
(1994) 05 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15279 of 1994

Mahipal Singh and Anther

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 18-05-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 31 Rule 2, Order 31 Rule 3
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B,
229C, 229D, 341

Citation : (1994) 05 AHC CK 0028

Hon'ble Judges : S.P.Srivastava, J

Final Decision : Disposed Of

Judgement

S.P. Srivastava, J.—Heard the counsel for the petitioners, learned Standing Counsel and learned counsel representing the Caveator as well as Gaon Sabha, respondent No. 7.

2. Perused the record.

Feeling aggrieved by an order passed by the Board of Revenue, respondent No. 1 dated 23.2.94 whereunder accepting the reference made by the Additional Commissioner dated 21.4.93 the revising authority had set aside the order of the trial court dated 30.4.92 granting ex pane, injunction against the defendants as well as the order passed by it dated 16.11.92 requiring the restoration of the status quo in respect of the land in dispute as reported by the Commissioner in his report dated 4.5.92 and directing for the reconstruction of the "dol" and in case there had been any alteration in the possession in that event restoration of possession, the plaintiffspetitioners have now approached this court seeking redress praying for the quashing of the order of the Board of Revenue, respondent No. 1 as well as the referring order passed by the Additional Commissioner indicated herein before.

3. From a perusal of the record, it appears that plaintiffs petitioners had filed a suit No. 35/1992 under Section 229B of the U.P. Zamindari Abolition and Land

Reforms Act seeking the declaration to the effect that they were the Bhumidhar of Khasra Plot No. 322 having in area of 6Bigha 10 Biswansi and were netitled to be recorded as such in the revenue records. The plaintiffs claimed that the land in dispute had been let out to them for a period of one year on crop sharing basis but even after the expiry of one year they continued to cultivate the said land for about 12 years and matured Bhumidhari rights therein. It was further alleged that although the recorded tenureholder requested the plaintiffs to vacate the land in dispute yet it was not done. The plaintiffs alleged that though the land in dispute was continuing to be in their exclusive cultivatory possession and the recorded tenureholder had no right or title left therein yet in an unauthorized manner he sold the land in dispute to defendants Nos. 2 and 3 on 27.1.92 and 30.1.92 through the sale deeds which were null and void. It was further alleged that the defendants threatened to interfere in the possession of the plaintiffs, hence the suit.

4. The aforesaid suit was contested by the recorded tenureholder defendant No.

1 as well as transfers, defendants Nos.

2 and 3. They denied the allegations made in the plaint and asserted that the land in dispute had never been let out to the plaintiffs and that they had never been in possession of the said land . which throughout continued to be in exclusive cultivatory possession of the recorded tenureholder till its transfer whereafter the transferees were in possession thereof.

5. It appears, that along with the plaint the plaintiffs had moved an application under Section 229D of the U.P. Zamindari Abolition and Land Reforms Act seeking an interim injunction against the defendants restraining them from dispossessing the plaintiffs from the land in dispute. It appears that on the aforesaid application seeking interim injunction the trial court on 30.4.92 issued an ex parte injunction to the effect that status quo on the spot be maintained and in case the plaintiffs were in possession over the land in dispute in that even they be not dispossessed till the date of service of the notice. The plaintiffs had also applied for appointment of a commissioner for effecting the service of the injunction order and the notice. On this application the trial court had appointed a Commissioner who was required to serve the injunction order on the defendants and to prepare a sketch map of the land in dispute and note the facts pointed out by the plaintiffs and submit a report. The Commissioner submitted a report dated 4.5.92. The defendants Nos. 2 and 3 the transferees filed an objection against the report on 22.6.92. On the same date they filed a written statement denying the plaint allegations and asserting that they were continuing to be in exclusive possession of the land in dispute from the date of the execution of the sale deed prior to which the recorded tenureholder was in possession of the same. Various other pleas were also raised by the defendants.

6. On 16.9.92 the plaintiffs moved an application under Section 151 of the Code of Civil Procedure alleging that the defendants had removed certain "mends"

noticed by the Commissioner and were not allowing the plaintiffs to cultivate the land in dispute and, therefore, the "mends" be got reconstructed through the Commissioner and in the presence of the Commissioner the plaintiffs be permitted to get the land in dispute cultivated. The transferees defendants Nos. 2 and 3 filed detailed objection against the aforesaid application. The trial Court, however, vide the order dated 16.11.92 came to the conclusion that the "mends" be got reconstructed and in case possession had been altered in that case the same be restored to bring in the status quo ante as reported by the Commissioner in his report dated 4.5.92.

7. Aggrieved by the order dated 16.11.92 the transferee defendants preferred a revision under Section 333 of the U.P. Zamindari Abolition and Land Reforms Act. The Additional Commissioner negated the pleas raised by the plaintiffs holding that their claim about being in adverse possession over the land in dispute could not be accepted. The Additional Commissioner was of the view that the plaintiffs had failed to establish prima facie case for the issuance of an interim injunction. The Additional Commissioner also observed that the suit filed by the plaintiffs was not entertainable as it had been filed before the expiry of the period of notice under Section 80 of the Code of Civil Procedure and the trial court had erred in granting leave as contemplated under Section 80 (2) of the Code of Civil Procedure. The Additional Commissioner further observed that it was not open to the trial court to base the findings on the report submitted by the Commissioner on 4.5.92 without disposing of the objections filed by the contesting defendants against the same.

8. Accordingly, the Additional Commissioner made a reference to the Board of Revenue, respondent No. 1 recommending for the setting aside of the trial court's order.

9. The Board of Revenue while exercising the revisional jurisdiction contemplated under Section 333 of the U.P. Zamindari Abolition and Land Reforms Act had called for the record of the case. After hearing the counsel for the parties the Board of Revenue had come to the conclusion that the order of ex parte injunction dated 30.4.92 itself was manifestly illegal. It was noticed by the Board of Revenue that the interim injunction granted by the trial Court itself provided that the plaintiff be not dispossessed in case he was in possession. The Board of Revenue felt that the aforesaid observation indicated that the trial court itself was unable to decide whether the plaintiff was in possession or not and in such cases no interim injunction could be issued under Section 229D of the U.P. Zamindari Abolition and Land Reforms Act. The Board of Revenue also observed that the trial court had failed to examine closely the rival claims of title and possession and at a stage when parties had not adduced their evidence it was not proper to express sharp opinions on disputed points. Observing this the Board of Revenue quashed the observations occurring in the orders impugned before it which touched on the merits of the rival claims. The Board of Revenue while accepting the reference set aside the order of ex parte injunction dated 16.11.92 as well as

the order dated 30.4.92 and directed that trial court to proceed to decide the case on merits but observed that no case for the issue of injunction was made out in favour of the plaintiffs. It also directed the trial court to reconsider whether leave for instituting the suit without the service of notice could be granted under Section 80 (2) of the Code of Civil Procedure.

10. The provisions contained in Section 341 of the U.P. Zamindari Abolition and Land Reforms Act stipulate that unless otherwise expressly provided by or under the said Act the provisions of the Code of Civil Procedure, 1908 shall apply to the proceedings under the said Act. Section 229D of, the U.P. Zamindari Abolition and Land Reforms Act vests the trial court with the jurisdiction to grant a temporary injunction if in the course of a the suit under the provisions of Sections 229B and 229C it was proved by an affidavit and otherwise that any property, trees or crops standing on the land in dispute was in danger of being wasted, damaged or alienated by any party to the suit or any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of justice.

11. Considering the implications arising under Section 229D and Section 341 of the U.P. Zamindari Abolition and Land Reforms Act, it seems to me that while granting a temporary injunction under Section 229D of the U.P. Zamindari Abolition and Land Reforms Act, the trial court ought to keep in mind the provisions contained in Order XXXIX, Rule 3 of the Code of Civil Procedure which mandates that the court shall in all cases except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction direct notice of the application for the same to be given to the opposite party provided that where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay.

12. The provisions contained in Order XXXIX, Rule 3 of the Code of Civil Procedure are of a mandatory nature and the court while granting ex parte injunction has to record the reasons as contemplated in the aforesaid provision. In the present case what I find is that the trial court has not complied with the mandatory requirements envisaged under Order XXXIX, Rule 3 of the Code of Civil Procedure at all. Moreover the trial court has manifestly erred in relying upon the ex parte report of the Commissioner without considering and disposing of the objections filed against it by the contesting defenants. This irregularity is fatal and vitiates the entire finding recorded by the trial court.

13. It may be noticed here at his stage that this Court in its decision rendered by a Division Bench in the case of Road Flying Carrier and another v, The General Electric Company of India Limited, 1990 AWC 437, had clarified that it must be stressed that the subordinate courts are granting temporary injunction without having any regard to the mandatory provisions of Ruel 3 of Order XXXIX, C.P.C. It is of utmost importance to note that an ex parte order of injuction is an

exception, the general rule being that order be passed only after hearing both the parties. It is only in rare cases where the court finds that object of granting injunction would be defeated by the delay, the court can issue an injuntion ex parte but that too only after recording reasons therefor. Ex parte injuction is not a routine matter and it must be borne in mind by the courts below.

14. In the circumstances, therefore, I do not find the present one to be a fit case for interfering with the impugned order passed by the Board of Revenue to the extent it sets aside the orders of the trial court dated 30492 and 161192. However, it seems to me that the Board of Revenue was not justified in observing that no case for issue of injuction was made out in favour of the plaintiffs. This observation is bound to prejudice the claim of the plaintiffs in the matter relating to the disposal of the application seeking interim injuction which is still pending awaiting final disposal. The trial court shall ensure that this application is finally disposed of expeditiously according to law preferably within a month. It may, however, be further observed that the trial court has to keep in mind that before granting any mandatory injuction it must be ensured that the plaintiff has a strong case for trial that is, of a higher standard than a prima facie case that is normally required for a prohibitory injuction and further it must be necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money and further that the balance of convenience lies in favour of the one seeking such relief.

15. In the result, this writ petition is finally disposed of an in the light of the observations and the directions indicated hereinbefore.

There shall be no order as to costs.