

Roop Singh Vs. Nirmoo

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Court : Himachal Pradesh

Decided On : Mar-29-1971

Reported in : AIR1971HP24

Judge : D.B. Lal, J.

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

Appeal No. : F.A.O. No. 13 of 1969

Appellant : Roop Singh

Respondent : Nirmoo

Advocate for Def. : R.K. Gupta, Adv.

Advocate for Pet/Ap. : A.C. Sud, Adv.

Disposition : Appeal dismissed

Judgement :

D.B. Lal, J.

1. This is an appeal under Order 43, Rule 1 of the Civil P. Code and is directed against the decision of the District Judge, Mahasu, whereby he has rejected the application of the appellant, Roop Singh, for grant of interim injunction under Order 39, Rules 1 and 2 of the Civil P. Code.

2. The facts of the case are, that Roop Singh, plaintiff, filed a suit for declaration in respect of landed property situate in various 'Khewats' belonging to Chak Mau and some Khasra numbers of Chak Kiri, Pargana Shak as well as Chak Pojarli in Tehsil Chopal of the District of Mahasu. The allegation was, that Roop Singh is adopted son of one Ram Singh who was admittedly the owner of this landed property. It was stated that Roop Singh is in physical possession over the property, but Shrimati Nirmu and Shri Karam Singh, defendants, who are respondents before us, claim to possess title for the property, the former being daughter and the latter being brother of the deceased Ram Singh. They also got mutation in the revenue record in their favour. In this manner some cloud was cast upon the title of Roop Singh and he appeared before the Court for the relief of declaration that he was the full owner of. the property and was also in possession over the same.

3. Roop Singh further filed an application under Order 39, Rules 1 and 2 of the Civil P. Code, alleging that his possession was likely to be interfered with by the respondents and that the latter were also likely to alienate this property and therefore interim injunction was required to safeguard his interests.

4. The learned District Judge, Mahasu, after hearing both the parties, found that there was no substance in the application for the relief of interim injunction and he rejected the application. Roop Singh has come up in appeal before this Court against that decision.

5. The relief of interim injunction is in the nature of a preventive relief granted to a litigant quia timet, that is to say, the applicant fears future possible injury. It is then required of him to show before the Court that his claim is founded on a prima facie case and further that irreparable injury will accrue to him if the injunction is not granted to him. The cumulative effect would be that the balance of convenience is in his favour so that the injunction prayed for is a sine qua non to protect his rights. It was, therefore, required of the Court to weigh, if any substantial mischief was likely to be done to the applicant in case the injunction was refused and naturally the Court had to compare the substantial mischief thus claimed to be suffered by the applicant with that which is likely to be caused to the other side if the injunction

is granted. This is important in the present context, because according to the prima facie evidence, which I shall presently discuss, the possession appeared to be with the respondents and a substantial mischief would be caused to them if the injunction is granted to the appellant, because then the latter would be in a position to dislodge the possession of the former and thereby get a relief which he has not even claimed in the suit. We have to safeguard against this mischief which the injunction, if granted, is likely to cause to the respondents.

6. As to the prima facie case, the 'jamabandi' entry of 1966-67 clearly depicts that the disputed property is in the 'khud kasht' of the respondents. It could thus be held, at any rate, prima facie, that the respondents are in possession over the property. The appellant cannot be stated to possess a prima facie case as has already been held by the learned District Judge. That being so, he would not suffer any irreparable loss if the injunction is not granted. It naturally follows that the balance of convenience is also in favour of the respondents and the amount of mischief likely to be caused to them is much more than what is expected to be caused to the appellant.

7. It is stated that by virtue of Section 4 of the Hindu Adoptions and Maintenance Act, 1956, any custom or usage in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act. In other words, the adoption by custom alleged by the appellant would be seriously affected by the provisions of Section 4 of the Act. The learned counsel for the respondents rather asserted vehemently that the very title of the appellant on the basis of customary adoption was open to serious objections. This would naturally affect the prima facie case which could be established in favour of the appellant.

8. It was also contended that Karam Singh, respondent, filed a written statement supporting the case of the appellant. To this, the reply was given that he was in collusion with the appellant and although he was not called upon to file any written statement at that stage of the suit, yet he filed it to prejudice the case of Nirmu, respondent. The written statement of Karam Singh, to my mind, does not fortify the case of the appellant nor does it go to establish a prima facie title in his favour and

against the interest of Nirmu.

9. I am, therefore, of the opinion that the learned District Judge rightly held that a prima facie case was not made out in favour of the appellant. It could neither be stated that he would suffer an irreparable injury if the injunction is not granted, nor can it be stated that the balance of convenience justifies the grant of the interim relief of injunction. In the result, I do not find any substance in the appeal and the same is dismissed. The costs in this appeal shall abide the event and shall be costs in the suit itself.

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