
(1996) 12 BOM CK 0032

In the Bombay High Court

Case No : Civil Revision Application No. 675 of 1996

Radheshyam Agrawal

APPELLANT

Vs

Mangalchand Agrawal and Others

RESPONDENT

Date of Decision : 24-12-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115, 145

Citation : (1997) 4 BomCR 303

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : S.A. Bobde, for the Appellant; V.C. Daga, for the respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.

Heard finally with the consent of the parties.

1. The original plaintiff Radheshyam s/o Mangalchand Agrawal has filed this civil revision application challenging the appellate order by which the Appellate Court has allowed the Misc. Civil Appeal filed by the original defendant Nos. 1 & 2, Mangalchand Badriprasad Agrawal and Shakuntalabai w/o Mangalchand Agrawal respectively, against the order passed by the trial Court granting an injunction in favour of the present petitioner/original plaintiff. By the said injunction two detrainments were issued by the trial Court. First was that the present respondent Nos. 1 and 2, i.e. Mangalchand and Shakuntalabai were restrained from taking anybody else, and more particularly the respondent No. 4 Kamalkishor, by way of adoption. The second restraintment was in respect of possession of the disputed property i.e. a godown. Facts are rather interesting.

The present petitioner claims to be an adopted son of the respondents 1 and 2 and claims that his adoption has taken place at the time of his birth. On the basis of that he claims that he is in possession of the disputed property. Now, claim in

the civil suit is that he is tried to be dispossessed by none else but his adoptive father and mother. In the application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, the injunctions as have been described were prayed. The trial Court has held that the original plaintiff/present petitioner did have a prima facie case in respect of both these injunctions, inasmuch as, firstly, the said Radheshyam was an adopted son of Mangalchand and Shakuntalabai and, secondly, that he was in possession of the property in dispute. The Appellate Court has upset both these injunctions and has held that the original plaintiff did not have a prima facie case at all. The original plaintiff is, thus, before this Court to challenge the appellate order.

2. The learned Counsel for the petitioner very strenuously urged that the Additional District Judge, Gondia, has dealt with the evidence extremely highly and has not discussed the voluminous evidence led by him suggesting that, firstly, he was the adopted son of the respondents 1 and 2 and, secondly, being an adopted son, he was in possession. The learned Counsel has found fault with the direction of the lower Appellate Court, which is as under :-

"Plaintiff is hereby directed to vacate the premises forthwith and stay away."

The learned Counsel strenuously points out that there is no such complaint that the petitioner has, during the pendency of the litigation, dispossessed the present respondent Nos. 1 and 2 and, according to the learned Counsel, in the absence of any such assertion, it was beyond the power of Appellate Court to pass such a direction. The learned Counsel points out that it is rather strange that in his own suit there should have been an injunction passed against himself.

3. The learned Counsel appearing on behalf of respondent Nos. 1 and 2 points out that the trial Court had completely misdirected itself in, firstly, holding that there was a prima facie case in favour of the petitioner regarding his adoption. He points out that there is absolutely nothing on record to suggest that there was any ceremony of adoption or that the so-called adoption was a proven fact. I have seen the record myself. There is nothing to suggest that there was any ceremony of adoption regarding the present petitioner. The date, month, year of the so called adoption is very studiously kept vague. There is not a single document on record to suggest that respondent Nos. 1 and 2 have ever adopted the petitioner or have been accepted this adoption by their conduct. It was, therefore, correctly observed by the Appellate Court that the theory of adoption appears to be a myth.

4. Shri Daga, learned Counsel for the respondent Nos. 1 and 2, has taken me through the alleged partition deed between respondent No. 1 Mangalchand and his brothers. The said partition deed itself bore the signature of the present petitioner Radheshyam where he is described as son of Gorelal. This alleged partition-deed appears to be of the year 1988. This would go directly against the present petitioner as the admission is the best kind of evidence. This can conveniently be read as admission against the said theory of adoption. That

apart it would also go to show the exclusive ownership on the part of the present respondent No. 1 Mangalchand as regards the suit property.

5. Shri Daga points out that in the year 1984 itself, there was a dispute u/s 145, Criminal Procedure Code, in respect of the possession of the suit property and the present petitioner was a party thereto. Shri Daga invited my attention towards the order passed by the Sub Divisional Magistrate in those proceedings, which order attained finality and was not challenged by the present petitioner in any manner. It is also evident that after this order, the present petitioner has not chosen to file a civil suit. There can be no doubt that once there was a clear-cut finding that the possession was that of the respondent No. 1 Mulchand, then it would have to be shown by the petitioner that factually the possession remained with himself and he would have to come out with very strong circumstances to suggest that the order passed by the Criminal Court was not a correct order. I am afraid, the petitioner has failed here also. In the wake of this order, the plea of the petitioner that he has been in possession of the suit property right from 1978 is not least acceptable. In that view of the matter, it must be held that the petitioner did not have a prima facie case either in favour of his adoption or in favour of the exclusive possession.

6. The learned Counsel for the petitioner then invited my attention towards the two judgments in the criminal cases in which the petitioner himself was an accused. There are some stray observations. I am afraid, those stray observations are not of any help to the petitioner nor could they be viewed as a circumstance in his favour. At any rate, those observations, where the present respondent Nos. 1 and 2 were not the parties, should not be viewed as prima facie case, as has been done by the trial Court. In that view of the matter, it must be held that the petitioner had no prima facie case and that the Appellate Court was right in refusing injunction and dismissing his application.

7. That leaves the last argument of the learned Counsel for the petitioner that in his suit, there could be no direction to him to vacate the premises and stay away from the property. I am afraid, there also the learned Counsel is not right as it is the paramount function of the Court to see that the parties do not take law in their hands. The Additional District Judge, being an Appellate Court, was armed with the powers u/s 151 of the CPC to issue such a direction. There is a direct ruling of the Supreme Court reported in *Sri Samir Sobhan Sanyal v. Tracks Trade Private Ltd.*, 1996(5) SC 237. The Apex Court has observed as under :--

"The Court cannot blink at their unlawful conduct to dispossess the appellant from demised property and would say that the status quo be maintained. If the Court gives acceptance to such high-handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law abiding citizens and rule of law would remain a mortuary."

The observations are amply applicable to the present case.

8. In that view of the matter, no fault can be found with the appellate order. The Civil Revision Application has no merits. It is dismissed with costs.