

(1991) 02 DEL CK 0009

In the Delhi High Court

Case No : Civil Revision Appeal No. 448 of 1990 and Civil Miscellaneous Appeal No. 1340 of 1990

Babu Lal

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 08-02-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1991) 43 DLT 570

Hon'ble Judges : P.N. Nag, J

Bench : Single Bench

Advocate : K.C. Kalra and P. Dewan, for the Appellant;

Judgement

P.N. Nag, J.

(1) This revision petition is directed against the order dated 13th March, 1990 passed by Shri V.S. Aggarwal, Additional District Judge Delhi wherein he has dismissed an application under order 39 Rules 1& 2 read with Section 151 of the Code of Civil Procedure, 1908 filed on behalf of the petitioner-plaintiff restraining the respondent-defendant from dispossessing the petitioner from the shop bearing No. 3/45, New Link Road, New Delhi on the ground that the appellant-petitioner is in possession of the shop as owner of the same.

(2) Learned Additional District Judge, after having discussed the matter, has come to the prima facie finding that the petitioner is not the owner of the shop and he has not come with clean hands and, Therefore not entitled to the relief asked for by him.

(3) From the judgment, it appears that the submission made by the learned counsel for the appellant before the Additional District Judge was that even if it is assured that he is a trespasser, he cannot be dispossessed by the owner without recourse to law. The learned Additional District Judge, however, has not considered this aspect of the matter.

(4) Learned counsel for the petitioner advanced the same arguments that even if it is assumed that he is not the owner but a trespasser of the shop in dispute he is entitled to continue to be in possession of the property except dispossessed in accordance with the law.

(5) However, learned counsel for the D.D.A. states that after the impugned order dated 13.3.1990 the D.D.A. has taken possession of the premises in accordance with the provisions of law and, Therefore, he is not in settled possession of the premises and no protection should be given by the court in the form of injunction. He further states that the petitioner has again re-occupied the said premises after getting the stay order from this court. This position has been denied both at the bar as well as in the rejoinder filed by him.

(6) After bearing counsel for the parties, I am of the opinion that it is a settled position of in law that even a trespasser is entitled to remain in property unless he is dispossessed by the owner in accordance with the law. Although it is stated by Mr. P. Dewan that recourse of law has been taken but nothing has been shown on the record to this effect nor has any document been shown to me in court indicating that any recourse of law was taken by them for dispossessing the petitioner from the shop in dispute. Therefore, the trial court has approached the case from wholly erroneous angle inasmuch as he has failed to consider this aspect of the matter that the petitioner-plaintiff is entitled to be in possession of the property except dispossessed by due process of law, with the result, the learned Additional District Judge has exercised jurisdiction with material irregularity which has led to miscarriage of justice. Therefore, the impugned order cannot be sustained in law.

(7) The next question that arises for consideration is what should be the nature of relief which can be granted to the petitioner at this stage. In view of the facts stated by the learned counsel for the parties, it appears to me that the petitioner is in possession of the premises in dispute and Therefore in the interest of justice it would be expedient to order maintenance of status quo as of possession as on today, during the pendency of the suit.

(8) The revision petition, Therefore, succeeds and the orders of the courts below are set aside and it is ordered that the status quo of possession as of today shall be maintained during the pendency of the suit and that the petitioner shall not be dispossessed except by recourse to law. No costs.

(9) My above observations are only tentative and shall not have bearing on the merits of the case.