

Romesh Singh Vs. Amrik Singh

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Court : Jammu and Kashmir

Decided On : May-29-2002

Reported in : AIR2002J& K26

Judge : B.L. Bhat, J.

Acts : Jammu and Kashmir Code of Civil Procedure (CPC) , Smvt. 1977 - Order 39, Rules 1 and 2

Appeal No. : Civil Revn. No. 77 of 1995

Appellant : Romesh Singh

Respondent : Amrik Singh

Judgement :

ORDER

B.L. Bhat, J.

1. This civil revision is directed against the order dated 28-1-1995 passed by learned District Judge, Jammu in Civil Miscellaneous Appeal titled as 'Amrik Singh v. Hans Raj and others. It stems out of those circumstances summarised as under :--

2. That respondent-plaintiff came to institute a suit for permanent prohibitory injunction restraining the defendants from encroaching and interfering in the

peaceful possession of the plaintiff over the plot of land measuring 9 marlas, 249-1/4 sq. ft. comprising Khasra No. 389 situate at Ashok Nagar, Satwari, Jammu, more specifically described in para (1) of the plaint before the Court of learned District Judge, Jammu who in turn came to transfer the same to the file of Munsiff Sub-Registrar, Jammu. Alongside this suit the plaintiff came to file an application for issuance of ad interim injunction. With respect to this petition, the learned trial Court vide its order dated 15-4-1994, directed the defendants-respondent to maintain status quo on spot with respect to the suit land. This order, however, came to be passed subject to objections of the defendants and after hearing the parties this order came to be vacated by the learned trial Court by virtue of its order dated 23-8-1994. This order of the trial Court came to be challenged in appeal before the learned District Judge, Jammu who by virtue of its order dated 28-1-1995 came to set aside the said order of the trial Court and directed the parties to maintain status quo on spot and also with a direction that the parties shall not change the nature of the suit property till disposal of the suit. This order is impugned in this revision.

3. In this motion of revision, the impugned order is assailed as being passed contrary to law and facts of the case.

4. I have perused the file. The perusal of the file reveals that plaintiff/respondent has in the suit sought decree for permanent prohibitory injunction against the defendants on the sole ground that he is in possession of the suit land, the same belongs to Nazool Department and he has applied for its allotment on payment of market price and his case for allotment of land in question stands strongly, recommended by the authorities; that the defendant has no right whatever on this land. The defendant No. 3 on the other hand has resisted the suit by filing his written statement, wherein, he has inter alia stated that the plaintiff is not in possession of the suit land and the land belongs to Industries Department which was allotted to M/s. Play East International by the Directorate of Industries through one S. Harcharan Singh. He has nowhere in his written statement claimed himself in possession of the suit land.

5. Perused the record of the case and the impugned order. The plaintiff has claimed himself to be in possession of the suit land which is supported by the documents placed on file by him. The said documents are the photostat copies of the original, however, for the limited purpose to the disposal of the petition for temporary injunction they could be taken into consideration. The revisionist has nowhere in his written statement claimed himself to be in possession of the suit land. Prima facie it is proved that the plaintiff is in possession of the suit land. Law is settled on the point that plaintiff on the strength of possession can resist interference with respect to possession from the persons who have no better title than himself in the suit property. Once it is accepted that the plaintiff was in possession of the suit property, his possession has to be protected as against interference by someone not to have proved to have better title than the plaintiff in the suit property. Besides, the plaintiff cannot be disentitled to the relief of temporary injunction only on the ground that his possession of the suit property which he wants to protect is not a possession based on title. As indicated the plaintiffs possession on the suit property is prima facie proved and the defendant has nowhere claimed himself to be in possession or has any interest in the suit land whatsoever.

6. This being so, the order impugned by virtue of which the parties have been directed to maintain status quo on spot and also not to change the nature of the suit land till disposal of the suit, cannot be said to suffer from any jurisdictional error or passed with material irregularity, Therefore, the motion of revision fails and the same is dismissed.

7. This is pertinent to mention here that from the perusal of trial Court record, it is manifest that the defendants 1 and 2 have not been served in this case. The trial Court to look into the matter and to proceed with the case after effecting the service of summons upon the said defendants.

8. Send the record of this case along with copy of this order to the trial Court for information and necessary action.