
(2014) 05 RAJ CK 0113
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11682/2012

Gopi Chand

APPELLANT

Vs

Chief Executing Officer and Others

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Rajasthan Tenancy Act, 1955 — Section 207

Citation : (2014) 05 RAJ CK 0113

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : Rohan Jain, Advocate for the Appellant; Mahesh Sharma, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

R.S. Chauhan, J.—The petitioner-plaintiff is aggrieved by the order dated 19.7.2012, passed by the Additional District & Sessions Judge, Baran whereby the learned Judge has set aside the order dated 8.5.2012 passed by the Civil Judge (Jr. Div.), Mangrol, District Baran, wherein the learned Magistrate had granted a temporary injunction in favour of the petitioner-plaintiff under Order 39 Rules 1 & 2 CPC.

2. The brief facts of the case are that the petitioner-plaintiff, Gopi Chand, filed a suit for permanent injunction against the respondents-defendants with a prayer to restrain the defendants from opening any bid regarding the land in dispute in Khasra No. 271, Rakba 9.33 Hectare, and in Khasra No. 273/3101, Rakba 0.32 Hectare, total Rakba 9.65 Hectare, situated in Village Bohat, Tehsil Mangrol, Dist. Bundi, under Khata No. 804, Khatedar Temple Shri Gordhan Nathji Virajman, Nathdwara, and to allow the petitioner to cultivate the same after depositing the amount as per the agreement dated 1.5.1981. According to the plaint, one Gulab Singh had illegally encroached upon the suit property. Therefore, the Bhandari of Shrinathji Bhandar, Kota, entered into an agreement with the petitioner on

1.5.1981, to the effect that if the petitioner gets rid of Gulab Singh's encroachment, then the land in dispute would be given to him for cultivation on Munafa Kashta @ Rs. 6000/- per year. Alongwith the suit, the petitioner also filed an application under Order 39, Rules 1 & 2 CPC for temporary injunction. The respondents-defendants filed reply to the T.I. application. By order dated 8.5.2012, the learned trial court allowed the T.I. application, and restrained the defendants from opening any bid, and allowed the petitioner to cultivate the land in dispute after depositing the amount as per the agreement. Being aggrieved by the order dated 8.5.2012, the respondents-defendants filed an appeal before the learned Judge. By order dated 19.7.2012, the learned Judge allowed the appeal filed by the respondents-defendants, and set aside the order dated 8.5.2012. Hence, this petition before this court.

3. Mr. Rohan Jain, the learned counsel for the petitioner has raised the following contentions before this court: firstly, relying on the cases of District Club Bundi & Ors. v. Madhukar Gupta [1997 (3) RLW 1825] and Hemraj v. Executive Officer, Nagar Palika Indragarh [1999 WLC (Raj.) UC 319], the learned counsel has contended that power of the appellate court while hearing an appeal against the order passed under Order 39, Rules 1 & 2 CPC is a limited one. At the stage of hearing of appeal, the appellate court is merely concerned in seeing whether a prima facie case does exist in plaintiff's favour, or balance of convenience lies in his favour, or any irreparable loss has been caused to him or not? At this initial stage, the learned appellate court cannot examine the issue of jurisdiction, or any other technical issue of law. However, in the present case, the learned Judge has entered into the question of jurisdiction. Since the question of jurisdiction is a mixed question of fact and law, he cannot express his opinion at this stage. In fact, the said issue should have been left to be framed by the learned trial court and to be adjudicated by it. Therefore, the learned Judge has overstepped his jurisdiction.

4. Secondly, the learned Judge has not considered the fact that according to the agreement dated 1.5.1981, certain rights were bestowed upon the petitioner which have been breached by alleged action of the respondents-defendants wherein they are threatening to dispossess from the agricultural land, and to auction the same. Therefore, the learned Judge has failed to consider existence of a strong prima facie case in favour of the petitioner. Hence, the learned Judge is unjustified in setting aside the order dated 8.5.2012.

5. Lastly, while passing the order dated 8.5.2012, the learned trial court had considered all the three factors, namely existence of a prima facie case, balance of convenience, and irreparable loss. Having applied his judicious mind, the learned Magistrate passed his order of temporary injunction. Therefore, the learned counsel has pleaded that while the impugned order dated 19.7.2012 deserves to be set aside, the order dated 8.5.2012 deserves to be restored.

6. On the other hand, Mr. Mahesh Sharma, the learned counsel for the respondents-defendants, has contended that the issue of jurisdiction would go to

the root of the case. Therefore, the appellate court was justified in entering into the said issue.

7. Secondly, before the appellate court, the learned counsel for the petitioner had himself conceded that the agreement dated 1.5.1981 was an illegal one. Thus, once such a concession is made no right would arise from the said agreement. If no right could arise, obviously, a strong prima facie case does not exist in favour of the petitioner. Hence, the learned counsel has supported the impugned order.

8. Heard the learned counsel for the parties and perused the impugned order.

9. A bare perusal of the impugned order dated 19.7.2012 clearly reveals that the learned Judge has gone into the question of jurisdiction. Relying on Section 207 of the Rajasthan Tenancy Act, the learned Judge has clearly held that the civil court would not have jurisdiction to try the suit. Instead, only a revenue court would have the jurisdiction to do so. In the case of District Club Bundi & Ors. (supra), this court has clearly held that while hearing an appeal against an order under Order 39, Rules 1 & 2 CPC, the appellate court should not have entered into the question of maintainability of the suit. To do so, the appellate court would overstep its jurisdiction. A similar view has also been expressed by this court in the case of Hemraj (supra). Since the question of jurisdiction is a mixed question of fact and law, and since it would require the trial court to frame an issue, and to decide the same thereafter, obviously, the learned Judge has overstepped its jurisdiction. Therefore, the finding given by the learned Judge with regard to jurisdiction is clearly unsustainable.

10. However, once the counsel for the petitioner has conceded before the appellate court the fact that the agreement dated 1.5.1981 was an illegal one, naturally the petitioner cannot claim that he has any right which would arise from the said agreement. Therefore, the learned Judge is certainly justified in concluding that the petitioner does not have a prima facie case in his favour. Moreover, while considering the agreement dated 1.5.1981, the learned trial court should have considered the fact whether the said agreement is a legal one, or not before proceeding to see whether any right accrues to the petitioner from the said agreement or not. Hence, the finding given by the learned appellate court that the petitioner does not have a prima facie case in his favour is legally justified. Thus, this court does not find any illegality or perversity in the said conclusion.

11. For the reasons stated above, this court partly modifies the order dated 19.7.2012, passed by the learned Judge. While upholding the order to the effect that the order dated 8.5.2012, passed by the learned trial court, deserves to be set aside and has been correctly set aside by the learned Judge, with regard to the issue of jurisdiction, this court directs the learned trial court to frame an issue on the said question and to decide the same in accordance with law.

12. The appeal stands partly allowed. The stay application is also disposed of.