
(2013) 07 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5658 of 2013

Manoj Nagpal and Another

APPELLANT

Vs

Smt. Archana Kathuria and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2014) 1 WLN 346

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : D.D. Chitlangi, for the Appellant; S.L. Jain, Advocate (Caveator), for the Respondent

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J.—This writ petition has been preferred by the petitioners against the order dt. 08.05.2013 passed by learned Additional District Judge No. 1, Sri Ganganagar (for short "the appellate Court" hereinafter) in Appeal No. 1/2013 preferred by the petitioners against the order dt. 08.01.2013 passed by the Civil Judge (Junior Division) No. 1, Sri Ganganagar (for short "the trial Court" hereinafter) on an application under Order 39 Rule 1 and 2 read with Section 151 C.P.C. preferred on behalf of the respondent Nos. 1 to 4 along with a suit for permanent injunction. Respondent Nos. 1 to 4 have preferred a suit for permanent injunction while praying that the petitioner-defendants may be restrained from raising any construction on the plot No. 15 situated at Chak C-E, Chhoti, Sri Gangangar. Along with the suit, the respondent-plaintiffs have preferred an application for temporary injunction under Order 39 Rule 1 and 2 C.P.C. with a prayer that the petitioner-defendants may be restrained from interfering with the peaceful possession of the respondent-plaintiffs and also with a prayer for restraining the petitioner-defendants from interfering the respondent-plaintiffs from raising construction on the plot in question.

2. The learned trial Court has allowed the said application and restrained the petitioner-defendants from interfering with the peaceful possession of the

respondent-plaintiffs as well as in the construction work carried out by them on the plot in question.

3. In the appeal preferred by the petitioner-defendants before the appellate Court, the appellate Court vide order dt. 08.05.2013, has confirmed the order dt. 08.01.2013 passed by the trial Court, whereby the learned trial Court granted the temporary injunction.

4. Being aggrieved with the orders impugned, the petitioner-defendants have filed this writ petition.

5. The learned counsel for the petitioner-defendants has argued that the learned trial Court has grossly erred in granting the temporary injunction in favour of the respondent-plaintiffs in the nature of the final relief. The learned counsel for the petitioner-defendants has invited the attention of this Court towards the prayer clause of the suit preferred by the respondent-plaintiffs and has argued that the learned trial Court, while granting temporary injunction, has granted all the prayers as claimed in the suit itself.

6. It is contended by the learned counsel for the petitioners that it is a settled proposition of law that the interim relief amounting to the final relief should not be granted but the learned trial Court has granted the interim relief to the respondent-plaintiffs in the nature of the final relief and, therefore, the order dt. 08.01.2013 passed by the learned trial Court was per se illegal and the learned appellate Court vide order dt. 08.05.2013, without taking into consideration this aspect of the matter, has illegally confirmed the stay order passed by the trial Court.

7. The learned counsel for the petitioner-defendants has relied upon a decision of this Court in Mohan Lal Sukhadia University & Anr. vs. Chandrabhan Singh, reported in 2003 (1) WLC (Raj.) 359 and has prayed that the orders passed by both the Courts below dt. 08.01.2013 and 08.05.2013 may be set aside.

8. Per contra, learned counsel for the respondents has argued that the learned trial Court has taken into consideration all the material available on record and has thereafter observed that the respondents had purchased the plot in question vide registered sale-deed, whereas the petitioner-defendant are claiming title over the plot in question on the basis of agreement to sale, wherein also, the measurement of the plot mentioned is different from the earlier documents on the basis of which, the petitioner is claiming that the plot was purchased by him from previous owner.

9. I have considered the rival submissions made on behalf of the parties and perused the record.

10. The learned trial Court, after examining the documents produced by the parties and after taking into consideration the submissions of the respondent-plaintiffs, has observed that the description of the property given in the agreement to sale, on the basis of which, the petitioner-defendants are claiming

the title, does not match the size of the plot given in the chain of the documents pertaining to the very said plot.

11. The learned trial Court has also observed that the respondent-plaintiffs have purchased the plot in question from a person, who was holding a patta in his favour issued by the local authority and the respondent-plaintiffs were prima facie able to prove their title over the property in question. The learned trial Court has thereafter observed that if the respondent-plaintiffs are restrained from using the property in question, which prima facie belongs to them, then they would suffer irreparable loss. After observing this, the learned trial Court has granted temporary injunction in favour of the respondent-plaintiffs and has restrained the petitioner-defendants restrained the petitioner-defendants from interfering with the peaceful possession of the respondent-plaintiffs as well as in the construction work carried out by them on the plot in question. The learned appellate Court, after taking into consideration all the arguments advanced by the petitioner-defendants, has confirmed the order dt. 08.01.2013 passed by the learned trial Court.

12. After taking into consideration all the facts and circumstances of the case, this Court is of the opinion that the learned trial Court as well as the learned appellate Court have not committed any illegality in passing of the impugned orders particularly in view of the documentary evidence produced by the respondent-plaintiffs, whereby the title of the respondent-plaintiff over the property in question is prima facie proved. The judgment referred by the learned counsel for the petitioners in Mohan Lal Sukhadia University & Anr. vs. Chandrabhan Singh (supra) is in relation to the admission in an educational institution and the facts of this case are quite different and, therefore, the same does not help to the petitioners in any manner. In view of the aforesaid discussions, the instant writ petition fails and is hereby dismissed. Stay petition also stands dismissed.