

(2011) 10 SHI CK 0042
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 165 of 2011

Kashmiri Lal

APPELLANT

Vs

Premi Devi

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Citation : (2011) 10 SHI CK 0042

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—The petitioner, Kashmiri Lal, is aggrieved by the order dated 29.03.2011, passed by the learned Additional District Judge, Fast Track Court, Hamirpur, whereby he allowed the appeal of the plaintiff-respondent and restrained the petitioner-defendant from forcibly dispossessing the plaintiff from the suit land.

2. The undisputed facts are that the defendant, Kashmiri Lal, is the son of late Shri Ram Chand from his first wife, Sarvo Devi. Premi Devi claims to be the second wife of Ram Chand and according to her, she has inherited the property of Ram Chand.

3. Kashmiri Lal filed Civil Suit No. 189 of 2011 for possession of various properties allegedly belonging to Ram Chand on the ground that he is the legal heir of Ram Chand and that Premi Devi had no right to the same. Khata No. 22 min, khatauni No. 28 min, khasra No. 703, measuring 0-01-66 hectares, which is the subject matter of the second suit filed by Premi Devi, also was the part of the earlier suit filed by Kashmiri Lal. Premi Devi filed a second suit in respect of the land mentioned hereinabove and claimed that defendant Kashmiri Lal had forcibly trespassed on the suit land in June 2009 and sown the maize crop to establish his possession. She had reported the matter to the Panchayat, but the defendant was still threatening to forcibly dispossess the plaintiff from the suit

land. She also stated that again in July, 2009, the defendant had tried to dispossess the plaintiff and hence the suit. In the suit, she did not make any mention of the previous suit filed by Kashmiri Lal. Kashmiri Lal filed written statement and an objection was raised that the second suit was not maintainable and the stay application was also contested on the ground that since even according to Premi Devi (plaintiff in the second suit), the defendant had sown maize crop, he was in possession of the suit land and no interim direction could be issued in favour of the plaintiff. This application was rejected by the learned trial Court mainly on this ground and also on the ground that the plaintiff had suppressed material facts by not making any mention of the earlier suit. Premi Devi filed an appeal and the learned lower Appellate Court allowed the appeal and granted the stay in favour of Premi Devi. Hence, the present petition.

4. I have heard Mr. Romesh Verma, learned counsel appearing on behalf of the petitioner and Mr. Neeraj Gupta, learned counsel appearing on behalf of the respondent.

5. Mr. Romesh Verma contends that the pleadings themselves indicate that the plaintiff, Premi Devi, was not in possession of the suit land and no stay could have been granted in her favour. He further submits that the second suit was not maintainable since the suit property was already the subject matter of litigation in the previous suit. He lastly submits that the plaintiff was guilty of suppressing the material facts in as much as she has stated as follows:

That no similar suit on same cause of action qua the suit and between the same parties is either pending or has been decided earlier by any court of law.

6. As far as the first objection is concerned, it would be pertinent to mention that though Premi Devi had stated that defendant Kashmiri Lal had sown the maize crop, but at the same time, she had not clearly admitted that she was not in possession and according to her, Kashmiri Lal was trying to interfere in her possession. Be that as it may, when Kashmiri Lal in his suit had claimed possession of this very land, he without explaining how he entered possession could not claim that he is in possession of the suit land.

7. Normally, even a trespasser is entitled to protect his possession, but here we are dealing with a case where Kashmiri Lal filed a suit for possession of various properties including the suit land in the second suit and without waiting for decision of the suit tried to interfere in the possession of Premi Devi. Here it would be pertinent to mention that suit filed by Kashmiri Lal has been dismissed by the learned trial Court on 12.08.2011 and in the said suit, there is a finding that Premi Devi became absolute owner in possession of the estate of Ram Chand on the basis of Will executed by him. In the light of this judgment delivered in the suit filed by Kashmiri Lal, he can by no stretch of imagination claim that he is in possession of the suit land.

8. As far as the second objection is concerned, the same is totally without merit. At best, the second suit, if it arises out of the same cause of action and is

between the same parties, may have to be stayed, but the suit cannot be said to be not maintainable.

9. Mr. Verma has relied up a judgment of this Court delivered in Smt. Rani Kukreja versus Smt. Prabha Bhagra and others, Latest HLJ 2011 (HP) 817, whereby this Court has held that any person, who approaches the Court for grant of relief, must come with clean hands and must not suppress the material facts. In this case, the plaintiff, Premi Devi, would have been well advised to make a mention about the suit filed by Kashmiri Lal against her.

10. Mr. Neeraj Gupta submits that no false averment was made, since the present suit does not arise of the same cause of action. This is a technical plea being taken and it would have expected of the plaintiff to have made a mention of the previous proceedings. Having said so, in my view, in the present case, Premi Devi, cannot be non-suited only on this ground. She is virtually an illiterate lady and her counsel probably was aware about the previous litigation.

11. Furthermore, if she had mentioned about the previous litigation, it would have only helped her case since this would have clearly shown that Kashmiri Lal had filed a suit for possession. Be that as it may, the fact remains that this is a case where even if Kashmiri Lal has not stated the entire truth. The conduct of Kashmiri Lal is also not above board. There is no explanation worth the claim as to how during the proceedings of the previous suit for possession filed by him, he could have come in possession of the suit land.

12. As observed above, the suit filed by Kashmiri Lal has already been dismissed. Therefore, I find no merit in the petition, which is accordingly dismissed. No order as to costs.