

**(2018) 12 RAJ CK 0273**

**In the Rajasthan High Court**

**Case No : Civil Miscellaneous Appeal No. 5234 Of 2016**

Kalyan And Ors

APPELLANT

Vs

Dinesh Chand Jain

RESPONDENT

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**Date of Decision : 10-12-2018**

**Acts Referred:**

Code Of Civil Procedure, 1908 — Order 43 Rule (1)r

**Citation : (2018) 12 RAJ CK 0273**

**Hon'ble Judges : Prakash Gupta, J**

**Bench : Singal Bench**

**Advocate : Saransh Saini, Bipin Gupta**

**Final Decision : Dismissed**

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## **Judgement**

This civil miscellaneous appeal has been filed by the defendant-appellant under Order 43 Rule (1) (r) CPC against the order dated 29.07.2016 passed by the District Judge, Sawai Madhopur in civil miscellaneous application No.27/2015 whereby the court allowed the application filed by the respondent-plaintiff for temporary injunction.

Brief facts giving rise to this appeal are that the plaintiff-respondent filed a suit for specific performance of contract and for permanent injunction against the defendant-appellant wherein it was stated that the defendant-appellant sold the agricultural land bearing Khasra No.2550 measuring 0.76 Hectare for a consideration of 76 lac and executed an agreement to sell on 27.02.2014. It was also stated that out of the sale consideration, a sum of Rs. 15 lac was paid and subsequently Rs.42 lac was also paid on different dates. In this way, a sum of Rs.57 lac was paid by the plaintiff-defendant. It was also stated that the defendant also executed a power of attorney in favour of the plaintiff. Defendant filed the reply to the application wherein execution of agreement to sell dated 27.02.2014 was admitted and receipt of amount of Rs.15 lacs was also admitted but receipt of rest of the amount was denied.

After hearing both the parties, learned trial court granted temporary injunction in favour of the respondent-plaintiff in the following terms:-

"प्रार्थी का प्रार्थना पत्र बाबत अस्थाई निषेधाज्ञा विरुद्ध अप्रार्थी स्वीकार किया जाकर आदेश दिया जाता है कि ता फेसला मूल वाद अप्रार्थी विवादित ग्रस्त भूमि किसी अन्य व्यक्ति को रहन, व्यय या अन्य किसी प्रकार से अन्तरित नहीं करे तथा उभय पक्ष मौके की यथास्थिति बनाये रखें ।"

I have heard learned counsel for the parties.

It is the contention of the learned counsel for the defendant-appellant that the possession of the suit land had not been handed over by the defendant to the plaintiff. This fact is specifically mentioned in the power of attorney which has been relied by the plaintiff himself. It is submitted that the learned court below has held that both the parties have failed to establish the factum of possession but in spite of that the learned trial court passed an order of status-quo which is contrary to law. Prima facie, there was no evidence on record which proves that plaintiff is in possession of the disputed land. On the contrary, in the power of attorney dated 04.08.2014 which is an admitted document, it is mentioned that possession of the suit land has not been transferred to the plaintiff and therefore, the order passed by the court below is arbitrary, perverse and against the material available on record.

On the other hand, learned counsel for the respondent-plaintiff has supported the order passed by the court below and submitted that the execution of the agreement has been admitted by the defendant in his reply and in the agreement to sell dated 27.02.2014, it is clearly mentioned that possession of the suit land has been transferred to the plaintiff by the defendant. Therefore, at this stage, it is prima facie proved that the plaintiff is in possession of the suit property.

I have considered the rival submissions of the learned counsel for the parties and perused the impugned judgment and also the material available on record.

There is no denial regarding the execution of the agreement to sell dated 27.02.2014. It is revealed from the agreement to sell dated 27.02.2014 that possession of the suit property was handed over by the defendant to the plaintiff at the time of the execution of the agreement to sell itself. At this stage, in view of the agreement to sell dated 27.02.2014, the possession of the plaintiff over the suit property is prima facie proved. The trial court in para 9 of the order observed as under:-

" प्रार्थी ने विवादित भूमि पर अपना कब्जा बतलाया है जबकि अप्रार्थी ने भी विवादित भूमि पर अपना कब्जा होना कथन किया है । लेकिन दोनों पक्षों की ओर से विवादित भूमि पर कब्जे के सम्बंध में कोई सारवान साक्ष्य पेश नहीं की गई है । "

It is revealed that at a later point of time, a power of attorney was executed by the appellant-defendant in favour of the plaintiff. It is mentioned therein that the power of attorney holder has not been given possession of the disputed suit land. From this document, it is not revealed that the possession delivered by virtue of

the agreement to sell had lost its value. Therefore, the argument raised in this regard has no substance.

Though the trial court has observed that both the parties have not produced evidence to prove their possession, on the basis of the agreement to sell dated 27.02.2014, the possession of the respondent over the suit land is prima facie proved. Therefore, instead of passing a vague order of status quo, the trial court ought to have observed that the respondent is in physical possession of the disputed land. A vague order of statusquo causes a lot of confusion among the parties and sometimes, it also becomes a cause of further litigation. In view of the above, order of status quo is maintained with the observation that the respondent is in possession of the suit land.

Consequently, the appeal is devoid of any merits and is dismissed accordingly.