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Court : Jammu and Kashmir

Decided On : Jul-06-2011

Judge : J. P. Singh, J.

Appeal No. : C Rev No. 63 OF 2009

Appellant : Chattar Singh

Respondent : Mohan Lal

Advocate for Def. : Mr. Vipin Gandotra, Adv.

Advocate for Pet/Ap. : Mr. Anil Khajuria, Adv.

Judgement :

1. This Civil Revision is directed against Order dated 02.04.2009 of the learned Principal District Judge, Udhampur whereby allowing the respondents Appeal against trial Courts Order of November 01, 2008, he set aside the trial Courts order to the extent it permitted the petitioner-defendant to get the water and electricity connections installed in the rooms constructed over land measuring 2 kanals and 10 marlas comprised in Khasra No. 23 min of Village Karlai Sukki of Tehsil and District Udhampur, the subject matter of respondents Suit seeking Permanent Prohibitory Injunction against the petitioner restraining him from interfering in the Suit land.

2. The undisputed facts leading to the filing of the Revision Petition may be stated thus:-

> On the basis of the pleadings of the parties and the documents relied upon by them to project their respective Claims to the ownership and possession of the Suit land, the trial Court of Subordinate Judge Udhampur recorded a prima facie finding that both the parties to the Suit had a strong prima facie case and the balance of convenience too was evenly poised.

3. Finding the petitioner in possession of the Suit land where he had constructed two rooms, the trial Court, considered it appropriate, in the interests of justice, to direct the parties to maintain status quo, on spot, however, with permission to the petitioner to install the water and electricity connections in the rooms.

4. Learned District Judge did not find any ground to interfere with the findings recorded by the trial Court and, accordingly, upheld its order directing the parties to maintain status quo on spot, meaning thereby that the petitioner would continue to remain in possession of the two rooms but may not raise any further construction on the Suit land.

5. The permission granted by the trial Court to the petitioner to have water and electricity connections for the two rooms was, however, found unwarranted by the appellate Court. In taking the view that the permission granted to the petitioner was unwarranted, the learned District Judge was of the opinion that as the petitioner-defendant had raised construction during the pendency of the Suit, despite there being an injunctive direction against him not to interfere in the land in question, so he was disentitled to seek any discretionary and equitable relief, until the final adjudication of the respondents Complaint against him for disobeying the ex-parte interim directions of the Court.

6. During the pendency of the Appeal before the learned District Judge, the Naib Tehsildar Udhampur was appointed as local Commission to find as to whether or not the appellant had encroached upon the respondents land.

7. The report of the Commissioner indicating that the petitioner was in possession of his own land and had not encroached upon the Suit land, does not, however, appear to have found favour with the learned District Judge.

8. Appearing for the petitioner, his learned counsel submitted that the learned District Judge had committed an error of law in setting aside the order of the trial Court whereby the petitioner was permitted to have water and electricity connections in the rooms constructed by him, in that, the findings recorded by the learned District Judge that the petitioner had raised construction during the subsistence of the interim order, was unwarranted because the respondents allegation that the petitioner had raised construction during the subsistence of the interim order had been strongly refuted by the petitioner asserting that the construction was raised much before the filing of the Suit and unless there was any material on records on the basis whereof the petitioners aforementioned stand could be belied, there was no occasion for the learned District Judge to have ruled against the petitioner and that too when there was no material on records to support the findings recorded in this behalf by the learned District Judge.

9. Per contra, the respondents learned counsel submitted that having raised construction during the pendency of the Suit thereby violating the subsisting ex-parte interim direction of the Court, the petitioner was not entitled to the grant of any equitable relief unless the respondents Complaint against him of having disobeyed the directions of the Court was finally adjudicated upon. He, accordingly, submitted that the Order impugned in the Revision Petition may not warrant interference in the facts and circumstances of the case.

10. I have considered the submissions of learned counsel for the parties and perused the material placed on records. Perusal of the appellate Courts order reveals that in coming to the conclusion that the permission granted to the petitioner to have electricity and water connections for the two rooms, was unwarranted, the learned District Judge appears to have been influenced by the fact that the material on records would indicate that the respondent had been reluctant to obey the ex-parte ad-interim injunction of the trial Court and had raised construction on the Suit land in violation thereof.

11. This prima facie finding of the learned District Judge, which appears to have weighed heavily with him in declining permission to the petitioner to have electricity and water connections in the two rooms, is, in my view, unjustified, in that, in view of the categoric plea of the petitioner in his Written Statement, filed at the earliest possible occasion, before the trial Court, that he had raised construction of the two rooms, before the filing of the Suit, and the question as to whether or not the construction was raised in violation of the ex-parte interim order of the Court, having not yet been examined by the trial Court, there was no occasion for the learned District Judge to have pre-judged the issue which was required to be adjudicated upon on the basis of the evidence which the parties may lead in this behalf.

12. The learned District Judge has, therefore, acted illegally in setting aside the trial Courts Order whereby the petitioner was permitted to have electricity and water connections in two rooms in question, on the basis of his finding, which is not supported by any material on records.

13. In view of the material available on records indicating that the petitioner-defendant had constructed two rooms on the Suit land, which construction, according to the report of the Commissioner, who is a Revenue Officer, had been raised by him on his own land, there was no scope for declining permission to the petitioner to have electricity and water connections, pending final adjudication of the respondents Claim over the Suit land, in that, grant of permission to the petitioner, would not, in any way, affect the status quo which both the Courts below, in the facts and circumstances of the case, had deemed it fit, to direct the parties, to maintain, until final disposal of the Suit.

14. For all what has been said above, the order passed by the learned Principal District Judge cannot, therefore, be sustained.

15. This Revision Petition, accordingly, succeeds and is, therefore, allowed, setting aside learned Principal District Judge, Udhampurs Order of April 02, 2009 and upholding the Order passed by learned Sub-Judge(C.J.M) Udhampur.

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