

(2017) 05 RAJ CK 0045
In the Rajasthan High Court
Case No : 8611 of 2014

Nagar Palika, Raisingh Nagar

APPELLANT

Vs

Smt. Pooja Kumar wife of Shri Balvindra Kumar

RESPONDENT

Date of Decision : 10-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 39Rule 1](#), [Order 39Rule 2](#)

Citation : (2017) 05 RAJ CK 0045

Hon'ble Judges : Dinesh Mehta

Bench : SINGLE BENCH

Advocate : Rajesh Joshi, Chavi Bardia, Rajeev Purohit, Sunil Beniwal

Final Decision : Disposed

Judgement

1. The petitioner-Municipal Board, Raisinghnagar has preferred the present writ petition, invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India, feeling aggrieved of the order dated 21.10.2014, passed by the Additional District Judge, Raisinghnagar in Appeal No.6/2014, filed by the respondent No.1 Smt. Pooja Kumari which appeal was directed against the order dated 19.09.2014, passed by the Civil Judge (Jr.Dn.), Raisinghnagar in an application for grant of Temporary Injunction filed by her, under Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure, 1908.

2. Shorn of unnecessary details, the necessary facts in a

nutshell are that the petitioner-Municipal Board, Raisinghnagar had executed a registered lease deed dated 29.09.1970 conveying the rights of land admeasuring 80ft X 60ft, in favour of a firm M/s Kumar Brothers, for establishment of a petrol pump.

3. The ownership and title of the land admeasuring 80ft X 60ft is not at all, in dispute, what is disputed is; the sides of the plot in question.

4. The genesis of the entire dispute is; the site map, inscribed on the aforesaid lease deed dated 29.09.1970, according to which, the plot in question, was having it's one arm of 80 feet from East to West and another arm of 60 feet from North to South. It will be profitable to reproduce recitals and sketch of the plot given in the said lease deed dated 29.09.1970, hereunder:-

5. It has also been stated by the plaintiff that said M/s Kumar Brothers was allotted a strip of land ad-measuring 12ft X 110ft abutting, the contentious land of the petrol pump, by way of grant deed dated 24.06.1971. As stated in para No.6 of the plaint, on 09.10.2001, respondent Municipal Board, Raisinghnagar issued a notice, threatening to demolish the construction raised by the It has also been stated by the plaintiff that said M/s Kumar Brothers were allotted a strip of land ad-measuring 12ft X 110ft abutting, the contentious land of the petrol pump, by way of grant deed dated 24.06.1971. A stated in Para 6 of the plaint, on 09.10.2001, respondent Municipal Board, Raisinghnagar issued a notice, threatening to demolish the construction raised by the plaintiff on the land of petrol pump. Plaintiff preferred an appeal before the Sub-Divisional Officer,

Raisinghnagar, against the said notice dated 09.10.2001, who had allowed the same, vide his order dated 19.06.2003 and upheld the construction, so raised by the plaintiff, while directing the Municipal Board to maintain status quo over the plot in question.

6. The plaintiff approached the Civil Court, by filing the suit in question, for grant of Temporary and Mandatory Injunction, faced with an action of the Municipal Board, Raisinghnagar, scrapping the floor tiles/floor, machines and fixtures installed on the front portion of the land admeasuring 20ft X 60ft, on the Northern side of the petrol pump. It has been stated in the plaint that the said action of the Municipal Board, Raisinghnagar was illegal, as neither any notice was ever issued to plaintiff nor any acquisition proceedings were ever undertaken.

7. The petitioner-defendant Municipal Board, Raisinghnagar filed a written statement and contested the suit on various counts; including, questioning the bonafides of the plaintiff and highlighting the concealment made by her.

8. The defendants stated in their written statement that the plaintiff has intentionally not disclosed the sides and neighborhood of the subject land parcel. It was emphasised that the plaintiff has concealed material fact in relation to the subsequent judgment dated 07.02.2005, passed by Rajasthan High Court in S.B. Civil Writ Petition No.578/2004, while maintaining that the plaintiff had encroached upon 1757.55 sq.ft land, which was part of the Public Works Department and GREF road. Defendant brought to the notice of the Trial Court, the facts regarding

order dated 03.03.2008, passed by the Collector, setting aside the order dated 19.06.2003; and interim order dated 07.10.2003, passed by the Sub-Divisional Magistrate ordering to eject the plaintiff from the encroachment made by her. The defendant submitted that the plaintiff has not taken any remedy against the order dated 03.03.2008, which has attained finality; and as such, the possession of the plaintiff on the contentious land is unauthorised.

9. The Trial Court, after hearing the parties at length, allowed the application for Temporary Injunction, vide its order dated 19.09.2014. While delving upon the issue of prima facie case, the learned Trial Court examined the grant deed dated 29.09.1970 and recorded a prima facie finding in favour of the plaintiff about the ownership and possession of the land admeasuring 80ft X 60ft. In wake of such findings about title and possession, the Trial court passed an injunction, restraining the respondents from interfering in plaintiff's possession and raising any construction or interfering in any manner, with the subject plot of admeasuring 80ft X 60 ft in the following terms:-

"VERNACULAR MATTER OMITTED"

10. The Trial Court, though had granted injunction in favour of the plaintiff, however, made the said interim order subject to the narration and recitals of the land, its measurement and sides as depicted in the lease deed dated 29.09.1970.

11. The respondent-plaintiff preferred an appeal against the said order dated 19.09.2014, before the Additional District Judge, Raisinghnagar inter alia with a prayer that the operative portion of the order of the Trial Court, be

modified or altered to indicate the plot as 80ft from the North to South and 60 ft from East to West, with an additional prayer that the Municipal Board, Raisinghnagar be directed to construct the road in accordance with the original plan/map.

12. Learned Appellate Court heard the parties at length and has found out an apparent incongruity in the site plan/map drawn on the lease deed dated 29.09.1970 and, thus, proceeded to delve deep into the documents and recorded a finding that the land allotted, owned and possessed by the plaintiff was 80 ft. from North to South and 60 ft. from East to West and allowed the appeal filed by the plaintiff with the following modification/observation:-

"VERNACULAR MATTER OMITTED"

13. Mr. Rajesh Joshi, learned Senior Counsel assisted by Ms. Chavi Bardia navigated the Court through the pleadings of the plaintiff to drive home his point, that the plaintiff has intentionally not disclosed the sides of the plot, essentially with a view to take undue advantage, to cover up her encroachment over the Government land. He read the averments in the plaint and contended that it was required of the plaintiff to disclose demarcation, measurement of sides and neighborhood of the plot, on which the petrol pump has been installed. He contended that in a dispute like the present one, it was minimum expected of the plaintiff to have stated in the plaint, not only the measurement, but also the neighborhood, along with map to establish her ownership and possession. His contention was that the plaintiff has encroached upon the excess land and has been deceiving the authorities by showing the lease

deed dated 29.09.1970, allotment of strip of land admeasuring 20ft X 60ft and allotment of adjacent land, which had taken place on three different point of time.

14. Learned Senior Counsel for the petitioner drew attention of the Court, towards Para Nos.2 and 6 of the written statement filed by the petitioner-Municipal Board, to buttress his argument that the plaintiff had not approached the Court with clean hands while extensively referring to various documents, including Commissioner's report, the order of the District Collector dated 07.10.2003 and judgment dated 07.02.2005 passed by this Court, in S.B. Civil Writ Petition No.578/2004. He contended that the plaintiff-respondent had approached the Court with incomplete rather incorrect facts and hence she is not entitled to get injunction, on account of her conduct.

15. Assailing the order under consideration, passed on 22.10.2014, Mr. Joshi read the same, in great detail and argued that the learned Appellate Court has transgressed the territories or confines, provided under the law. He urged that the Appellate Court, while deciding an appeal against the order, granting/refusing injunction, is required to give a prima facie look at the order impugned, and the Appellate Court cannot substitute its own findings over the findings of fact recorded by the Trial Court.

16. With an expression of bewilderment, Mr. Joshi pointed out that the learned Appellate Court has undertaken ardent exercise of mathematical calculation to ascertain the fact-position, measurement and location of the plot as if, the Court were an Engineer. He submitted that the Appellate Court has taken into consideration, various documents and

maps which were not even mentioned in the plaint. He painstakingly submitted that the Appellate Court, in a way has decided the Suit itself, even before the evidence of the respective parties are led.

17. With these submissions Mr. Joshi argued that the order impugned dated 21.10.2014, passed by the Appellate Court deserves to be quashed and set aside.

18. Per contra, Mr. Rajeev Purohit, learned counsel for the respondent-plaintiff submitted that the order under consideration, passed by the learned Additional District Judge, Raisinghnagar is perfectly just and proper in the facts of the present case. He submitted that the non-mentioning of the sides and neighborhood of the plot in question in the plaint was unintentional, rather such narration was not required inasmuch as, the plaintiffs' possession in terms of the title was settled, on which the petrol pump was being run for last 50 years. He submitted that the possession of the plaintiff over the said land is undisputed and so also the title in relation thereto. He took this Court through the lease deed and the map approved by the Burma Shell Petrol Company, (as it then was) and contended that at the time of the installation of the Petrol Pump, the Oil Company which is a Government Company, had examined all title documents and possession and had prepared a site map way back in 1954, according to which, the possession of the land, on which, petrol pump has been installed and established had been found. He had extremely referred to these documents, to convince that measurement and possession of the land parcel was 80ft from North to South and 60ft from East to West. Such effort was made by

Mr. Purohit, obviously to urge that the Appellate Court has reached to a correct conclusion, on the analysis of facts and record.

19. Mr. Rajeev Purohit contended that as per the original map/plan prepared for the newly constructed road in question, as conceived by the defendants; the road coming from the underbridge was beyond the petrol pump boundary, which however, has been deviated by the defendants from the original map and the road has been realigned by 20ft, towards petrol pump and in this process, the Municipal Officers have stripped off the floor/floor tiles on the disputed land admeasuring 20ft X 60ft. He submitted that this land was integral part of the petrol pump, owned and possessed by the plaintiff. He had shown various photographs, placed by him along with the reply, to satisfy that the subject land, admeasuring 20ft X 60ft is owned and possessed by the plaintiff and the same is not in the road boundary.

20. I have heard learned counsel for the parties at length and perused the record. The contextual facts, appear to be complex and complicated, but the essence of the dispute rests in a very narrow compass; viz., the "sides and not the size of the plot". The size of the disputed plot, 80ft X 60ft has not been disputed by any of the parties. What is disputed is, which side of the plot is 80ft and which side is 60ft.

21. The bone of contention is, the site map given on the lease deed dated 29.09.1970; a casual look thereupon brings out the apparent inconsistency therein. On perusal of the site map one finds that the West side has been shown

in the right side of the North whilst East has been shown on the left side of the North, which is per se erroneous. The size of the plot has been shown as 60ft parallel to the Railway Line whilst 80ft is diagonal to the Railway Line. However, all other documents, prepared right in the year 1953-54 (when the said land was allotted for the establishment of the petrol pump to M/s Kumar Brothers) certified copies whereof, has been placed by the respondent along with reply as Annexure-9, shows that the plot of petrol pump is 80ft parallel to the Railway Track and 60ft diagonal to it, and parallel to the Canal/Mandi Minor.

22. Be that as it may, without delving into the documents in detail, suffice it to observe that there is a scope of confusion regarding the sides of the plot, namely; which side is 80 ft and which is 60 ft. All the parties are ad-idem that the plot in question is 4800 sq. ft. admeasuring 80ft X 60ft, the quarrel is confined to, which side is of 80 ft length?

23. It is also not in dispute that the land of the petrol pump had been allotted to M/s Kumar Brothers way back in the Year 1954 and possession thereof had been handed over. However, the contentious lease deed came to be executed on 29.09.1970, wherein the sides of the plot have been mentioned, which may be incorrect or discordant as claimed by the plaintiff.

24. Be that as it may, it is a matter of evidence and can be decided only after the evidence and thorough examination of the documents on record, based on pleadings of both the parties.

25. The argument of Mr. Joshi appears to be correct that

the Appellate Court exceeded its jurisdiction, in taken unto itself, the task of measuring the land, foot by foot and inch by inch; and that the plaintiff had not laid before the Court, the complete and correct facts; and further that the finding of encroachment has attained finality, pursuant to the order of Collector, passed in the year 2003, wherein authorities concerned have found that the plaintiff's was possessing extra land admeasuring 1792 ft.

26. The approach of the Appellate Court dated 19.09.2014, cannot be approved or countenanced in principle. However, in ultimate analysis, the Appellate Court has reached to a conclusion, which prima facie cannot be said to be erroneous or contrary to record; viz., the plot in question is having its boundary 80 ft. from North to South and 60 ft. from East to West.

27. It is pertinent to note that the petitioner Municipal Board, Raisinghnagar has also not established that the plaintiff is having possession of excess land or more than what was conveyed or allotted to it. The Revenue and Municipal authorities seem to have proceeded solely on the edifice of the map, given in the lease deed, which itself is inconsonant. No body seems to have undertaken the exercise as to what is the total land holding or the ownership of the plaintiff, vis a vis the actual possession. The plaintiff also has not tried to prove that her possession is not more than the title/ownership, nor has she taken up any pleadings seeking correction/amendment in the site plan shown in the lease deed.

28. The Appellate Court, has though gone beyond the scope of the appeal and pleadings, but however, modified

the order in appeal, only to the extent of mentioning of the sides of the land, namely 80 ft North to South and 60ft East to West. Except this minor modification, the order of the Trial Court has been kept intact. It is to be noticed that the possession of the plaintiff to the extent of plot size of 80ft X 60ft had already been protected, by the Trial Court, which order has not been challenged by the defendants.

29. It was informed by the learned counsel for the respondents that the construction over the front side of the petrol pump has been razed by the petitioner-Municipal Board, before passing of the order dated 21.10.2014 by the Appellate Court.

30. In light of the above discussion, the order of the Appellate Court could have been set aside and the matter could have been remanded back to the Appellate Court, but this Court cannot lose sight of the fact that the order of Appellate Court was passed on 21.10.2014 and since then the matter is pending consideration before this Court, along with the entire record of the Trial Court. Remitting the matter to the Appellate Court would not serve anybody's cause.

31. Any interference at this stage, after about two and a half years of the passing of the order impugned, would result in more complications rather than resolving it.

32. Be that as it may, being mindful of the fact that the petrol pump, shops and other construction, pursuant to validly conferred title to the plaintiffs are existing on the subject land of course with genuine dispute about demarcation, it would be in the interest of justice that the suit itself be decided expeditiously and till disposal of the

suit, "status quo" as it exists today, be maintained.

33. Counsel for the parties have informed that the floor and machines installed on the front portion of land admeasuring 20ft X 60 ft. of the petrol pump has been removed and a road connecting the under bridge; though not perfectly smooth motorable does exist, it is deemed appropriate and hence ordered that till disposal of the suit, "status quo" on the 20 ft X 60 ft strip of land on the Northern side (front side) of the petrol pump shall be maintained by the parties to the suit.

34. The record of the case had been summoned by this Court on 12.12.2014, as a result whereof, the proceedings in the suit are stalled. The Registry is directed to remit the record of the case to the Trial Court forthwith. Both the parties shall appear before the learned Trial Court on 22.05.2017, which shall commence and take up the proceedings in the suit, with a goal to dispose it, as early as possible, preferably within a period of 18 months from today.

35. The expeditious disposal of the present suit is warranted as it is not only a question of individual right of the plaintiff, but it is equally a question of convenience and need of the citizens who are entitled to have convenient and hassle free motorable road.

36. With these observations, the present writ petition filed by the Municipal Board, Raisinghnagar is disposed of.