

Pratan Ram Vs. Ramsukh

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Court : Rajasthan

Decided On : Feb-11-1987

Reported in : 1987(1)WLN624

Judge : Navin Chandra Sharma, J.

Appeal No. : S.B. Civil Revision Petition No. 74 of 1987

Appellant : Pratan Ram

Respondent : Ramsukh

Advocate for Pet/Ap. : Mr. S.R. Bhandari

Disposition : Petition allowed

Judgement :

Navin Chandra Sharma, J.

1. I have heard Mr. S.R. Bhandari, learned Counsel for the plaintiffs-petitioners in this revision and have gone through the order of the courts below.

2. This is an instance where District Judge, Merta has grossly abused the powers and jurisdiction that is vested in him by law. Having found that the possession of plot marked 'C' had already been delivered to Ramsukh defendant No. 1 as an auction purchaser of the plot in the auction held in Execution case No. 23 of 1976

at the instance of Mangu Ram decree-holder against Gordhan, Judgment debtor who is none else than the real brother of the plaintiffs-petitioners. Despite that, the District Judge firstly, imposed the condition that Ramsukh defendant No. 1 will give an under taking to the effect that in case the suit of the plaintiffs was decreed, he would restore the vacant land to the plaintiffs without claiming any expense which he may incur in the digging of the well on the said plot. No such undertaking was called for when the defendant No. 1 had been found to be in possession of the plot and it had been found prima facie by the Civil Judge, Merta that the plaintiff had no prima facie case with respect to plot marked 'C and the District Judge, Merta had not clearly found otherwise in his impugned appellate order.

3. It is also surprising that having allowed Ramsukh, defendant No. 1 to dig the well on plot marked 'C at his own risk and on furnishing the undertaking the District Judge, Merta, probably as if he was under some pressure, proceeded further to pass a contrary order directing the defendants to maintain the status quo which virtually had the effect of nullifying his earlier part of the order. Such gross and flagrant abuse of power by the District Judge should not be allowed to stand for a moment. The District Judge, Merta is impressed upon about his duty to exercise his powers vested in him by law judiciously and not arbitrarily as he had done in the instant case.

4. I allow this revision, set aside this part of the order of the District Judge, Merta dated February 3, 1987 which relates to plot marked *C and remand to him the case with the direction that he should examine the matter afresh keeping in view all those well-settled principles on the basis of which a temporary injunction is granted or refused by courts and then decide Civil Miscellaneous Appeal No. 3 of 1987 filed by the plaintiffs in his Court, after giving notice to the defendants, in accordance with law.