper appreciation of the material on record. There is no material irregularity or illegality in the exercise of the jurisdiction by the learned lower Court and the learned lower Court rightly granted injunction in favour of the plaintiff non-petitioner.

5. In the result, I do not find any merit in this revision petition and the same is hereby dismissed.

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