
(1998) 05 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 16001 of 1998

Mohd. Jubair

APPELLANT

Vs

District Judge, Jaunpur and others

RESPONDENT

Date of Decision : 06-05-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227, 262

Citation : (1998) 3 AWC 1860

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Shahabuddin and Govind Krishna, for the Appellant;

Judgement

D.K. Seth, J.—The petitioner as plaintiff instituted Original Suit No. 1688 of 1997 in the Court of Civil Judge. (Junior Division). Jaunpur. In connection with the said suit, he filed an application for temporary injunction. By an order dated 13.11.1997, ad interim injunction was granted. Subsequently, by an order dated 4.2.1998 the application for temporary injunction was rejected on contest. Misc. Appeal No. 15 of 1998 was preferred against the said order. By an order dated 31.3.1998 passed by the learned District Judge, the appeal was dismissed and the order passed by the learned Civil Judge (Junior Division) was upheld. These orders have been challenged in this petition.

2. Mr. Govind Krishna, learned counsel for the petitioner, contends that the appeal court had thoroughly on misconception of facts come to the finding that no prima facie case was made out. It has come to the finding that plot No. 38 is recorded as petri in the name of the plaintiff and Khasra for the year 1404 Fasli also stands in the name of the plaintiff on misconception notion that plot No. 38/66 was not recorded as pond but as petri and then the said land was shown to have been used by the plaintiff in possession for cultivation of crops. The appeal court has not come to the finding as to the question of the pond which is in the possession of the plaintiff and therefore the entire order is perverse.

According to him. on similar grounds the order passed by the learned Civil Judge is also perverse. Inasmuch as the learned Civil Judge (Junior Division) has also not correctly ascertained the facts and had proceeded on misconception of the facts. The findings of fact appear to be perverse on the basis of the materials placed before the Courts. According to him, the defendant had been claiming right, title and interest by virtue of a lease deed executed by the then Zamindar on 9.2.1952 in favour of the defendant, which according to him is void by reason of coming into force of U. P. Zamindari Abolition and Land Reforms Act. Therefore, the findings of the Courts below being perverse, the orders impugned cannot be sustained and are to be set aside.

3. Mr. J. S, Tomar, learned counsel for opposite party Nos. 3 to 7, on the other hand, contends that both the Courts had come to a finding that the plaintiff-petitioner is in possession of the land other than that is used as a pond. From the records it is apparent as has been discussed by the Courts below that the lands other than the pond are in possession of the plaintiff-petitioner, which has rightly been found by the Courts below. But so far as the land which is pond that has been found to be in possession of the defendants. He has also pointed out that there were several suits between the defendants -and ancestors of the plaintiff in respect of the said pond, in which rights of the defendants have been confirmed including a decree arrived at through compromise between the parties. Therefore, according to him, there is no infirmity in the impugned orders.

4. Before entering into merits. Mr. Tomar had taken a point that the application under Articles 226 and 227 is not maintainable in view of the ratio decided in the case of Ganga Saran Vs. Civil Judge, Hapur, Ghaziabad and others, and New Jahangir Vakil Mills v. State of Gujarat. 1997 (77) FLR 854.

However, this submission was opposed by Mr. Govind Krishna. He relied on the decision in the case of Matthan Singh v. IIna A.D.J., Meerut and others 1996 ARC 117.

5. I have heard both Mr. Govind Krishna and Mr. Tomar at length. So far as the preliminary objection is concerned, the decision in the case of New Jahangir Vakil Mill's case /supra), does not lay down a proposition that application under Article 227 is not maintainable against an order arising out of a suit for permanent injunction as in the present case. Admittedly, the present writ petition has been moved under Articles 226 and 227 of the Constitution of India. Mr. Govind Krishna at the very initial stage prayed for leave to convert the application into one under Article 227. The petitioner having inscribed the application as one under Article 227, there is no difficulty in treating it under Article 227.

6. In the present case, the suit was a suit for injunction. In connection with such a suit for injunction, the application for temporary injunction was rejected by both the Courts. Therefore, according to Mr. Tomar, the grant or refusal of injunction, in effect, amounts to a mandamus to be granted between two private individuals none of whom have any public or statutory duty, therefore, in view of

the ratio decided in Ganga Saran's case (supra) in such situation, writ petition against such order is not maintainable. In my view, there is no doubt about the said proposition. In a suit for permanent injunction. If application for temporary injunction is rejected, in that event the Court has refused to grant mandamus between two private individuals. Therefore, such a situation is hit by the ratio laid down in Ganga Saran's case (supra). But since the present application is one under Article 227, the said ratio cannot be applied. Inasmuch as in Ganga Saran's case (supra), the question of Article 227 was not consciously gone into as has been found in the decision in the case of Matthan Singh, (supra), therefore, the ratio in Ganga Saran (supra) cannot be a pointer to hold that a petition under Article 227 is not maintainable. On the other hand, the decision in the case of New Jahangir Vakil Mills (supra) proceeds on the basis as to when discretion under Article 226 or 227 is to be exercised. It has not laid down any absolute proposition that an application under Article 226 or 227 against an order passed by the civil court is not altogether maintainable. Even if a petition under Article 226 is not maintainable against an order passed by the civil court exercising civil jurisdiction, but there is nothing to prevent the High Court from exercising its supervisory jurisdiction conferred under Article 227. This power having been conferred by the Constitution, it cannot be circumscribed even by any statute until and unless any embargo is Included in the Constitution itself. The power of superintendence by the High Court over civil courts or tribunals subordinate to it, is unfettered, therefore, a petition under Article 227 is very much maintainable. In that view of the matter. I am unable to agree with the contention of Mr. Tomar.

7. Now on the question of merits, it appears that the appellate court had considered the materials placed before It and had relied on the decision in Haftjullah v. Sitaram. Civil Appeal No. 664 of 1954. one of the defendant in the present suit. It has come to a finding that Hafijullah was one of the ancestors of the plaintiff and on perusal of the said judgment, it was found that the plaintiffs ancestors were given tenancy right including in the plot No. 38/3 and 38/4 but the right of defendant No. 1 Sita Ram to take fish from the pond was upheld. By the said Judgment, the judgment and decree in Original Suit No. 161 of 1947 was upheld. The defendant had also filed copy of the Khatauni for the 1359 Fasli which shows that the name of the defendant was recorded over an area of 2.77 acres against plot No. 38/6. The suit appears to have been decreed on compromise. The defendant had further filed copies of the Khasra for the year 1380 to 1385 Fasli wherein plot No. 38/6, area 2.77 acres, has been shown in possession of Ram Adhar defendant. It had also come to a finding that the remaining area of plot No. 38 was shown in the possession of Farooq and Mohd. Jubair which fact has also not been disputed by the defendants. The appellate court has also relied on various affidavits affirmed by number of heirs of Mohd. Farooq namely Smt. Tahlra Khatoon. Abdul Samad son of Fariqullah, Smt. Sameerunisa daughter of Mohd. Farooq and Aftab Alam, Mukhtar-e-Am of Smt. Afsana Khatoon daughter of Mohd. Farooq. On the basis of these materials, the

appeal court came to the finding that so far as pond in plot No. 38 is concerned, it is in possession of defendants and the plaintiff has not been able to show that he is in possession of the said pond. Similarly, the trial court had also considered various documents produced by the parties including those which have been referred by the appellate court as well as appeal and various other cases, certified copies whereof were produced as well as Khasras and the alleged deed of lease executed in 1952 and had come to the finding that the defendants are in possession of the pond.

8. The findings being finding of fact arrived at by the Courts below concurrently, sitting in revisional jurisdiction, it is not open to this Court to enter into concurrent findings of fact unless any perversity is shown. Since on the basis of the materials. It appears that the pond is in possession of the defendant while the remaining portion of plot No. 38 are in possession of the plaintiff, therefore, there is nothing to show that such finding is perverse. After having gone through the orders passed by the Court below. I am also of the same view as the both Courts below had reached.

9. So far as the validity of the lease deed executed in 1952 by Zamindar is concerned, the same cannot be decided at this stage which is dependent on the evidence that might be led in the suit and decision on the said deed at this stage would be premature. Whether the said lease deed has any validity or not, this question can be gone into after issues are framed and evidence are led. For the purpose of granting injunction, the Court is required to find out prima facie case coupled with balance of convenience and both the Courts have found in this respect against the plaintiff, with which I do not find any reason to differ.

10. In that view of the matter, I am not inclined to interfere with the orders impugned in the present writ petition. The writ petition, therefore, fails and is accordingly dismissed. It is expected that the trial court may decide the suit expeditiously if such application is made by the parties before it.

11. After the petition is dismissed. Mr. Govind Krishna insisted that since the trial court had granted interim order and the appeal court had granted order during the pendency, therefore, this Court should also grant interim order till disposal of the suit directing the parties to maintain status quo. Despite being pointed out that the trial court as well as the appeal court had dismissed the same, still he insisted that this Court should issue an ad interim order of status quo till disposal of the suit. The interim orders merge into the final orders and since the writ petition is dismissed, there is no scope to grant such an order which will virtually amount to allowing the application for injunction in the present petition which stands dismissed. The interim orders are of interim nature. That is to say, it continues as an interim measure pending final decision. Such orders are always subject to the final decision and merges in the same. The prayer, therefore, made by Mr. Govind Krishna is wholly misconceived and cannot at all be entertained.