

(2004) 03 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 330 of 2000

Niranjan Lal Joshi and Another

APPELLANT

Vs

P.K. Joshi and Others

RESPONDENT

Date of Decision : 17-03-2004

Acts Referred:

Citation : (2004) 03 RAJ CK 0035

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : B.L. Mandhana, for the Appellant; M.M. Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

Gyan Sudha Misra, J.—This appeal has been preferred against the order dated 16.3.2000 passed by the Additional District Judge No.2, Jaipur City, Jaipur granting temporary injunction in favour of the plaintiff-respondent after recording a finding that he is in actual physical possession of the suit premises and therefore, he should be entitled to take separate electricity and water connection for the disputed premises. The defendant-appellant who also happens to be full brother of the plaintiff-respondent, preferred an appeal challenging the aforesaid order granting temporary injunction in support of which the learned counsel for the appellant Shri B.L. Mandhana submitted that the plaintiff-respondent in his application for temporary injunction had never sought separate electricity and water connection in the suit premises and therefore, the relief which was not even sought in the plaint could not have been granted by the trial Court in favour of the plaintiff-respondent. In so far as the actual physical possession of the plaintiff-respondent is concerned, the same has been admitted on the plea that the plaintiff-respondent is a licensee of the suit premises and therefore, he is occupying the suit premises as a licensee and not an absolute owner. Thus, from the averments of the plaintiff-respondent himself, the actual physical possession of the plaintiff-respondent on the suit premises has been accepted even by the defendant-appellant and therefore, the finding of the Court below on this count

does not suffer from any infirmity and therefore, the order of the Court below requires no interference on this count.

2. Now the only question which remains is whether the learned Additional District Judge was legally competent to permit the plaintiff-respondent to apply and avail the separate electricity and water connection which has been strenuously challenged by the defendant-appellant, but having read the operative portion of the impugned order of the injunction, it is sufficiently clear that the trial Court has merely granted the relief to the plaintiff-respondent to avail separate electricity and water connection on the basis of balance of convenience as also on humanitarian grounds and therefore, the contention of the counsel for the appellant that the defendant-appellant should not have been permitted to avail this facility since the electricity bills are being paid by the defendant-appellant, has no substance, as the plaintiff-respondent has been granted the authority to apply for separate electricity and water connection and he has not been permitted in any manner to avail the separate electricity and water connection at the cost of the defendant-appellant.

3. In so far as the previous contention of the counsel for the defendant-appellant that the plaintiff-respondent that the plaintiff-respondent should not have been granted the relief to avail the electricity and water connection without any prayer to that effect in the plaint is concerned, also appears to be without any substance for once the trial Court recorded a finding that the plaintiff-respondent is in actual physical possession of the suit premises which is also admitted by the defendant-appellant atleast to the extent that the plaintiff-respondent is occupying the suit premises as a Licencee, the fact remains that his actual physical possession on the suit premises is unblemished and suffers from no infirmity and in that circumstance if the basic amenity of electricity and water has been allowed to be availed by the plaintiff-respondent as an equitable relief, the same cannot be interfered with on the plea of the defendant-appellant that it could not have been granted because this plea specifically in express Word was not taken in the plaint.

4. It is well known and well acknowledged legal procedure that whenever a plaint or petition is drafted, it is incorporated therein that the Court may pass any order-orders in the interest of justice and in the plaint any other relief/reliefs can be granted by the trial Court considering the need of the situation and in the interest of justice, this prayer encompasses any relief which is considered just and appropriate in the opinion of the Court after hearing the parties in this regard. Testing the argument of the counsel for the appellant on the anvil of this principle, it is difficult to hold that the Court below has committed an error if it has granted liberty to the plaintiff-respondent to avail separate electricity and water connection at his own cost as no one can deny that it is a basic amenity for human existence. The impugned order, therefore, requires no interference and (appealed) is dismissed, but in the facts & circumstance, without any order as to costs.