

A.A. Abdul Rasheed Vs. L.M. Basheer Ahmed Rowther and anr.

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Court : Chennai

Decided On : Oct-13-1971

Reported in : AIR1972Mad181

Judge : Gokulakrishnan, J.

Acts : Code of Civil Procedure (CPC) - Order 39, Rule 1

Appeal No. : A.A.O. No. 297 of 1971

Appellant : A.A. Abdul Rasheed

Respondent : L.M. Basheer Ahmed Rowther and anr.

Advocate for Pet/Ap. : Sri. T. R. Srinivasan

Judgement :

1. The petitioner herein filed I. A. No. 276 of 1971 in O. S. No. 65 of 1971, on the file of the Court of the Subordinate Judge, Thanjavur, under Order XXXIX, Rule 1, C. P. C., praying to pass an order of ad interim injunction restraining the respondents from entering upon the suit properties and disturbing his peaceful possession and enjoyment of the same till the disposal of the suit. The trial court dismissed that application. Aggrieved by the said order, the petitioner has filed the present appeal.

2. The petitioner's suit is for specific performance of a contract to execute a sale deed by the respondents in favour of the petitioner and for a permanent injunction. The suit properties consist of two items, of which the first item measures 99 cents and the second item measures 29 cents. The first respondent is the owner of these properties, and the appellant had taken a lease thereof for the purpose of running a cinema theatre. Ex. A-1 dated 5-3-1966 is the lease deed in favour of the appellant for a period of five years. Ex. A-2 dated 17-9-1968 is the agreement for sale of these items to the appellant by the first respondent. It is on the basis of Ex. A-2 that the plaintiff-petitioner has come forward with the suit for specific performance and for injunction. Since he is already in possession of the suit properties as lessee, he has the advantage of that possession before seeking to specifically enforce the agreement Ex. A-2. Since he apprehended interference by the respondents, he filed not merely the suit for specific performance and permanent injunction but has come forward with I. A. 276 of 1971 for an ad interim injunction. The second defendant in the suit has purchased the first item of the suit properties under the original of Ex. A-7 dated 16-2-1970, which is admittedly subsequent to the alleged agreement Ex. A-2. It is stated by the second defendant that he has got an agreement to purchase the second item of the suit properties also. The first defendant disputes the genuineness of the agreement Ex. A-2. But the same being the subject-matter of the suit, it need not be discussed and considered here.

3. It cannot be disputed that the appellant came on the suit lands only as a lessee. No doubt, the period of that lease has expired. Even though the respondents allege that the appellant has abandoned possession of the suit properties the appellant claims to be in actual possession thereof. The trial court while disposing of the interlocutory application did not advert as to who is in actual possession of the suit properties. The trial court seems to have doubted the genuineness of the agreement under Ex. A-2 at the stage of the interlocutory application itself and has further observed that after the lease under Ex. A-1, which has expired on 1-7-1971, the appellant has no legal right to continue in possession of the suit properties. It is not for the respondents to take the law into their own hands to dispossess the appellant when especially he has come forward with a case of actual possession on his part in seeking to specifically enforce the agreement

under Ex. A-2, executed by the first respondent.

4. Sri T. R. Srinivasan, learned counsel for the appellant, brings to my notice I. A. No. 50 of 1971 filed by the defendants before the Vacation Judge, Thanjavur, praying to restrain the appellant from in any way altering, re-constructing, re-erecting the fallen theatre and its allied construction. The said application was not pressed and consequently the same was dismissed, on the undertaking made by the appellant that he will not put up any construction on the latrine and booking-office and that he will remove the main fallen theatre and his things whenever he liked, and no new construction will be put on the suit lands. This undertaking is dated 21-7-1971. From this, Sri T. R. Srinivasan states that it is abundantly clear that the appellant is in actual possession of the suit properties lands and there is no question of any abandonment of possession as alleged by the respondents.

5. As regards the Commissioner's report, both the counsel for the appellant and for the respondents treat it as if it is in their favour. No doubt, we find in the Commissioner's report that the theatre has fallen down and that it is not in use. But it is clear therefrom that the dilapidated construction is there and as many as 23 articles belonging to the appellant are still on the suit lands. The Commissioner's report also makes it clear that the appellant is in possession of the theatre. The trial court without properly considering all these factual prima facie data, dismissed the injunction petition. In my opinion, the trial court has completely erred in not properly appreciating and discussing the relevant facts in dealing with the application for temporary injunction under order XXXIX, C. P. C. It has been often held that grant of temporary injunction is a discretionary order for the purpose of maintaining the status quo and to protect the interests of parties pending disposal of the suit. No doubt the balance of convenience and the judicial discretion are the key-notes in the matter of disposing such interlocutory applications. Thiru Ratnam, the learned counsel for the respondents, cannot, in the teeth of the Commissioner's report and the endorsement of undertaking in I. A. No. 50 of 1971, argue that the appellant has abandoned possession of the suit properties. On the other hand, Sri T. R. Srinivasan is able to substantiate his contention and satisfy the court as to the actual possession of the suit lands by the appellant. While passing the order under appeal the trial court has failed to consider the above

main aspects; and thereby there is failure of using of judicial discretion on the part of the Court below.

6. As regards balance of convenience, it is needless to mention that a person in possession, especially a lessee who continues to be in possession after the expiry of the period of lease, has a better case and strong grounds to have his possession protected till the disposal of the suit, in which he seeks to get the suit properties for himself by means of the prayer for specific performance. Sri Ratnam, the learned counsel cites the decision in *Alagi Alamelu Achi v. Ponniah Mudaliar*, : AIR1962 Mad149 where this court has held that a person in wrongful possession of property is not entitled to be protected against the lawful owner by an order or temporary injunction. Apart from the fact that the said decision was rendered at the second appellate stage, it cannot be considered that the appellant herein is in 'wrongful' possession of the suit properties. Even though the trial court has stated that the plaintiff has no legal right to continue in possession of the suit properties, it cannot be considered that the possession the plaintiff has, in respect of the suit lands, is illegal or wrongful, inasmuch as he has not been ejected subsequent to the expiry of the lease in his favour. The respondents have ample remedy to eject the appellant by due process of law. It is the duty of the court to protect the person in possession when the respondents try to take the law into their own hands to dispossess him. This does not mean that the respondents' right to file a suit in ejectment is in any way stayed by such type of temporary injunctions. The respondents are at liberty to take out such proceedings in court of law, as they may be advised, for getting possession in legal way.

7. Sri Srinivasan for the appellant also suggests that his client is prepared to deposit the arrears of rent due to the first respondent. It is for the first respondent to avail himself of this opportunity and file necessary petition before the trial court for directing the appellant to deposit the admitted rents, since he is prepared to deposit upto the limit of Rs. 3000 into court.

8. The balance of convenience is definitely in favour of the appellant and his possession has to be protected. In view of the discussion made above, and in the interests of justice, I am of the view that a temporary injunction has to issue

against the respondents herein in order to protect the possession of the appellant of the suit properties.

9. In these circumstances, the civil miscellaneous appeal is allowed; but, without costs. The courts below will expedite the hearing of the suit O. S. 65 of 1970 on the file of the Sub-Court, Thanjavur and O. S. 371 of 1971 District Munsif Court, Mannargudi and dispute of the same before April, 1972.

10. Appeal allowed.

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