

(2017) 12 RAJ CK 0036
In the Rajasthan High Court
Case No : 3119 of 2017

Kantilal S/o Shri Ratan Lal

APPELLANT

Vs

Vidyadhar S/o Ummedramji

RESPONDENT

Date of Decision : 13-12-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 104](#),
[Order 39 Rule 1](#), [Order 39 Rule 2](#), [Order 43 Rule 1\(r\)](#)
a> - Orders from which app

Citation : (2017) 12 RAJ CK 0036

Hon'ble Judges : P.K. Lohra

Bench : SINGLE BENCH

Advocate : Bharat Shrimali, Nitesh Mathur

Final Decision : Allowed

Judgement

1. Appellant-plaintiffs have preferred this appeal under Order 43 Rule 1(r) read with Section 104 CPC to assail order dated 21 st of August 2017, passed by Addl. District Judge Bali, District Pali, rejecting their application for temporary injunction under Order 39 Rule 1 & 2 CPC in a suit for cancellation of sale-deed and perpetual injunction.
2. Brief facts of the case are that appellant-plaintiffs filed aforesaid suit with the averments that first respondent, Vidyadhar, is real uncle of appellant Kantilal and brother-in-law of third appellant, Smt. Pyari Bai. It is also averred that Late Shri Ratan Lal was father of appellants No.1, 2 & 4 to 7, and husband of third

appellant-Smt. Pyari Bai. While referring to the first respondent, it is averred in the plaint that he is real brother of Late Ratan Lal having joint agricultural land in Khasra Nos.24 & 25 ad-measuring 2.48 hectare situated at village Guda Jaitavtan, Tehsil Rani, District Pali and land ad-measuring 3.6 hectare of Khasra Nos.336, 339, 340 and 380 at village Tokarla, Tehsil Rani, District Pali. It is also averred in the plaint that both the brothers entered into family settlement and it was decided that deceased Ratan Lal shall own the agricultural land situated in village Guda Jaitavtan and the first respondent shall have right over the agricultural land of the village Tokarla. Appellants specifically pleaded in the plaint that part of agricultural land situated at Guda Jaitavtan has been alienated by first respondent unauthorisedly in favour of second respondent. Therefore, in that background, appellants have craved for issuance of decree for cancellation of sale-deed executed in favour of second respondent and also sought perpetual injunction. Along with the suit, an application under Order 39 Rule 1 & 2 CPC was also filed by the appellant-plaintiffs seeking temporary injunction for preserving the alienated property as it is and maintaining status quo. The respondents contested the temporary injunction application. The learned trial Court, thereafter, heard arguments of both the sides, by the order impugned rejected the temporary injunction application.

3. I have heard learned counsel for the appellants, learned counsel for the respondents and perused the impugned order.

4. Upon perusal of impugned order, I am at loss to say that the learned trial Court has not at all cared to examine the three requisites for grant of temporary injunction in right perspective. There is no quarrel in the legal position that grant of temporary injunction always depends upon existence of three necessary

ingredients, viz., prima facie case, balance of convenience and irreparable loss in favour of suitor and the Court is expected to examine all the three ingredients. Temporary injunction being equitable remedy founded on the principles of equality, justice and good conscience, a Court, clothed with jurisdiction to grant such relief is required to scrutinize afflictions of an aggrieved party with pragmatic approach.

5. True it is that the learned trial Court has recorded finding on all the three ingredients against appellants but the finding on prima facie case is not based on sound reasoning. Besides that, the other ingredients are also not examined by the learned trial Court appropriately.

6. Although the scope for interference with discretionary order of temporary injunction by appellate Court is very much limited but appellate court cannot shut its eyes when it is noticed that trial court has not examined the matter on the touchstone of sound legal principles governing the province for grant of temporary injunction.

7. In totality, I am afraid, finding on prima facie case by the learned trial Court and other two ingredients necessary for grant of temporary injunction are not satisfactory and therefore the impugned order is liable to be interfered with in exercise of appellate jurisdiction.

8. Resultantly, instant appeal is allowed. Impugned order is set aside and the matter is remanded back to the learned trial Court for deciding the application for temporary injunction of the appellants afresh.

9. It is needless to observe here that the learned trial Court is expected to decide the temporary injunction application dispassionately, uninfluenced by the observations made to supra.