
(1994) 09 BOM CK 0001

In the Bombay High Court

Case No : Civil Revision Application No. 407 of 1991

Govindbhai Ramjibhai Chauhan

APPELLANT

Vs

Gokulchand Juthalal Agrawal and Another

RESPONDENT

Date of Decision : 15-09-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1996) 2 MhLj 1062

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Bhushan R. Gawai, for the Appellant; S.C. Mehadia, for the Respondent

Judgement

R.M. Lodha, J.—The Plaintiff Govindbhai has filed the present revision application u/s 115 of the CPC aggrieved by the order dated 14.9.1991 passed by the IInd Additional District Judge, Amravati, in Misc. Civil Appeal No. 144 of 1990 Gokulchand v. Govindbhai and Anr. whereby he vacated the temporary injunction order granted by the Civil Judge, Senior Division, Amravati on 1.11.1990 Reg. Civil Suit No. 368 of 1990.

2. Shorn of unnecessary details, it may be observed that in the suit for declaration and injunction filed by the Plaintiff on 28.2.1990 relating to Nazul Plot No. 285/1, Sheet N0.81-D within the limits of Municipal Corporation, Amravati, admeasuring 120 sq.ft. the trial Court after holding that the Plaintiff's possession cannot be said to be or deemed" to be a possession as trespasser or in the capacity of as an encroacher over the disputed land and also finding prima facie case, irreparable loss and balance of convenience in favour of the Plaintiff-applicant, directed the Defendants to maintain status quo until disposal of the suit.

3. Aggrieved by the order of status quo, the Defendant No. 2 Gokulchand filed an appeal before the IInd Additional District Judge, Amravati. The said appellate Court after hearing the learned Counsel for the parties tentatively found that the

Plaintiff was in unauthorised occupation of the said land and, therefore, being a trespasser and wrong doer cannot be allowed to continue his wrongful possession and no injunction can be granted in his favour and consequently allowed the appeal filed by the Defendant No. 2 and set aside the order of status quo passed by the trial Court on 1.11.1990.

4. I have heard the learned Counsel for the parties.

5. Having found that the Plaintiff was in settled possession of the disputed land, may be a trespasser or as unauthorised occupant, the appellate Court was not justified in holding that the Plaintiff was not entitled to seek the temporary injunction being a trespasser or wrong doer. The law is well settled that even a settled trespasser can seek temporary injunction to protect his possession till he is dispossessed in accordance with law. This view is duly supported by various decisions of this Court. Faced with this situation, Mr. Mehadia, learned Counsel for the non-applicant No. 1 in his usual frankness submitted that the non-applicant No. 1 (defendant No. 2) never intended to take law unto himself and dispossess the Plaintiff forcibly. Mr. Mehadia submits that by status quo the Defendant No. 2 could not be precluded to pursue his remedy for dispossession of the Plaintiff before the competent forum in accordance with law. The submission of Mr. Mehadia appears to be justified. By directing the parties to maintain status quo, the Defendant No. 2 cannot be said to be precluded from prosecuting the remedy available to him for dispossessing the Plaintiff in accordance with law in the appropriate competent forum or Court. Mr. Mehadia further submits that till appropriate order or decree is obtained from the competent court of law by the Defendant No. 2 he would maintain the status quo. In view of the aforesaid facts, the order passed by the IIInd Additional Sessions Judge, Amravati on 14.9.1991 deserves to be quashed and set aside and is consequently set aside. The order passed by the Civil Judge, Senior Division, Amravati dated 1.11.1990 granting status quo is restored. However, it is made clear that it would be open to the Defendant No. 2 to prosecute appropriate remedy for dispossessing the Plaintiff in accordance with law, if so advised, and available, under the law. Order accordingly.