
(2015) 05 RAJ CK 0219
In the Rajasthan High Court
Case No : Civil Second Appeal No. 147/2015

Mohan Singh

APPELLANT

Vs

Sevar Gram Sewa Sahakari Samiti Limited and Others

RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2015) 4 WLN 63

Hon'ble Judges : Prakash Gupta, J.

Bench : Single Bench

Advocate : J.P. Goyal, Sr. Counsel and Abhi Goyal, Advocate, for the Appellant;
Nikhlesh Katara, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Gupta, J.—This appeal is preferred against the Judgment and decree dt. 31/01/2015 passed by the Additional District and Sessions Judge No. 1, Bharatpur, (hereinafter referred to as "the appellate Court") in civil regular appeal No. 10/2014 whereby, the appellate Court confirmed the judgment and decree dt. 19/02/2014 passed by the Additional Civil Judge (Junior Division) No. 1, -Bharatpur (hereinafter referred to as "the trial Court"), in civil suit No. 130/2013 (300/2011). The brief facts giving rise to this appeal are that the appellant-plaintiff filed a suit for permanent injunction against the respondents-defendants inter alia, alleging that the plaintiff has been a tenant in a shop described in para No. 2 of the plaint. The defendant No. 1 wants to dispossess the plaintiff without taking due process of law with the help of the defendant Nos. 2 to 6.

2. The defendant No. 1 resisted the suit by filing a written statement, inter alia, stating therein that the appellant-plaintiff was neither being dispossessed nor threatened to be dispossessed out of the shop without due process of law.

3. It is submitted by the learned counsel for the appellant-plaintiff that even

thought a notice for termination of tenancy was served upon the plaintiff, the plaintiff cannot be said to be in unauthorized possession but is a tenant holding over. Therefore, the plaintiff cannot be dispossessed without due process of law. It is also submitted that the undertaking given by the defendant No. 1 was not given by the other defendants and the right to seek relief under the general law has not been barred by the said undertaking; this aspect has not been considered by both the Courts below.

4. On the other hand, the learned counsel for the respondent supported the judgments and decrees passed by the Courts below.

5. I have considered the rival submissions made by the learned counsel for both the parties and perused the record.

6. The defendant No. 1-respondent No. 1 filed a S.B. Civil Writ Petition No. 15849/2010 and other connected writ petitions, which were disposed of on 24/02/2011 as under:-

"After arguing the matter to some length, learned counsel for petitioners, on instruction, submits that eviction would not be effected without undertaking the process as provided under the law.

In view of statement made aforesaid, nothing survives now in the matter rather applications made by respondents before the Court below has also become infructuous. Accordingly, while not interfering with the impugned order herein, writ petitions are disposed of with the following directions:-

(i) Petitioner undertakes not to evict respondents without following the provisions of the law as provided.

(ii) Outcome of the aforesaid is that if at all petitioner is intended to evict respondents, it would be as per the law. Accordingly, matter pending before the Court below is also rendered infructuous and for that purpose, this order may be produced there.

In view of disposal of writ petitions, stay applications also stand disposed of."

7. Thereafter, the appellant-plaintiff filed a writ petition No. 11900/2013 which was decided on 19/07/2013 as under:-

"All the writ petitions arise in identical background, agitate a common question and are thus being decided by this common order. SBCWP No. 11903/2013 is the leading case for reference to the necessary facts.

The writ petition has been filed with the following prayer:

(i) "By an appropriate writ Order or direction the order passed on 26.06.2013 by non-petitioner No. 2 may kindly be quashed and set aside.

(ii) By an appropriate writ order or direction the respondents may kindly be directed not to dispossess the petitioner from rented shop without following legal

procedure."

A perusal of the writ petition indicate that in SBCWP No. 15849/2010, Sevar Gram Seva Shakari Samiti Ltd. vs. Munshi Shah & Anr. and three other connected matters, this Court vide order dt. 24.02.2011 recorded the undertaking of Sevar Gram Seva Shakari Samiti Ltd. (now respondent No. 3 before this Court) not to evict Munshi Shah (Now the petitioner before this Court) from the tenanted premises without following the provisions of law. This Court further directed that the Sevar Gram Seva Shakari Samiti Ltd. would only be entitled to evict the petitioner as per law. The said order has attained finality. It further transpires from the file of the present writ petition that the petitioner had approached the Civil Judge (Jr. Division), Bharatpur and vide order dt. 23.11.2012, the Civil Judge directed on the petitioner's application under Order 39 rule 1 & 2 read with Section 151 CPC that in the pending suit, the petitioner Munshi Shah, who was the plaintiff before the Civil Court, would not be dispossessed without due process of law.

Now the Tehsildar, Bharatpur, vide its show cause notice dt. 26.06.2013, has required the petitioner, Munshi Shah, to present before 1st July, 2013 proof with regard to his ownership or other legal right to continue in the tenanted shop in dispute or otherwise the petitioner would be dispossessed. The petitioner is aggrieved of this notice.

In my considered opinion, there is no occasion for this Court to interfere in the present writ petition. The Prayer in the writ petition now agitated has already been granted by this Court in its judgment dt. 24.02.2011 in SBCWP No. 15849/2010. Reference to which has been made hereinabove. And the petitioner has already filed reply to the notice of the Tehsildar, Bharatpur detailing all the facts with regard to the protection by this Court as also Civil Court. The Tehsildar, Bharatpur no doubt would have due regard to the order of this Court passed in SBCWP No. 15849/2010 and in the event the same were to be overlooked, it is on the Tehsildar's own peril. If wronged and the order dt. 24.02.2011 in SBCWP No. 15849/2010, overlooked and disobeyed, the petitioner would be free to take his proceedings in law including for contempt of the order aforesaid.

For the present, I do not find any ground to interfere with the writ petitions and the same are disposed of with the aforesaid observations. Stay application need no address in view of the petitions being disposed of. "

8. In view of the aforesaid Order dt. 24/02/2011, it is clear that this Court has already given a finding that the plaintiff would be dispossessed from the disputed property only after following the due process of law. In Order dt. 19/07/2013, this Court has also observed that in the event of the Order passed in S.B. Civil Writ Petition No. 15849/2010 being overlooked and disobeyed, the plaintiff would be free to take appropriate proceeding in law, including contempt of the Order aforesaid. In view of the finding aforesaid, civil rights of the present plaintiff have already been protected. Hence, the Courts below have not committed any

illegality by holding that the relief claimed in the suit has already been granted to the plaintiff by the High Court in Orders dt. 24.02.2011 and 17.07.2013. In view of the above the Court does not find any infirmity, perversity or illegality in the impugned judgments and decrees passed by both the Courts below. Both the Courts below, having considered all the factual and legal aspects in the right prospective, the findings recorded by the Courts below not require any interference. The learned senior counsel for the appellant has also failed to point out any substantial question of law being involved in the present appeal.

Resultantly, the appeal being devoid of merits, hence, is dismissed.