Hari Kishore Vs. Uoi and Others

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Court : Delhi

Decided On : Apr-30-2012

Judge : P.K. Bhasin

Appeal No. : R.S.A. No.118 OF 2004

Appellant : Hari Kishore

Respondent : Uoi and Others

Advocate for Pet/Ap. : Ms. Zubeda Begum

Judgement :

P.K.BHASIN, J.

1. The appellant is the unsuccessful plaintiff in a suit for permanent injunction(reference to him hereinafter shall be made as „the plaintiff?). He was allotted one shed no. 8, B-45, Jhilmil (Tahirpur), Shadara, Delhi on lease by the respondents under a scheme meant for denotified Tribes vide allotment letter dated 09.09.1988. Thereafter the plaintiff started his business of auto parts in that shed in the name and style of Sangam Auto Industries. In February, 1991 he was informed by the respondents that he had encroached upon government land outside his shed and had also raised a boundary wall there. He was called upon to demolish the boundary wall by 22.02.1991 but he did not do that. He was however given another chance by the respondents vide notice dated 15.04.1991 to remove the encroachment over the government land positively by 02.05.1991 failing which

eviction proceedings were to be initiated against him. The plaintiff?s stand was that he had not encroached any land outside his shed but it was done by one Mrs. Gita (who as per the case of the defendants was his sister only). It was his further case that on 31.10.1992 he was told by one peon of the concerned department that the lease in respect of his shed had been cancelled and its possession shall be taken back from him. However, no order of cancellation of the lease was given to him. Since the plaintiff was apprehending his dispossession from the shed he filed a suit for permanent injunction on 02.11.1992(being suit no. 422/1992) against the respondents-defendants to protect his possession.

2. The suit was contested by the respondents-defendants primarily on the ground that since the lease in respect of the shed in dispute had been cancelled on 18th September, 1992 before the filing of the suit which was for injunction the suit had already become infructuous. It was also pleaded that the order of cancellation of lease was served on the plaintiff.

3. The trial Court had framed the following issues for trial:-

“1. Whether the plaintiff is entitled to the relief claimed?

2. Whether the suit of the plaintiff has become infructuous as the lease granted has already been terminated prior to the filing of the present suit?

3. Relief.”

4. No evidence was adduced during the trial from either side. The learned trial Court disposed of the suit on the basis of the pleadings of the parties alone and accepted the objection of the respondents that the suit for injunction was already infructuous since the lease of the shed had admittedly been cancelled before its institution and dismissed the suit vide its judgment dated 01.11.2000 holding that since the plaintiff had not challenged the cancellation of the lease of his shed as being null and void the suit for permanent injunction was infructuous.

5. The plaintiff filed an appeal (being R.C.A. No.310 of 2000) in the Court of Senior Civil Judge but that appeal was also dismissed vide judgment dated 18/03/2004.

6. Then this second appeal came to be filed. The following substantial questions of law were formulated on 22.07.2011 for the decision of this Court:-

“(i) Whether trial Court was justified in dismissing the suit for permanent injunction filed by the appellant-plaintiff on the ground that he had failed to advance any evidence in support of his case that the termination of his lease in respect of land in question was illegal when the onus of proving that suit had become infructuous because the lease had been terminated before the filing of the suit was placed upon the respondents and in defence admittedly no evidence had been adduced on their behalf.

(ii) Whether the Courts below were justified in dismissing the suit on the ground that the appellant/plaintiff should have sought declaration that the cancellation of his lease was illegal which he had not claimed while in fact in para no. 12 of the plaint he had categorically claimed that if at all his lease had been cancelled, the same was illegal on as many as 12 grounds pleaded therein.”

7. It was argued by the learned counsel for the plaintiff-appellant that even if there was no evidence adduced by the plaintiff the suit could not be dismissed on that ground since the onus of proof in respect of the issue no.2 was upon the defendants and they had also led no evidence and in fact for that reason the suit should have been decreed because it was the stand of the defendants that the suit had become infructuous because of the cancellation of the lease in respect of the shed in dispute and they had not even placed on record the order of cancellation of the lease. Learned counsel further submitted that it was the grievance of the plaintiff that he had not been served with any such order and he was only orally informed by some peon that his lease had been cancelled so now possession of the shed would be taken back from him. It was also contended that by way of abundant precaution the plaintiff had in any case pleaded in the plaint that even if the lease had actually been cancelled that cancellation was illegal and, therefore, the Courts below could not dismiss the suit on the ground that the plaintiff had not challenged the cancellation of the lease. Since the defendants had not even produced the lease cancellation order the plaintiff was not obliged to lead any evidence to challenge its validity and as the respondents-defendants were

claiming that the plaintiff would be dispossessed from his shed because of the cancellation of the lease of the shed the trial Court should have decreed the suit because in a suit for prohibitory injunction, like the present one, all that a plaintiff is required to show is that there is a genuine threat of dispossession from the suit property by the defendant without following due process of law. In the present case, the plaintiff thus cannot be dispossessed by the respondents-defendants without following due process of law. Learned counsel had also contended that the fact that the lease of the shed in question was not cancelled in the year 1992 and the threat of the dispossession of the plaintiff given by the respondents-defendants was illegal gets established from the fact that during the pendency of the first appeal the respondents had issued a notice dated 09.10.2001 to the plaintiff, copy of which had been annexed with the written arguments submitted before the first appellate Court by the plaintiff and the same had been filed in this appeal also as Annexure A-X, and by way of that notice the plaintiff was informed to show cause as to why the allotment of the shed in question be not cancelled since he had sub-let the same but the appellate Court did not even consider that development as a subsequent event which it was expected to do. Same fact was pleaded in the memorandum of this second appeal also and the respondents have simply stated in reply that that fact could not be considered since the plaint was not amended by the plaintiff.

8. On the other hand, Ms. Zubeda Begum, learned counsel for the appellant supported the judgments of the Courts below and submitted that this second appeal also deserved to be rejected.

9. In my view, this appeal deserves to be allowed. The learned trial Court?s observation in its judgment that since the plaintiff had not challenged the cancellation of the lease of his shed the suit for injunction was infructuous cannot be sustained since, as noticed already, in the first question of law framed by me it is mentioned that the plaintiff had clearly pleaded in the plaint that in case the lease of his shed had actually been cancelled, though he was not informed of that by the respondents-defendants at any stage, that cancellation was illegal for the reasons which he had set out in para no.12 of the plaint. This position was not disputed even by the learned counsel for the respondents before this Court.

However, since the respondents-defendants had not even placed on record the order of cancellation of the lease of the shed in question there was no need of adducing any evidence from the side of the plaintiff since the onus of proof in respect of issue no.2 framed in respect of the defence of the respondents-defendants that the suit for injunction was infructuous and not maintainable was upon the respondents-defendants. Since they had failed to lead any evidence their onus did not get discharged and consequently the plaintiff?s not adducing any evidence was of no adverse effect on his suit because the respondents-defendants were threatening to dispossess him without establishing that they had cancelled the lease of his shed. I am also in full agreement with the submission of the counsel for the plaintiff that the subsequent event in the form of issuance of a show cause notice issued by the respondents-defendants in October, 2001, which fact has not been disputed on behalf of the respondents-defendants, requiring the plaintiff to show cause as to why his allotment of the shed be not cancelled also shows that in the year 1992 the lease had not been cancelled.

10. This appeal, therefore, succeeds. The judgments of the trial Court as well as the first appellate Court are set aside and consequently there shall be a decree of permanent injunction in favour of the plaintiff and against the respondents-defendants whereby they shall stand restrained from taking over the possession of the shed in dispute from the plaintiff except by due process of law and since the plaintiff himself had been claiming that he had not encroached any government land the respondents shall be at liberty to remove the alleged encroachment also.