

Ram Krishna Vs. Pawan Kumar

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Court : Jammu and Kashmir

Decided On : May-16-2002

Reported in : AIR2003J& K33

Judge : B.L. Bhat, J.

Acts : Jammu and Kashmir Code of Civil Procedure (CPC) , 1977 - Order 41, Rule 11

Appeal No. : C.R. No. 65 of 2002

Appellant : Ram Krishna

Respondent : Pawan Kumar

Advocate for Def. : B.L. Kalgotra, Adv.

Advocate for Pet/Ap. : A.H. Qazi, Adv.

Disposition : Revision allowed

Judgement :

ORDER

B.L. Bhat, J.

1. This revision is directed against an order/judgment dated 6-5-2002 passed in 3/Appeal, titled Pawan Kumar v. Ram Krishan, recorded by the learned District

Judge, Kathua.

2. The facts leading up to this revision are that the respondent Pawan Kumar came to institute a suit for declaration, with consequential relief of permanent injunction against the appellant-respondent before the Court of Munsiff, Hira Nagar. Alongside the said suit the respondent-plaintiff came to file an application for issuance of an interim injunction, wherein the learned Munsiff came to pass the impugned order, which reads as under :--

'Issue notice to the non-applicant to restrain from interfering in the suit land measuring 15 marlas comprising khasra No. 186 situated at village Dayala Chak, in any manner including that by way of using the same as a passage. This order is, however, subject to objections from the other side. Put up on 30-4-2002 for objections by the non-applicant.'

This order came to be challenged by the present petitioner, Ram Krishan, the defendant, before the learned District Judge, Kathua in appeal, on 6-5-2002 and on the same day learned District Judge ostensibly came to dispose of the appeal with the observation that since the order has been passed ex parte, the appellant would under these circumstances be well advised to approach the trial Court first and file objections and put his case there, who shall consider the matter after hearing both the parties and dispose of the application for temporary relief and also came to direct the parties to maintain status-quo on spot, existing as on the date of institution of suit, till 17-5-2002 and also directed the appellant to remain present before the trial Court for filing objections. Trial Court was also, directed to dispose of the interim matter expeditiously, after hearing both the parties. In this motion of revision the order impugned is assailed, being illegal and having been passed without jurisdiction.

3. Heard learned counsel for the parties and have also perused the record of the case.

4. Rule 11 of Order 41, C.P.C. deals with the power of the Appellate Court to dismiss an appeal summarily. This Rule refers to a stage, after the memorandum of appeal has been filed and appeal is registered under Rule 9 of the said Order.

This discretion needs to be exercised judiciously and not arbitrarily. It must be supported with sound reasoning. But once an appeal is not summarily dismissed and is admitted under Rule 12 of the Order by the Appellate Court, it shall fix a day for the hearing of the appeal and notice of such hearing shall be served upon the respondent along with the copy of the memorandum of appeal and simultaneously the notice of appeal shall be sent to the trial Court for its Information and for the transmission of the record. Perusal of the impugned order, in the background of this law, demonstrates that the Appellate Court below on the one hand has dismissed the appeal in question under Order 41, Rule 11, C.P.C. but on the other hand has come to substitute its order of maintenance of status-quo, till 17-5-2002, with respect to the suit property, as it existed on the date of Institution of the suit, in place of order impugned in appeal before it. Since the Impugned order by the Appellate Court, while disposing of the appeal, has been passed under Order 41. Rule 11, C.P.C. therefore, altering or reversing the impugned order in appeal, without notice to the petitioner-respondent, is without jurisdiction and suffers with material irregularity.

5. Therefore, this revision petition is accepted and the order impugned, to the extent of maintenance of status-quo on spot till 17-5-2002, as it existed on the date of the institution of the suit, is set aside. Trial Court and the Ist Appellate Court shall be immediately informed about this order by the Registrar (Judicial) either by fax or through some special messenger.