

(2023) 08 MP CK 0054

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 4077 Of 2022

Bharta Rathore Patliya

APPELLANT

Vs

Gaja Rathore Patliya And Others

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2
Madhya Pradesh Land Revenue Code, 1959 — Section 250

Citation : (2023) 08 MP CK 0054

Hon'ble Judges : Pranay Verma, J

Bench : Single Bench

Advocate : S.C. Shrivastava, Rizwan Nizam, Geetanjali Chourasia

Final Decision : Allowed/Disposed Of

Judgement

Pranay Verma, J

1. This petition under Article 227 of the Constitution of India has been preferred by the plaintiff/petitioner being aggrieved by the order dated 02.08.2022 (Annexure P/1) passed in Miscellaneous Civil Appeal No.22/2021 by the Second Additional District Judge, Jhabua affirming the order dated 25.09.2021 (Annexure P/7) passed in Civil Suit No.72-A/2020 by the Civil Judge Senior Division, Thandla, District Jhabua whereby his application under Order 39 Rule 1 and 2 of the CPC had been rejected.

2. As per plaintiff, he is in legal possession of the suit lands total measuring 1.190 hectare at Gram Phuledi, Tehsil Meghnagar, District Jhabua. The same are recorded in the name of defendant No.1 in the revenue records. On 28.04.1997 defendant No.1 had entered into an agreement with him for sale of the suit lands in his favour for a total consideration of Rs.77,500/- upon receiving the entire consideration. An agreement was also executed between the parties in that regard. Since no sale deed of the transaction was executed, the same is void and he has been in adverse possession of the suit lands ever since then for past

23 years. However, taking advantage of being recorded over the suit lands in the revenue records defendant No.1 has filed an application before the Tehsildar, Meghnagar for obtaining possession of the suit lands.

3. On the aforesaid contentions the plaintiff instituted an action for declaration of his title to the suit lands, declaration that he is entitled for being recorded over the suit lands in the revenue records and for permanent injunction restraining defendant No.1 from interfering with his possession over the suit lands.

4. Alongwith the plaint, plaintiff also filed an application under Order 39 Rule 1 and 2 of the CPC for issuance of temporary injunction restraining defendant No.1 from interfering with his possession over the suit lands and from alienating the same in favour of any third person.

5. Defendant No.1 contested the application by filing his reply submitting that plaintiff does not have any title to the suit lands, that he is an encroacher thereupon and being an encroacher he is not entitled for grant of any relief in his favour. The averments as made by plaintiff as regards acquisition of title by virtue of adverse possession are neither legal nor based on correct facts. Defendant No.1 has already instituted legal proceedings for obtaining possession of the suit lands which cannot be stayed. The suit is not maintainable hence plaintiff is not entitled for issuance of temporary injunction in his favour.

6. The Courts below have rejected plaintiff's application for issuance of temporary injunction by holding that though he is in possession of the suit lands but such possession cannot be protected since the same is by way of encroachment. Defendant No.1 has already instituted proceedings under Section 250 of M.P. Land Revenue Code, 1959 against plaintiff for obtaining possession of the suit lands which cannot be said to be an illegal act on his part. The defendant No.1 is taking recourse to law for obtaining possession of the suit lands which proceedings cannot be stayed by issuance of temporary injunction. It has been further observed that the agreement to sale produced by plaintiff shall be examined at the time of evidence and has also to be proved and all the questions raised by plaintiff are matters of evidence.

7. Learned counsel for the plaintiff has submitted that the Courts below have themselves held plaintiff to be in possession of the suit lands but have illegally declined to issue temporary injunction in his favour. His possession is settled possession and not sporadic by way of encroachment. His claim is for declaration of title also during pendency of which his possession deserves to be protected.

8. Per contra, learned counsel for defendant No.1 has submitted that defendant No.1 has legally instituted proceedings before the Tehsildar under Section 250 of the Code, 1959 for obtaining possession of the suit lands which cannot be stayed by way of issuance of a temporary injunction. Defendant No.1 has taken recourse to law and is not attempting to forcibly dispossess the plaintiff. Issuance of temporary injunction would result in staying the legally instituted proceedings by defendant No.1 which cannot be permitted. The plaintiff is a rank trespasser over

the suit land and has no semblance of title. The claim as laid by him is itself not maintainable. Being an encroacher he has no right for protection of his possession.

9. I have heard the learned counsel for the parties at length.

10. The Courts below have themselves held that plaintiff is in possession of the suit lands. Such possession of plaintiff has been since a considerable period of time and since 1997 as contended by him. It cannot be said that he is a rank trespasser. The possession of plaintiff is not sporadic or intermittent but has been a settled possession for about 25 years. Such possession of plaintiff deserves to be protected whereas the Courts below have rejected his application by merely observing that he is an encroacher over the suit lands.

11. Though, defendant No.1 has instituted proceedings under Section 250 of the Code, 1959 before the Tehsildar but that by itself would not mean that plaintiff would be precluded from approaching the Civil Court for claiming declaration of his title to the suit lands and for protection of his possession during pendency of that suit. That is precisely what plaintiff has done. He has instituted an action for declaration of his title to the suit lands based on adverse possession and during pendency of that suit has claimed protection of his possession. It is only the Civil Court which would have the jurisdiction to decide the title of the parties and till decision of such a dispute it would be imperative for possession of plaintiff to be protected.

12. Since plaintiff has approached the Civil Court claiming declaration of his title and protection of his possession, the same cannot be denied to him merely for the reason that proceedings have been instituted by defendant No.1 before the Tehsildar for obtaining possession. While it is true that proceedings which have been instituted by defendant No.1 are duly constituted proceedings but that would not be end of the matter. It cannot be said that only because defendant No.1 has instituted such proceedings for obtaining possession of the suit lands, plaintiff would be precluded from approaching the Civil Court claiming declaration of his title and protection of his possession. By protecting possession of plaintiff, the Civil Court would not in any manner be staying the proceedings of the Tehsildar though that may be the ancillary effect. However, only because issuance of temporary injunction by the Civil Court would effect the proceedings of the Tehsildar, the same cannot be a ground for not exercising the jurisdiction vested in the Civil Court.

13. Thus in my opinion, the possession of plaintiff as has been found by both the Courts below deserves to be protected during pendency of the suit. The Courts below have however, committed a gross error of law in rejecting the application for issuance of temporary injunction filed by plaintiff. The impugned orders hence cannot be sustained and are hereby set aside. The application for issuance of temporary injunction filed by plaintiff stands allowed. The petition is accordingly allowed and disposed off.