
(2012) 08 MP CK 0294

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2258 / 2012

Mangroolal, Aamrual and Anulal

APPELLANT

Vs

Jhadulal, Jhanaklal

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 2013 MP 8

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Sanjay Jain, for the Appellant; Paritosh Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Shri Justice A.K. Shrivastava

1. By this petition under Article 227 of the Constitution of India, the petitioners are challenging the validity of order dated 30.01.2012 passed by Second Additional District Judge, Balaghat in Misc. Civil Appeal No.1/2011 whereby order of 4th Civil Judge, Class-II Balaghat in Civil Suit No.116/2011 dated 20.10.2011 has been reversed and set aside and the order by which application for temporary injunction filed by plaintiffs was allowed, has been set aside. The plaintiffs filed a suit for declaration and injunction in re-spect of certain agricultural land, the description whereof has been men-tioned in the plaint, on the averments that mother of plaintiffs namely Chamharin Bai purchased the land from Dharmu S/o. Ambar and Devaji S/o. Gaundu on 21.03.1979 and obtained the possession of the land in question. Since then the plaintiffs are in possession and cultivating the land. However, the defendants Jhadulal and Jhanaklal who are sons of Devaji (one of the vendors of plaintiffs) and other two defendants who are their family member are creating hindrance and thus present suit has been filed.

2. An application for issuance of temporary injunction has also been filed by the

plaintiffs praying that defendants be restrained from interfering in their possession.

3. The defendants filed reply to the said application and also filed written-statement and submitted that plaintiffs are not in possession of the property and the said property is of HUF in which defendants are also having their share. Therefore, it has been prayed that not only the suit as well as application for temporary injunction may be dismissed.

4. Learned Trial Court on the basis of pleadings as well as documents and other material on placed on record came to hold that the plaintiffs are having registered sale-deed dated 21.03.1979 executed by Dharmu and Devaji in favour of mother of plaintiffs Chamharin Bai. Thereafter name of Chamharin Bai was also mutated. The learned Trial Court hence allowed the application of temporary injunction which has been set aside by the appellate court by the impugned order.

5. In this manner, this petition has been filed by the plaintiffs.

6. It has been contended by learned counsel for petitioners that if the learned Trial Court has exercised discretion vested in it under the law on the basis of pleadings, affidavits, documents and other material placed on record, on sound judicial principles, in all fairness the appellate court should not have interfered in the appeal. Further it has been contended that if the mutation order in favour of the defendants has been made in absence of any knowledge of the plaintiffs, it would not mean that the plaintiffs are in possession and said mutation order cannot over-ride the registered document i.e. sale deed dated 21.03.1979.

7. On the other hand by placing reliance on the averments made in para 22 of the written-statement it has been contended by learned counsel for respondents/defendants that sale-deed is a fictitious document and cannot be looked into. Learned counsel submits that since the names of defendants are mentioned in the revenue record, they shall be deemed to be in possession of the property and therefore rightly the order passed by the learned Trial Court has been set aside by the learned Appellate Court by assigning cogent reasons and therefore, this petition be dismissed.

8. Having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed.

9. On bare perusal of the order passed by the learned Trial Court dated 20.10.2011 it is gathered that by considering the pleadings of parties, averments made in the temporary injunction application, reply thereof, documents which were placed on record, learned Trial Court came to hold that there is prima facie case in favour of the plaintiffs because the land in question has been sold by owners of land Dharmu and Devaji by executing a registered sale-deed in favour of Chamharin Bai. Learned Trial Court further found that defendants Jhadulal and Jhanaklall are sons of Devaji (who is one of vendors of sale-deed dated 21.03.1979). Learned Trial Court gave a finding that thereafter mutation has also

been made and thus plaintiffs are having prima facie case and are also in possession of the suit land and in case they are dispossessed, they would suffer irreparable loss and balance of convenience also lies in their favour. The learned Appellate Court only on the ground that lateron mutation of defendants has been made, therefore, they are in possession of the land, has passed the impugned order.

10. To me, whether sale-deed is fictitious or not, at this juncture, it cannot be decided. Since registered sale-deed dated 21.03.1979 is on record in which sellers are Dharmu and Devaji and further first and second defendants are sons of Devaji and the vendors sold the land in question to Chamharin Bai, who was mother of plaintiffs and if lateron plaintiffs' names were mutated in the revenue record, it would be deemed that plaintiffs are having prima facie case.

11. On bare perusal of the sale-deed dated 21.03.1979 it is gathered that possession of suit property was also delivered to the plaintiffs. Thus, I am of the view that learned First Appellate Court ought not to have interfered in the well considered order of Trial Court which was based upon sound principles of granting temporary injunction.

12. Resultantly, this petition succeeds and is hereby allowed. The impugned order dated 30.01.2012 is hereby set aside and the order dated 20.10.2011 passed by the Trial Court is hereby restored. Petition is allowed and disposed of. No costs.