
(2003) 02 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 374 of 1997

Devilal Shrivastava (Dr.)

APPELLANT

Vs

Ramesh Chandra Gupta

RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2003) 2 MPLJ 432

Hon'ble Judges : R.B. Dixit, J

Bench : Single Bench

Advocate : A.M. Naik, with B.K. Agarwal, for the Appellant; R.D. Jain with Sangam Jain, for the Respondent

Judgement

R.B. Dixit, J.

By the impugned order dated 8-7-1997 passed in Civil Suit No. 30-A of 1991 of Additional Judge to the District Judge, Gwalior, at Dabra, an application under Order 39, Rules 1 and 2, CPC read with section 151, CPC was dismissed against which the present appeal has been filed.

Appellant had filed a civil suit before the trial court for declaration and permanent injunction on the ground that he is tenant of the defendant-respondent in a shop situated at Subhashganj, Dabra. It is alleged that the defendant-landlord is threatening to dispossess from the suit premises. An application under Order 39, Rules 1 and 2, CPC was filed along with the plaint on which the learned trial Court ordered to maintain status quo. Subsequently, plaintiff filed an application under Order 39, Rules 1 and 2, CPC dated 30-9-1991 to the effect that on 22nd August 1991 defendant with the aid of antisocial elements had thrown him out of the possession of the shop and therefore the possession be restored to him.

In reply the defendant denied the forcible dispossession of the plaintiff, however maintained that plaintiff had entered into a compromise during pendency of the

suit to vacate the shop. However, before expiry of the said period of twenty two months he has voluntarily offered the vacant possession to the defendant.

The learned trial Court by the impugned order held that admittedly at the time of filing of application the plaintiff was not in possession of the suit premises, therefore, the question whether he was forcibly dispossessed or voluntarily assigned possession of the shop is a question of inquiry and therefore, no mandatory injunction can be passed in favour of the plaintiff.

The learned counsel of the appellant has submitted that the so called compromise between the parties dated 9-1-1990 was filed on behalf of the respondent-defendant. However, he has not mentioned the fact of this compromise in his reply dated 14-2-1991 regarding previous application of temporary injunction. Even otherwise according to this compromise the time of 22 months was granted for vacation of the suit premises which was due to expire in the month of October 1991 and in the circumstances handing over possession of the shop voluntarily before this date does not arise. It has also been contended for the appellant that the Court has ample discretionary power to restore the possession of the plaintiff which was forcibly taken from him during pendency of the suit. Reliance is placed on the decisions of this Court in the case of Gulshan vs. Sahadevi Pal, reported in 1985 JLJ 527 and Municipal Council, Mandleshwar vs. Ramesh Mangilal Fagna, reported in 1984 MPLJ 633.

Learned counsel of respondent has submitted that the learned trial Court has rightly held that whether the plaintiff was forcibly dispossessed or he has voluntarily offered vacant possession to the landlord is a question of inquiry and must be decided on merits. However, admittedly, no such inquiry was deemed fit by the learned trial court before passing the impugned order.

It may be noticed that period of 22 months allowed under the compromise dated 9-1-1990 for getting possession by the landlord has already expired. In the circumstances, the trial Court has also to enquire whether parties had entered into such a compromise and, if so, what is the effect of compromise on the suit itself. The trial Court is, therefore, directed to frame a preliminary issue on the point of compromise as well as on the point whether the possession was delivered voluntarily by the plaintiff to the defendant. Since, the suit is pending for last twelve years, it is directed that such a summary inquiry be completed within a period of six months from the date of receipt of this order.

This appeal is partly allowed and the impugned order is set aside with a direction that the parties shall maintain status quo as directed by this Court on 26-7-1997 in respect of suit premises and the learned trial Court shall decide the application under Order 39, Rules 1 and 2, CPC for mandatory injunction filed by the appellant in accordance with the directions made hereinabove.

Parties are directed to appear before the trial Court on 3rd March 2003.