
(2014) 02 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 721/2013

Kamla Devi

APPELLANT

Vs

Krishna Bhuriya

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1, 151

Citation : (2014) 3 WLN 474

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Prashant Gupta, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This civil misc. appeal has been filed against the order Dt. 17.11.2012 passed by the learned Addl. District Judge No. 1, Bundi (hereinafter "the trial court") dismissing the plaintiff- applicant's (hereinafter "the plaintiff") application under Order 40 Rule 1 read with Section 151 CPC for appointment of the Receiver over the suit property. The facts of the case in nutshell are that a suit for cancellation of sale deeds Dt. 16.3.2007 and 23.5.2007 was filed by the plaintiff. It was stated that a sale deed Dt. 16.3.2007 was executed by the respondent defendant No. 3 Jagannathi Bai masquerading as the plaintiff in favour of respondent defendant No. 1 before the Sub Registrar, Keshavrai Patan. It was submitted that the respondent defendant No. 1 Smt. Krishna Bhutiya-the beneficiary of the fraudulent registered sale deed Dt. 16.3.2007 further executed a sale deed for part of the land earlier conveyed in her favour to respondent defendant No. 2 Smt. Kamla Bai. It was submitted that when the aforesaid fraudulent acts came to her knowledge, she lodged an FIR No. 201/2007 Dt. 9.7.2007 before the Keshavrai Patan Police Station, which was under investigation. In these circumstances it was prayed that the sale deeds 16.3.2007 and 23.5.2007 be declared void ab-initio and the respondents

defendants be restrained by way of permanent injunction from the use and occupation of the lands in their possession under the sale deeds Dt. 16.3.2007 and 23.5.2007. Along-with the plaint an application under Order 40 Rule 1 read with Section 151 CPC for appointment of Receiver was also filed as also an application under Order 39 Rules 1 and 2 CPC.

2. In the application under Order 39 Rules 1 and 2 CPC the learned trial Court vide order Dt. 17.11.2012 directed that the status quo be maintained by the defendants with regard to the suit land during the pendency of the suit. The application under Order 40 Rule 1 CPC for appointment of Receiver was however, dismissed. Hence, this misc. appeal against the order Dt. 17.11.2012 dismissing the plaintiff's application under Order 40 Rule 1 CPC.

3. I have heard the counsel for the appellant and perused the impugned order.

4. From the facts on record it transpires that the defendants respondents are in possession of the suit property on the strength of the duly executed registered sale deeds albeit the aforesaid registered sale deeds Dt. 16.3.2007 and 23.5.2007 are under challenge before the trial Court. There is however no gain-saying that the defendants respondents No. 1 and 2 have a legal right under the impugned sale deeds along-with possession of suit property thereunder. The power under Order 40 Rule 1 CPC is a drastic power vested in the Court in the interest of equity but has to be sparingly exercised. The person in possession of property cannot be removed without substantial grounds and unless it is established that the plaintiff seeking appointment of a Receiver has a case likely to succeed and the opposite party in possession without any apparent legal authority is threatening to dissipate or cause irreparable injury to the property by way of alterations. The Hon''ble Madras High Court in the case of T. Krishnaswamy v. C. Thangavelu, AIR 1995 Mad. 430 has held that the appointment of a Receiver over the suit property is a matter related to the exercise of discretion by the trial Court but an order appointing a Receiver cannot be passed where it deprives the defendant of possession, since such an order has the potential of causing irreparable loss to the defendants. In my considered view in the overall obtaining facts of the case as also the first principles for appointment of a Receiver and with reference to the Judgment of the Madras High Court in the case of T. Krishnaswamy v. C. Thangavelu (supra), there is no substance in this civil misc. appeal. It is consequently dismissed. The plaintiff appellant shall however be free to move an appropriate application before the trial Court for expediting the trial in her suit for cancellation of sale deeds Dt. 16.3.2007 and 23.5.2007.