

(2013) 05 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 355 of 2013

Moman Ram

APPELLANT

Vs

Municipality Pilibanga and Another

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Citation : (2013) 3 WLN 460

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Kulwant Singh, for the Appellant; P.R. Mehta, for the Respondent

Judgement

Vijay Bishnoi, J.—This appeal is preferred by the appellant against the order dt. 14.02.2013 passed by the learned Additional District Judge No. 2, Hanumangarh (hereinafter referred to as "the trial court") whereby the application preferred by the appellant under Order 39 Rule 1 and 2 C.P.C. was rejected. The brief facts of the case the appellant and Bhagirath filed a suit for permanent injunction against the Municipal Board Pilibanga, District Hanumangarh while claiming that he bought a plot measuring about 120" x 184" situated in Ward No. 2 of Pilibanga from one Gurmail Singh on 15.11.1997 and is residing in the said plot since 1997 by constructing a house. It was alleged that the respondent-defendant Municipal Board Pilibanga pasted a notice on the said plot and ordered for removing the construction over the said plot treating it as an encroachment over the Government land. The appellant sought permanent injunction against the Municipal Board, Pilibanga for restraining it to remove the construction and his possession on the plot in question.

2. Along with the said suit for permanent injunction, the appellant has also preferred an application under Order 39 and Rule 1 and 2 C.P.C. for restraining the respondents from dispossessing the appellant from the plot in question. The learned trial Court after taking into consideration all the facts and circumstances of the case has held that the document dt. 15.11.1997, on the strength of which the appellant claimed his title over the plot in question was an agreement

entered into between Gurmail Singh S/o. Magar Singh and appellant wherein Gurmail Singh had handed over his possession to the appellant over the said plot but it is nowhere borne out that Gurmail Singh was having any valid title over the said plot. The trial Court has, therefore, opined that in the absence of any title in favour of either Gurmail Singh or the appellant, the appellant cannot claim any right over the plot in question which is a public land and the Municipal Board Pilibanga has every right to remove the encroachment over the public land under the provisions of Municipal law. While observing this, the learned trial Court does not find any prima facie case in favour of the appellant and as such has rejected the application for temporary injunction preferred by the appellant.

3. Learned counsel for the appellant has assailed the order dt. 14.2.2013 while arguing that the appellant is in possession of the plot in question since 1997 and, therefore, his possession over the plot in question cannot be removed without due process of law. It is also contended by learned counsel for the appellant that the appellant was a bonafide purchaser, who has purchased the land in question from Gurmail Singh S/o. Magar Singh through agreement and, therefore, it cannot be termed that the appellant has no title over the plot in question and has no right in the said property.

4. This Court has considered the arguments advanced by the counsel for the appellant and has also perused the impugned order.

5. The appellant has claimed his title over the plot in question solely on the basis of agreement entered into between the appellant and one Gurmail Singh S/o. Magar Singh wherein Gurmail Singh has handed over the possession of the plot in question to the appellant. No material is placed on record on behalf of the appellant to show that Gurmail Singh S/o. Magar Singh had any title over the said property. In the records, the plot in question is shown as public land. The appellant cannot acquire any title over the said land on the basis of an agreement executed by Gurmail Singh S/o. Magar Singh for handing over the possession of the land. It is settled law that no person can transfer a better title than he himself has. In case in hand, there is no material available on record to show that Gurmail Singh had any title over the plot in question and, therefore, it cannot be said that the appellant got any title from Gurmail Singh in respect of the plot in question. Moreover the learned trial Court has specifically observed that the drive for removing the encroachment over the public land is going on in the town Pilibanga as per the directions given by the High Court in public interest litigation.

6. Looking from all angles, this Court is of the opinion that the learned trial Court has not committed any illegality in rejecting the application preferred by the appellant under Order 39 Rule 1 and 2 C.P.C. Hence, there is no force in this appeal and the same is hereby dismissed.