

(1995) 04 DEL CK 0050
In the Delhi High Court
Case No : First Appeal No. 102 of 1993

Raj Kumar Nigam and Others	Vs	APPELLANT
Khalifa Khajan Singh and Others		RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

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

Citation : (1995) 2 CivCC 553 : (1995) 58 DLT 632 : (1995) 34 DRJ 290 : (1995) 111 PLR 16

Hon'ble Judges : Dr. M.K. Sharma, J;Arun Kumar, J

Bench : Division Bench

Advocate : R.K. Gupta, Aman Vaccher, Mukul Rohatagi, G.K. Srivastava and B.S. Nagar, for the Appellant;

Judgement

Arun kumar, J.

(1) This appeal is directed against the judgment dated 19th January 1993 of a learned Single Judge of this Court whereby two applications of the plaintiffs in the suit (respondents herein) under Order Xxxix Rules I

(2) It is admitted position that the defendants (appellants herein) are owners of the property in suit bearing No.3564,Kucha Daya Ram, Chawri Bazar, Delhi by virtue of duly registered sale deeds executed in their favor by the previous owners of the property. It is also an admitted fact that on the date of institution of the present suit, no construction in the shape of any structure existed in the premises. Whatever structures existed on the premises stood demolished on the night of 30th/31st May 1992.

THE learned Single Judge has observed that this was the common case of the parties. This fact is also fully supported by the report of the Local Commissioner appointed by the Court which is on record. That is why the present suit by the plaintiffs for damages., The plaintiffs claim themselves to be tenants in the property in suit and their case is that the structures in which they were tenants

were illegally demolished by the defendants on the night between 30th and 31st May 1992. The plaintiffs besides claiming damages on account of the alleged illegal demolition of their tenanted property have claimed a right to reconstruct the alleged tenanted portions. The defendants have denied this claim of the plaintiffs and have stated that the plaintiffs have no right, title or interest in the property in suit at all and, Therefore, they are not entitled to any relief. The defendants claim themselves to be the owners of the property by virtue of duly registered sale deeds and also claim to be in possession of the entire property. According to the defendants none of the plaintiffs ever resided in " the suit property. They have their independent residences elsewhere. The plaintiffs are according to the defendants trying to grab the property which is a valuable property located in a busy locality of the city. Parties have tried to make good their respective claims qua the property on the basis of copies of ration cards, voters lists, bank passbook, birth certificate of child born to one of the plaintiffs etc. The plaintiffs have also placed on record photo copies of certain old rent receipts in favor of one Moti Ram and plaintiff No.1 Khajan Singh jointly, alleged to have been issued by the previous owners in order to show that Khajan Singh is a tenant in the premises. They have also placed on record photo copy of a statement of one of the previous owners of the property recorded in another suit in which the previous owner admitted Moti Ram and Khajan Singh to be tenants in the property in suit. According to the said statement, Moti Ram and Khajan Singh were running an akhara in a portion of the property in suit. The entire area in their tenancy was 135 sq. yds.. According to the said statement the rest of the property was lying vacant.

(3) By the impugned order the learned Single Judge while rejecting both the applications of the plaintiffs for interim relief, directed the parties to maintain status quo regarding the property in suit. The learned Single Judge has observed that there is no ground to permit the plaintiffs to reconstruct any structure nor there is anything to be repaired since admittedly there was no structure whatsoever in existence at the premises. The plaintiffs have accepted the judgment of the learned Single Judge and have not appealed against the said judgment even though both their applications for interim relief stand disposed of without any relief whatsoever being granted to them. It is the defendants alone who have challenged the said order of the learned Single Judge by way of the present appeal. The defendants are aggrieved of the direction to maintain status quo qua the property in suit. The defendants claim that they are the owners of the property and have a right to construct a building thereon according to the building plans which they allege to have got sanctioned in the meanwhile from the concerned authorities. According to the appellants/defendants the suit may take its own time and the Final outcome of the litigation may not become known for long. The defendants pray that they should not be deprived of the right to make construction on their valuable property. The delay in construction firstly deprives them of the opportunity to reap fruits of their property and secondly mounting cost of construction will result in great Financial loss and hardship to

them.

(4) On merits of the case the learned Single Judge has observed that "whether the plaintiffs were tenants or in enjoyment of the entire suit premises or a portion thereof or not at all is a matter of serious dispute between the parties relating to the merits of the case which can be decided only after parties have led their evidence. It is common ground that whatever structures existed on the premises were demolished on the night of 30th/31st May 1992 and that no structure exists now. This is otherwise reflected in the report of the Local Commissioner and the photographs taken by him and tiled with the report". The learned Single Judge thus found that at present the premises in suit is an open piece of land with no structure existing thereon. However, in view of the rival claims of the parties, i.e. whether the plaintiffs are tenants in the property or not the learned Single Judge considered it safe to direct maintenance of status quo by both the parties qua the property in suit.

(5) The main emphasis of the learned counsel for the appellants is on the fact that consequences of a status quo order so far as the appellants are concerned are quite serious and grave. Therefore, it is prayed that the Court ought to consider the prima facie strength of the rival claims of both the parties. So far as the plaintiffs/respondents are concerned, admittedly at present there is no construction at site and, Therefore, they do not suffer at all on account of the order of maintenance of status quo. Inasmuch as they claimed permission to carry out re- construction which has been denied to them by the learned Single Judge by the impugned judgment, they have not felt aggrieved and have not challenged the judgment. They have accepted the correctness thereof. On the other hand, according to the learned counsel for the appellants each day's delay in carrying out construction on the premises in suit results in heavy financial loss and hardship to them. It is a known, fact that cost of construction keeps on constantly rising day by day. Moreover the appellants submit that they have got the plans for carrying out construction on the premises sanctioned by the concerned authorities. The sanction is given for completing the construction within a specified time and each time they cannot keep on getting the sanction extended. The Final outcome of the suit may take long. The period is indefinite and cannot be predicted by anyone. Keeping the property in this condition for all this period amounts to wasting the property for which the appellants claim to have paid valuable consideration. It is " further submitted that keeping the open plot in this condition will encourage unauthorised occupations on it involving defendants into further litigation. The learned counsel for the appellants/ defendants has urged that the claim of the plaintiffs in suit is totally sham, bogus and without any merit or substance. On the basis of such a bogus and frivolous claim the defendants should not be subjected to such a hardship.

(6) On the other hand counsel for the plaintiffs in the suit, i.e. respondents herein submitted that the plaintiffs have raised a substantial claim regarding they being tenants in the property in suit and if the defendants are allowed to carry

out construction at the site during the pendency of the suit, the success of the plaintiffs in the suit will be rendered futile because at that stage nothing will be available for the plaintiffs to construct or for this Court to enable the plaintiffs to reap the fruits of their success in the suit. Moreover, counsel for the respondents submits that the defendants had demolished the structure on the night between 30th/31st May 1992 in the garb of an injunction order granted by this Court in a suit Filed by the defendants and the defendants should not be allowed to take advantage of their own wrong. The learned counsel for the respondents has also referred to certain pleadings on the part of the appellants in their previous suit filed in this Court against some of the plaintiffs in the present suit in order to show that the claim of the appellants in the said suit was also false to their knowledge. So far as the pleadings in the previous suit are concerned they need not detain us because the suit was dismissed as withdrawn. The appellants herein who were the plaintiffs in the said suit moved an application under Order Xiii Rule I, CPC for permission to withdraw the said suit. The said application was contested by the defendants in the said suit who are the plaintiffs in the present suit and after, contest, the suit was allowed to be withdrawn and was dismissed as such. Therefore, this aspect is not of much importance at this stage. The main question for consideration at present is about the prima facie nature of the case of the parties and the considerations of balance of convenience and irreparable loss and injury.

(7) For purposes of ascertaining prima facie nature of the case of the plaintiffs it has to be noticed that it is not in dispute that the defendants are owners of the property in suit by virtue of sale deeds in their favor executed by the previous owners. As noticed by the learned Single Judge in the impugned judgment itself, it is common ground that at present it is an open plot of land and it does not have any structures thereon. The present suit was filed on 3rd/4th August 1992 in which the plaintiffs claimed to be living in the premises in suit. There are seven plaintiffs as per the memo of parties. If the property in suit became an open piece of land on 30th/31st May 1992, the plaintiffs could not obviously claim to be residing in the property on the date of the institution of the present suit. In fact the plaintiffs' claim for damages shows that the structures stood demolished that is why damages were claimed. The plaintiffs have claimed that they are tenants in portions of the property. Regarding plaintiff No.1 Khajan Singh it is stated that he along with one Moti Ram was tenant "with respect to one room, three stores, one verandah and open space wrestling ground covered with Tin Shed measuring about 135 sq. yds. on a monthly rent of RS.100.00 for last about 40 years (more specifically described in Green Colour diagonal lines in the Site/Plan herewith)". plaintiff No.1 claims to be living in the premises in dispute having a ration card in his name at the address of the premises in dispute. A photo copy of an electric bill in the name of Moti Ram has been placed on record to show that he had an electric connection in his name at the premises in suit. It is further claimed that plaintiff No.1 and Moli Ram were running a Vyayamshala/Akhara in the premises. To support this claim for tenancy certain photo copies of

old rent receipts executed by previous owners have been placed on record. Besides this there is another document which is a photo copy of statement alleged to have been made by one of the previous owners in another litigation in a civil court. The said statement also shows that Khajan Singh and Moli Ram were tenants in the property having an area of 135 sq. yds.. The total area of the property in suit is 775 sq. yds. Therefore, the claim of plaintiff No.1 is on his own showing is to an area of 135 sq. yds. So far as the other plaintiffs are concerned, they have not filed any rent receipt or rent note to show that they are tenants in the property. It is their case in the plaint that no rent receipt was ever issued in their favor by the landlords. On the other hand the photo copy of the statement of the previous landlord made in another suit to which reference has been made just before shows that the landlord was categorical in his statement that there was no other tenant in the property and rest of the property was lying vacant. To this extent the plaintiffs' own document belies the claim of plaintiffs 2 to 7 to tenancy in any portion of the premises in suit. To support their claim for tenancy plaintiffs 2 to 7 rely on certain photo copies of ration cards in favor of some of them, photo copy of pass book of a bank showing the address of the premises in favor of another. A copy of a voters lists.

(8) These documents subject to their authenticity, can at best show that the concerned persons used the address of the premises in suit. None of these documents can be said to establish the case of plaintiffs 2 to 7 to be tenants in the property in suit. Tenancy is a positive act which is result of meeting of minds of the two parties concerned, i.e. the landlord and the tenant and payment of rent by the tenant to the landlord is an evidence thereof. Tenancy cannot be established by mere presence of somebody on the premises. They do not even say in the plaint as to since when they are tenants in the premises. Absence of such particulars shows that the claim is totally vague and has no legs to stand.

(9) The case of the defendants/appellants on the other hand is that they have purchased the property by paying valuable consideration through registered sale deeds in their favor. As per the previous landlord/owner there were only two tenants in the premises, namely, Krishan Prasad and Kanwer Lal. Both had died and their heirs were residing in portions of the property. The defendants have placed on record photo copies of letters of previous owners in this connection. They have also placed on record the documents to show that the heirs of these tenants had surrendered possession of the portions of property in their respective occupation. Therefore, according to the defendants there was no tenant in the entire property in suit. About Vyayamshala/akhara it is the case of the defendants that the akhara occupied an area of 135 sq. yds. out of the total size of the plot. The akhara was only allowed a permissive use of the said portion and there was no tenancy. The defendants have further stated that Moti Ram, who was running the akhara along with Khajan Singh, plaintiff No.1, had been given an alternative site in another property "belonging to the defendants for the use as akhara. The akhara had shifted to the said new site. They have placed documents on record to show the affiliation of the akhara with the Wrestling

Association at the new address. Interestingly this appears to be the reason for deletion of one name from the array of plaintiffs in the plaint. The first page of the court fee stamp papers shows that at Sr.No-2 white fluid has been used to cover the name and address of original plaintiff No.2. From backside of the said stamp paper it is easy to make out the name. It is Khalifa Moti Ram, i.e. the other associate of plaintiff No.1. It appears that on allotment of the alternate site the two persons, i.e. Khajan Singh and Moti Ram fell out. Moti Ram shifted to the new site Along with akhara. Khajan Singh is sticking to the property in suit. That is why Moti Ram apparently refused to be the plaintiff in the present suit.

(10) The defendants/appellants denied that any of the plaintiffs was ever a tenant in the property. They have also placed on record some documents in the shape of photo copies of voters lists, certificate of ration card, birth certificate of a child born to one of the plaintiffs to show that the plaintiffs are residents of places other than the property in suit. This has been done to controvert the claim of the plaintiffs to be residents of the property in suit.

(11) From the above material on record prima facie it appears that plaintiff No. 1 alone can at best be said to have some claim for tenancy regarding an area of 135 sq. yds. in the property in suit. The old rent receipts which he has placed on record Along with the statement allegedly made by the previous landlord in some other proceedings in a Civil Court show that plaintiff No.1 was running an akhara in a portion of the property in suit. The report of the Local Commissioner appointed in the previous suit which is available on record of the present suit also shows that some sort of akhara was in existence in a portion of the property. It is an admitted case of plaintiffs that the total area under the tenancy of plaintiff No.1 and the akhara was about 135 sq. yds. So far as the other plaintiffs are concerned, they have failed to show that they have any case at all even for purposes of a prima facie finding. It is their own case in para 9 of the plaint that no rent receipt was ever issued in their favor. The photo copies of documents relied upon by them could at best show their presence but that "alone is not enough to support a case of tenancy set up by them. Their case of tenancy is belied by their own documents, i.e. the photo copy of the statement of previous landlord in another proceedings in a Civil Court. It appears that they are trying to " take advantage of the fact that the property was lying in a state of neglect while owned by the previous owners. As per documents of defendants the previous owners have named only two tenants who were in occupation in portions of the property. They could have named others also if there were others. Thus we are not at all satisfied that plaintiffs 2 to 7 have any prima facie case so far as the property in suit is concerned. Only plaintiff No.1 has a prima facie case which needs to be protected at this stage.

(12) The learned counsel for the respondents submitted that the appellants are seeking the same relief in the present suit (though they are defendants) which they claimed in their own suit which they ultimately withdrew. We do not think that this is a correct approach. The appellants did not claim any relief before the

learned Single Judge. They did not file any application. They are aggrieved of the fact that an order has been passed against them which even the plaintiffs never sought or prayed for. The present appeal seeks that the said order be vacated. Therefore, it is not the appellants who approached the Court. The very basis for the argument is thus non-existent.

(13) The learned counsel for the appellants has also submitted that the plaintiffs have filed a suit for damages. They have not filed a suit for possession. Therefore, they cannot seek to restrain the defendants from carrying on construction in the premises. In other words the submission is that plaintiffs cannot be permitted to go beyond their pleadings. In a suit for damages the plaintiffs cannot seek to restrain another from carrying on construction on his own property. Actually it appears from the judgment under appeal that the learned Single Judge passed the status quo order qua both the parties to the suit in view of similar such order in the previous suit in which the present defendants were plaintiffs. The learned Single Judge felt that the parties had raised contentious issues which could be decided only on the basis of evidence to be adduced on the record. Therefore, he felt it safe to direct both the parties to maintain status quo. We, however, feel that though the issues raised are contentious, yet we should see the prima facie strength or weakness of the case of each side and that we should not deny to a party its legitimate right simply because the opposite party has just raised a claim, though prima facie a frivolous claim.

(14) The learned counsel for the appellants has relied on *Dr. V. Sidharthan Vs. Pattiori Ramadasan*, to contend that where the subject matter of a lease like a building is totally destroyed the tenant is not entitled to squat on the ground where the building stood or construct a new building in its place or require the landlord to put up a new structure. Since the respondents have not claimed any relief in this appeal, it is not necessary for us to go into their question.

(15) The learned counsel for the respondents also cited some judgments on relevant considerations for deciding application under Order XXXIX Rules I and 2. These principles are well settled. The cases are decided primarily on the facts on record. Legal principles are well settled and are never in question. The cases ultimately turn on their own facts. So far as the point made on behalf of the respondents about suppression of some material facts by the appellants so as to disentitle them to equitable relief, it is only to be noted that in the present case it is not the appellants who approached the Court for relief. The plaintiffs/respondents sought interim relief which was denied to them. Still interim order was passed against the appellants.

(16) We may also note that during the pendency of the appeal in this Court, we appointed a Local Commissioner to visit the suit property and make a report as to whether any of the respondents was in possession of the premises. The report of the Local Commissioner dated 27.3.1995 shows that none of the respondents is in settled actual physical possession of the premises in question. Same was the

conclusion of the previous Local Commissioner. This shows that the respondents' claim that they are in possession of the premises is suit is prima facie false.

(17) With this background we have to consider what order should be passed keeping in mind the consideration of irreparable loss and injury and balance of convenience. So far as the claim of plaintiff No. I in the property in suit is concerned it is confined to an area of 135 sq. yds. and to protect it the defendants/appellants can be directed to keep an area of 135 sq. yds. in the property in suit apart, so that the same is available to satisfy the claim of plaintiff No. I in the event of his success in suit.

(18) About the claim of plaintiffs 2 to 7 we have already observed that prima facie we do not Find any merit therein. Now question arises as to whether for such a fragile claim also should we deny to the defendants the right to make construction on the plot? Nobody can dispute that the cost of construction keeps on constantly rising. One does not know how long the litigation may take and ultimately what will be the result of the litigation. By not allowing construction on the property the plaintiffs do not gain any advantage except that they will have the satisfaction of being able to deprive the defendants of the fruits of their property and having the sadistic pleasure in ensuring that the defendants would in any case be losers because even if they are to succeed after 10 years the cost of construction would have risen manifolds. If the status quo order passed by the learned Single Judge is vacated to the extent of the balance area of the property, i.e. after keeping an area of 135 sq. yds. apart, the defendants may be in a position to carry on construction on the remaining area. In order to protect the interest of plaintiffs 2 to 7, if any, it can be ordered that the construction, if any, to be carried out on the reaming area of the plot by the defendants will be subject to the final outcome of the present litigation and the defendants will carry out the construction at their own risk and costs. In the event of success of plaintiffs 2 to 7, it will be the responsibility of the defendants to comply with the Final directions which may be issued by the Court in this behalf, keeping the property idle in the present state does not serve any purpose". It will rather encourage unauthorised occupations which may result in further litigation. In the interest of justice, and Keeping in mind the balance of convenience and consideration of irreparable loss and injury we feel that the embargo imposed on the appellants preventing them from carrying on any construction at all on the property in suit be partly lifted. Accordingly we direct that the order for maintenance of status quo will continue to operate qua the defendants appellants only to the extent of an area of 135 sq. yds.. The defendants will keep this area separate on one side of the plot where the akhara at present has been shown by the Local Commissioner in the photographs appended by him to his report and no construction whatsoever be raised on that area. Regarding the rest of the plot, the status qud order against the appellants/defendants is vacated. However, it is made clear that in view of this modification of the judgment of the learned Single Judge of the appellants carry out any construction on the remaining area of the plot the same will be at their risk and cost and it will be subject to the final

decision in the suit. The- appeal is disposed of leaving the parties to bear their respective costs.

(19) The above decision is based on a prima facie view of the matter and will be subject to final decision in the suit.