
(2021) 02 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3576 Of 2019

Pukhraj

APPELLANT

Vs

Ratan Lal And Ors

RESPONDENT

Date of Decision : 12-02-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 39 Rule 1, Order 39 Rule 2

Citation : (2021) 02 RAJ CK 0065

Hon'ble Judges : Vinit Kumar Mathur, J

Bench : Single Bench

Advocate : S.L. Jain, J.K. bhaiya, Shashi Shekhar Patel, Shyam Paliwal

Final Decision : Dismissed

Judgement

Heard learned counsel for the parties.

The present appeal has been preferred against the order dated 21.10.2019 passed by the learned Additional District & Sessions Judge No.4, Bikaner

in Civil Misc. Case No.154/2019 whereby the application preferred by respondent No.1 Ratanlal under Order 39 Rule 1 and 2 read with Section 151

CPC was allowed and directed Pukhraj (present appellant) and Bhanwar Lal (respondent No.2 herein) to open the locks of the suit property and allow

the respondent Ratan Lal free access and use of the property in question.

Mr. S.L. Jain, learned counsel appearing for the appellant vehemently submits that the present appellant as well as the respondents Ratan Lal and

Bhanwar Lal are the plaintiffs in the suit property, therefore, the application under Order 39 Rule 1 and 2 CPC preferred on behalf of one plaintiff i.e.

Ratanlal against the co-plaintiff Pukhraj and Bhanwar Lal is not maintainable and no relief can be granted in the application so preferred in view of the

provisions of Order 39 Rule 1 and 2 CPC.

The second contention of the learned counsel for the appellant is that as per the application preferred by respondent Ratan Lal under Order 39 Rule 1

and 2, it is nowhere stated that the presently the property is being used by them or which portion of the property is being specifically utilised for

habitation. He further submits that the respondent Ratan Lal is not residing at Nokha where the suit property situated. Therefore, the order passed by

the trial court, on the face of it, suffers from illegality and requires to be quashed and set aside.

Per contra, Mr. J.K. Bhaiya, learned counsel for the respondent-Ratan Lal submits that although it is a fact that the present appellant was a co-

plaintiff in the suit, however, during pendency of the suit, the property was locked by the present appellant and access to the same was disallowed. He

further submits that there are seven brothers in the family for which, a suit for partition is pending consideration before the trial court. He submits that

although he is not residing at Nokha where the suit property is situated but as and when his family members including the respondent Ratan Lal visits

Nokha, they are staying in the property. He further submits that this contention of the respondent Ratan Lal is also admitted by the plaintiff in the suit

itself. He submits that as per the provisions of Order 39 Rule 1 and 2 CPC, even if a person is plaintiff, the Court can pass the order, if it thinks fit, in

the larger interest of the parties and for preservation of the suit property. He further submits that in the suit for partition, all the parties are plaintiffs

and defendants and for the purpose, he relies upon the judgment passed by Hon'ble the Supreme Court in the case of Balan Nambiar Vs. Sankara

Kurup reported in 2014(2) Civil Court Cases 133 (kerala). He further submits that in the garb of the opening of the locks, the respondent will not try to

alienate or change the basic structure of the property.

Mr. Shashi Shekhar Patel, learned counsel appearing for the respondent Bhanwar Lal submits that if the locks are opened by the appellant Pukhraj, he

is also ready and willing to open the locks.

I have considered the submissions made at the Bar and have gone through the order dated 21.10.2019.

So far as the first contention of the learned counsel for the appellant is concerned that a plaintiff cannot file an application under Order 39 Rule 1 and

2 CPC praying for relief against the co- plaintiff, it is made clear that as per the provisions of Order 39 Rule 1 and 2 CPC, if an application is

preferred, then in such circumstances, for the larger interest of the utilisation of the property by the parties, the Court can pass the order, if it thinks fit,

till the disposal of the suit or until further orders. The finding of the trial court on this issue is well reasoned and does not require interference by this

Court, the same is reproduced as under:-

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As far as the fact that the respondent Ratan Lal is not residing in Nokha where the suit property is situated, it is made clear that since the suit for

partition is still pending consideration, the suit property is liable to be utilised by all the members of the family and since it is brought on record that

there are two rooms which are being utilised by Ratan Lal, there is no illegality if the same are continued to be utilised by Ratan Lal. Therefore, the

order passed by the trial court giving a direction to open the locks and allow free access to the respondents does not suffer from any illegality. It is

ordered that no material change will be made to the property in question if the same is utilised by the parties. It is made clear that in the garb of the

order passed by the trial court dated 21.10.2019, the respondents shall not change the structure of the property, forcibly occupy the property which is

in the possession of appellant, make any construction or will not misuse the same on any account.

In view of the discussions made above, the appeal preferred by the appellant is devoid of any force and the same is hereby dismissed. The finding

recorded by the trial court are upheld.