

Dharmi Devi Vs. Sardari Devi

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Court : Rajasthan

Decided On : Jan-14-2009

Reported in : 2009(2)WLN469

Judge : Prakash Tatia, J.

Appellant : Dharmi Devi

Respondent : Sardari Devi

Disposition : Appeal allowed

Judgement :

Prakash Tatia, J.

1. Heard learned Counsel for the parties.
2. The appellant is aggrieved against the order dt. 08.10.2007 passed by the Court of Additional District Judge, Raisinghnagar.
3. According to the appellant/plaintiff, the trial Court without deciding the question of actual physical possession passed the order to maintain status quo. It is submitted that the appellant is in possession of the property.
4. Learned Counsel for the respondent/defendant submitted that if the appellant's case is that she is in possession of the property and the trial Court has only

ordered to maintain status quo, then she cannot have any grievance. However, learned Counsel for the respondent also submitted that the respondent is in possession of the property in dispute.

5. A perusal of the facts mentioned in the impugned order itself reveals that there is a serious dispute with respect to the property in dispute and there were different litigations between the parties. Both the parties are claiming their possession over the property in dispute. The trial Court without deciding the core question, whose possession is over the property in dispute, has held that there is prima-facie case in favour of the appellant. The trial Court's own observation is that it is not possible to make clear that who is in possession of the property in dispute. If it is so, then how there can be prima facie case in favour of the appellant.

6. The Courts while deciding the injunction applications are not supposed to decide any issue finally but are required to decide the application on the basis of prima-facie satisfaction of the Court about the contentious issue. If the Court's observation that it is not possible to find out who is in possession of the property in dispute, yet if the Court grants injunction to maintain status quo virtually allowing the parties to use their might for taking possession or claiming possession. The whole purpose for granting injunction is frustrated by such type of orders. If a party is in possession, then he may obtain prohibitory injunction. If a party is not in possession of the property and may be owner of the property, cannot get prohibitory injunction and appropriate relief is mandatory injunction which can be granted by the trial Court in the peculiar facts only. If both the parties are not in possession of the property, no injunction can be granted of the nature of maintaining status quo by the parties when the parties are specifically claiming possession over the property.

7. The trial Court should have looked into all the relevant documents for recording the prima facie finding about the possession of the property as well as prima-facie case of the parties. The trial Court cannot refuse to decide this question by saying that it is not possible for the trial Court to record prima-facie finding of possession over the property of any party.

8. Even Order 39 Rule 7 CPC clearly provides that the Court has power to appoint a site inspection commissioner for obtaining the report of the property which may help the trial Court to decide the question of possession in a case where there is ambiguity.

9. In view of the above reasons, this appeal is allowed, the order of the trial Court dt. 08.10.2007 is set aside and the matter is remanded to the trial Court for deciding the injunction application afresh.

10. The trial Court will record a specific finding which is though prima-facie but there must be specific finding about possession over the property and thereafter, may pass appropriate order specifically instead of passing vague order of maintaining status quo by observing that who is in possession.

11. Both the parties are directed to appear before the trial Court on 02.02.2009. The record of the trial Court be sent to the trial Court forthwith along with copy of this order.

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