
(2018) 07 MP CK 0080
In the Madhya Pradesh High Court
Case No : Writ Petition No.812 Of 2017

Omprakash Badretia	Vs	APPELLANT
M/S Emrold Industry		RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2018) 07 MP CK 0080

Hon'ble Judges : Vivek Agarwal, J

Bench : Single Bench

Advocate : N.K.Gupta, Vinod Bhardwaj, Sanjay Sharma, Rohit Batham

Final Decision : Allowed

Judgement

Heard.Â

This petition has been filed by the petitioner/defendant being aggrieved by the order dated 24.1.2017 passed by the court of 14th Additional District

Judge Gwalior in Misc. Civil Appeal No.45 of 2016Â filed by the respondent/plaintiff.

Respondent/plaintiff had filed a suit for specific performance of contract and permanent injunction. In the civil suit, the relief has been claimed that it

be declared in favour of the plaintiff that defendant is boundÂ by the agreement dated 3.3.2015 executed in favour of the plaintiff. It has also been

claimed in clause 13-2 that permanent injunction be granted against the defendant and in favour of the plaintiff that till year 2023, defendant should not

create any obstruction in the work of mining operation on his own or through anybody else. An application under Order 39 Rule 1 and 2 of the CPC

was filed along with the suit and through that application annexure P/7, the relief has been sought that till final decision in the suit, permanent injunction

be granted against the defendant to the effect that he shall not interfere in the work of mining carried out by the plaintiff nor shall cause any hindrance

in such work through third party.

This application was taken up by Third Civil Judge Class II Gwalior in Civil Suit No.32A of 2016 and has been decided vide order dated 27.6.2016. It

has come on record that lease has been granted for extraction of mineral in favour of the defendant and such lease has been extended by the State

Government. Plaintiff has filed two agreements on record one dated 22.8.2014 and another dated 3.3.2015. As per agreement dated 22.8.2014, mine

situated at village Chandrapura Tehsil and district Gwalior at Khasra Number measuring 8.00 Hectares has been sub-let by the party no.1 in favour of

party no.2 from 29.7.2013 to 28.7.2023. It is mentioned in the said agreement that second party during the aforesaid period will be entitled to enter into

the lease area and shall carry out pitting, drilling etc for extraction of mineral its dressing and processing and shall be free to carry mineral and

disposing it of the way they like. For such purpose, they will be free to install plants and machines, go-down and shed etc. These terms and conditions

have been reproduced in para 3 of the plaint. Thereafter another agreement had been executed on 3.3.2015 according to which, the plaintiff paid a

sum of Rs.1 lac in advance to the defendant to purchase the stone being extracted from his mine. In this agreement dated 3.3.2015, a copy of which

has been enclosed by the petitioner as annexure P/3, first party is the defendant and second party is the plaintiff. As per the terms and conditions of

this agreement dated 3.3.2015, it is mentioned that first party i.e. defendant shall extract the mineral and second party shall purchase it at the rates

mutually decided from time to time.

It is the contention of the petitioner that without coming into force of the second agreement, first agreement stood superseded. Secondly, in fact

according to him, no such agreement was executed with the plaintiff and plaintiff is trying to use their dominant position including money and muscle

power to dislodge the mining operation of the defendant/petitioner. It is submitted that in view of the relief sought by the plaintiff, there is no mention

of specific performance of agreement dated 22.8.2014 in the proper sense and therefore, first appellate court exceeded its jurisdiction in allowing

application under Order 39 Rule 1 and 2. It is further submitted that in fact,

there is a clause in the lease deed Annexure P/6 itself i.e Clause No.14 which puts a restriction on sub-letting and transfer of lease-hold rights. Therefore, agreement of 2014 has no legal sanctity. It is further submitted that in an application under Order 39 Rule 1 and 2, the plaintiff has sought the relief in the nature of permanent injunction to not to create any obstruction in the mining activities of the plaintiff but the fact is that if the agreement dated 3.3.2015 filed by the plaintiff is taken into consideration, then from March 2015 mining operations are being carried out by the defendant and therefore, there is no question of any interference by the defendant in the operations of the plaintiff.

In view of such submissions, it is prayed that the relief granted by the court of 14th ADJ Gwalior is in excess of its jurisdiction. It has also been pointed out that learned 14th ADJ Gwalior has taken note of certain facts which were not part of the impugned order and therefore, it appears that 14th ADJ was not acting independently while deciding the application under Order 39 Rule 1 and 2.

On the other hand, respondent/plaintiff's counsel submits that they have reproduced clauses from the agreement dated 22.8.2014 and have sought permanent injunction in para 13.2. It is further submitted that in fact, the judgment of this court in the case of Leela Purohit and Company and others Vs. Arun Agarwal 2002 RN 54 has been rightly considered by learned 14th ADJ where it has been held in paras 9 and 10 that while considering the application under Order 39 Rule 1 and 2, primarily the court is concerned with preservation of disputed property till legal rights are executed. It is in the nature of preventive relief to prevent future possible injury. The power of granting interim injunction is to preserve subject matter of dispute.

Similarly, the reliance has been placed on para 5 of the judgment of Supreme Court in N.Umapathy Vs. B.V.Muniyappa AIR 1997 SC 2467 wherein mining lease of government property was granted to the appellant but actual possession and enjoyment of the same property was continuing with respondent who was in its wrongful possession in lease deed. In para 5, it was held that appellant cannot be given possession unless respondent is evicted in accordance with due process of law. Respondent was held to be entitled to ad interim injunction on protection of his lawful possession pending civil suit.

Similarity reliance has also been placed on the judgment of this Court in the case of Preetpal Singh and Others Vs. State of M.P. And others 1988 J.L.J.

549 wherein, the ratio is that at the time of deciding matter for temporary injunction, question of jurisdiction cannot be decided.

Learned counsel for the respondent/plaintiff has strongly pleaded that there is concealment of fact and has placed reliance on the judgment of

Supreme Court in S.P.Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs and others AIR 1994 SC 853 wherein, the ratio is that in

case the facts are concealed then the person is not entitled to equitable relief. It has been held that one who come to the court should himself come

with clean hands. It is submitted that the cause of action accrued when notice dated 14.4.2016 was served on the plaintiff terminating contract as has

been enclosed by the plaintiff. It is further pleaded that lot of investment has been made by the plaintiff to extract minerals from the lease granted in

favour of the defendant.

Therefore, order passed by the learned 14th ADJ Gwalior does not call for any interference.

Learned counsel for the petitioner/defendant submits that no document has been filed to show that any investment has been made in respect of the

area of lease to the defendant and in fact, the plaintiff has other mining lease and if he has made any investment with a view to extract minerals from

the said mining lease, then, the petitioner cannot be forced to continue its operation. It is again reiterated that notice as has been filed by the plaintiff

dated 15.4.2016 was never issued by the defendant and in fact the defendant had not executed any agreement which is subject matter of evidence

and even if it is presumed that there was any agreement for the sake of arguments, then agreement dated 3.3.2015 clearly superseded rights of the

plaintiff to extract any mineral and his status was only to that of a purchaser and not of an exploiter of the mine.

After hearing arguments, considering the rival submissions and the law laid down by the Supreme Court, this court is of the opinion that the law laid

down in the case of Leela Purohit (Supra) is in fact in regard to the preservation of the disputed property. A prima facie case is to be established.

Admittedly, there is a lease deed executed on behalf of Government of M.P as is annexd as Annexure P/6. This lease was granted by the Collector

district Gwalior on behalf of Governor of M.P. in favour of defendant Shri Chhotelal. Therefore, prima facie lease hold rights vest in the defendant.

There is a clause prohibiting sub-letting and therefore, the status of the defendant as that of a dummy of the plaintiff, cannot be accepted. Thus, prima

facie case in regard to preservation of the property is in favour of the defendant who has been granted a lease by the State government and who has

the right to extract minerals from the said lease. If he is prevented from carrying out said mining operations then irreparable injury would be caused

to the defendant and not to the plaintiff in as much as the plaintiff has failed to substantiate that any plant and machinery was purchased

subsequently for the purpose of deployment on the land obtained by the defendant on lease. A long list of equipments enclosed by the respondents

no.1 and 2 reveals that all such machinery were purchased on various dates starting from 24.1.2007 till 16.3.2016. There is no mention of such

equipment being purchased for specific deployment on the land of the present petitioner. Some of the invoices are of the year 1998. Invoices reveal

that consignee is M/s Emrold Industry Ltd in some of the cases. Therefore, prima facie, it cannot be accepted that such investment was made

exclusively to extract mineral from the lease hold area granted in favour of the defendant/petitioner. Thus, for preservation of the property as has been

laid down in the case of Leela Purohit and Company (supra) which has been wrongly mentioned by learned 14th ADJ as Lala Purohit,

preservation of the disputed property is to be held to be more in the interest of the defendant who is a valid lease holder issued by the Governor of

M.P.

So far as the law laid down in the case of N.Umapathi (Supra) is concerned, facts of that case are different where without evicting respondent, no

lease could have been granted in favour of the appellant and it was held that appellant cannot be given possession by the lessor unless and until

respondent is evicted in accordance with due process of law. In the present case, it is apparent from clause 10 of the agreement dated 22nd August,

2014 that an agreement in perpetuity has been executed and it is not the case of the plaintiff that they were in possession of the leased area prior to

execution of the lease by the Government of M.P in favour of the defendant. Therefore, the facts of this case are also distinguishable.

So far as the law laid down in the case of Preetpal Singh and Others (Supra) is concerned, the issue of jurisdiction has not been urged before this

court and therefore,Â this issue in this judgment has no relevance. Similarly judgment in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs

(Supra) is of no assistance in as much as there is no documentary evidence to show that the defendant has not approached this court with clean

hands. In fact, the onus is on the plaintiff to show that he had approached the court with clean hands and is not using the court process as convenient

lever to retain the illegal gains indefinitely.Â In fact, language of the agreement dated 22.8.2014 prima facie leaves an impression that in fact, plaintiff

did not approach the trial court with clean hands and is trying to use the process of the court as a convenient lever to retain illegal gains indefinitely as

has been pointed out by the petitioner by reading clauses of the agreement which demonstrate that the plaintiff is trying to sub-serve his narrow

interest is apparent from Clause 10 of the agreement dated 22.8.2014.

It is also apparent that 14th ADJ has discussed such material which wasÂ not part of the pleading before the trial court while deciding misc. civil

appeal as is apparent from discussion in para 14 which clearly reveal that learned 14th ADJ has travelled beyond the pleadings and has shown extra

indulgence while dealing with the matter. In view of such facts, this court is of the opinion that the order passed by learned 14th ADJ Gwalior is not

sustainable in the eyes of law and is not based on the material available on record and is also not based on correct appreciation of law relevant to the

context of the case. Therefore, this petition deserves to be allowed and is allowed. Order dated 24.1.2017 is set-aside. It is directed that the learned

trial court shall adjudicate the suit without getting influenced by any of the observations made in this order while deciding present writ petition.