

(1998) 11 AHC CK 0059
In the Allahabad High Court

Harish Chandra Singh

APPELLANT

Vs

First Addl. Distt.Judge,Jaunpur & Ors.

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 109A, 28

Citation : (1998) 11 AHC CK 0059

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D.K. Seth, J.—In a suit for injunction the learned trial Court had granted temporary injunction, against which appeal was preferred ii} Misc. Appeal, which was dismissed by an order dated 2021991. It is this order which has been challenged in this petition.

2. At the outset Sri Sankatha Rai, learned Cousnel for the petitioner seeks leave of this Court to convert the petition under Article 227 of the Constitution. The leave is granted. Learned Counsel for the petitioner will amend the cause title in course of today.

3. Sri Sankatha Rai, learned Counsel for the petitioners contends that proceedings under Consolidation of Holdings Act is pending between the parties and admittedly the parties are in joint possession of the property. Therefore, according to him injunction cannot be maintained against coowner. He further contends that two kind of injunction have been sought for namely, restraining the defendants from interfering with the peaceful possession of the plaintiff as well as restraining the defendants from making any construction. The question of possession cannot be gone into in this suit in view of pendency of proceeding under Consolidation of Holdings Act, particularly, when no "Dakhalanama" is being shown by the Plaintiff, to assert his right with regard to his exclusive possession in respect of the property in order to maintain the cause for injunction. Therefore, both the learned courts below had acted wholly illegally and with material irregularity and had exceeded in its jurisdiction in granting

injunction.

4. Sri Rai further contends that it is a case which falls under Rule 109A and not under Section 28 of the Act, as has been held by the Courts below. If it is a case under Rule 109A of the Rules, then, no injunction can be granted without "Dakhalanama."

5. Sri S.N. Singh, learned counsel appearing on behalf of respondents on the other hand contends that it is not a case under Rule 109A but a case under Section 28 which postulate deeming clause of possession. According to him shares have been declared and possession have been delivered which on the expiry of six months, results in deeming clause, confirming the petitioners' possession. Therefore, the Courts below have rightly granted injunction.

6. After having heard Sri Rai and Sri Singh, it appears that admittedly suit for injunction is maintainable in the Civil Court, but the question is as to whether the Court had granted injunction rightly or as to whether the plaintiff has been able to make out prima facie case for the purposes of injunction, in the facts and circumstances of the case. If the suit is not barred in that event the trial Court had jurisdiction to proceed with the suit and grant injunction, if prima facie case is made out. Normally, injunction is not granted against coowners, but at the same time the coowners in possession have every right to defend his possession and seek injunction against another coowner, seeking dispossession of the Plaintiff from his possession. Since it is admitted that the Defendants are not going to make any construction, therefore, it is not necessary to go into that question. In the present case both the Courts have given concurrent finding that the share of the Plaintiffs have been declared and the same have been executed and possession have been given. Therefore, the same being finding of fact this Court in revision cannot interfere with the same. Admittedly, the order of the Civil Court by virtue of the provisions as contained in Consolidation of Holdings Act and various other relevant rules relating to land revenue and tenure the order of the Civil Court is always subject to such proceeding and in case of any contradiction between the Civil Court and competent Revenue Court, the Civil Court's order would not stand in the way of decision of the Revenue Court in the matter over which it has exclusive jurisdiction to exclusion of the Civil Court. Therefore, even if any interim order is granted by the Civil Court it will not effect any proceeding before the Revenue Court or in a court of competent jurisdiction in respect of which it has exclusive jurisdiction.

7. So far as Section 28 of the Act it relates to the delivery of possession and subsection (2) thereof provides that on expiry of six months the tenureholder would become entitled to enter into possession of the Chak and the land allotted, unless possession has been obtained earlier, be deemed to have entered into actual physical possession of the Chak or land. It is not the case of the defendant that possession has been transferred from them, on the other hand it is a case of joint possession. Whereas Rule 109A refers to the proceedings under Section 52(2) which provides that in case of conflict in the order passed by the Revenue

Court of competent jurisdiction, and that of the order passed in the proceedings under Article 226 of the Constitution, even then order of the High Court will prevail. Admittedly, two writ petitions are pending in which interim orders are there. Whether the order of the writ petition will prevail or not, is in relation to the proceedings of the Revenue Court, as observed earlier, the Civil Court's order is always subject to the order of the Revenue Court. Therefore, there is no conflict between the orders of the Civil Court, in the facts and circumstances of the case. Therefore the reference to Rule 109A of the Rules with reference to Section 52 providing the authorities by whom the functions are to be discharged in respect of the action in respect of Section 52(2), has no manner of application, in the facts and circumstances of the case. It is also admitted, in usual fairness by Sri Sankatha Rai, that in the writ petition there are interim orders operating in favour of the defendants. If it is so coowner may also protect his dispossession and such protection of the other coowners cannot effect the possession of defendants which is secured by the order of writ court. The defendants have also not claimed exclusive possession in respect of the property claimed to be in possession of the plaintiffs.

8. Thus, as pointed out by Sri Singh, I do not find any infirmity in the impugned order passed and therefore, I am not inclined to interfere with the order impugned in the present writ petition. Therefore, present writ petition fails and is accordingly dismissed.

9. There will be, however, no order as to costs.

10. Let a copy of this order be given to the learned Counsel for the petitioners on payment of usual charges within a week.