
(2018) 05 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : OW104 NO. 65 OF 2018

MOHD.ASLAM & ANR

APPELLANT

Vs

MIR HUSSAIN

RESPONDENT

Date of Decision : 09-05-2018

Acts Referred:

Citation : (2018) 05 J&K CK 0015

Hon'ble Judges : JANAK RAJ KOTWAL

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Mr. S.M.Wajahat, Advocate waives notice on behalf of the respondent (defendant), who is on caveat.

Caveat No. 2738/2018 shall stand discharged.

Learned counsel for the respondent passes on copy of the written statement filed by him in the trial court, which is taken on record.

Heard.

Briefly stated, plaintiff, Mir, the predecessor-in-interest of the petitioners, in the suit filed by him before the trial court claimed that he was in

possession of the suit land measuring 8 kanals comprised in Khasra No. 81 situate at village, Ragoora, Tehsil and District, Jammu. He alleged that the

respondent was causing interference with his possession and intended to encroach upon the suit land.

Learned trial court relied upon the copies of Khasra entries for the years 2013-2014 and 2007 produced by the plaintiff wherein he is recorded in the

cultivative possession of the suit land though as an unauthorized occupant and observed that there was nothing on record to show that defendant has

any right to or are in possession of the suit land. The trial court, therefore found a prima facie case in favour of the plaintiff and

confirmed the interim direction issued on 04.12.2017 restraining the respondent from interfering with possession of the plaintiff qua the suit land.

In appeal filed by the defendant, the learned appellate court noticed that the suit land was owned by the State and was in possession of the Jammu

Development Authority so the plaintiff was not entitled to protection of his unauthorized possession by way of temporary injunction. Learned appellate,

court, therefore, set aside the order passed by the trial court and dismissed the application for temporary injunction filed by the plaintiff.

Learned counsel for the petitioners submitted that learned appellate court has fallen in error by rejecting the petitioners' claim to protect his

possession against a third person, who is a stranger to the suit land. Per contra learned counsel for the respondent supported the order passed by the

learned appellate court. He submitted that the land in question, as a matter of fact, is in possession of the respondent.

Both the courts below have fallen in error in one way or the other. It is evident and is not denied that the suit land is a State land, which has been

transferred to the Jammu Development Authority. The copy of the Khasra entry for the year 2017 annexed to this petition explains this position and

shows further that plaintiff has been recorded in its possession. It is not the plaintiff's case that the said land has been allotted to him or he came

in its possession in a lawful manner. This being so, learned appellate court can be said to have rightly taken the plaintiff as unauthorized occupant of

the suit land. However, once there is material to show that plaintiff is in possession of the suit land, may be as unauthorized occupant, he cannot be

denied the consideration of his claim to seek injunction against a third party, other than the true owner, because right to evict the plaintiff (now his legal

representative) lies with the true owner and not to a third person.

Relief of injunction, however, is a discretionary relief and principles of equity are attracted. An unauthorized occupant of State land cannot be

encouraged to maintain a suit against a third person in isolation of the true owner. Before according consideration to the claim of the plaintiff, the real

owner of the land, that is, the Jammu Development Authority, must have been brought in the picture to know its response to the claim of the plaintiff.

The anxiety expressed by the learned appellate court in this view of the matter is well justified.

Plaintiff's failure to implead the Jammu Development Authority as party in the suit was well pointed out by the defendant in his written statement.

Learned trial court should have first accorded consideration to this aspect before passing final order in the application for temporary injunction.

Plaintiff's right to discretionary relief of injunction in this case is required to be considered only after obtaining response from the Jammu

Development Authority to whom the State land seems to have been transferred.

For all that said and discussed above, the orders passed by both the courts below are set aside. The Jammu Development Authority through its Vice

Chairman is impleaded as party defendant to the suit filed by the plaintiff. Trial court shall get the cause title updated accordingly, issue notice to the

Jammu Development Authority and accord consideration to the plaintiff's claim in light of the response of the Jammu Development Authority and

decide the application for temporary injunction afresh.

Till the application for temporary injunction is decided afresh, the ad interim injunction granted by the trial court by its order passed on

04.12.2017 shall operate.

Registry shall send a copy of this order to the trial court.

Disposed of.