

(2022) 10 DEL CK 0241

In the Delhi High Court

Case No : Civil Revision Petition No. 207 Of 2018

Rajan Kumar

APPELLANT

Vs

Lajja Devi & Ors

RESPONDENT

Date of Decision : 18-10-2022

Acts Referred:

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

Citation : (2022) 10 DEL CK 0241

Hon'ble Judges : Dinesh Kumar Sharma, J

Bench : Single Bench

Advocate : Raj Kumar, Abhishek Sonkar, Sakshi G. Sonkar, Sangita Chauhan, R.M. Sinha, P.M. Sinha, Nandini Harsh

Final Decision : Dismissed

Judgement

Dinesh Kumar Sharma, J

C.R.P. 207/2018 & CM APPL. 39456/2018 (stay), CM APPL. 39457/2018 (for condonation of delay)

1. Present civil revision petition has been filed challenging the order dated 31.08.2017, whereby, the learned Trial Court while invoking the powers under Section 151 CPC, dismissed the suit of the plaintiff/petitioner. Learned Trial court also directed defendant No.4/APMC to remove every illegal encroachment existing within the premises of Azad Pur Mandi within two weeks.

2. It is pertinent to mention here that the petitioner had also filed an appeal against the impugned order, which was dismissed by the Court of learned ADJ being not maintainable.

3. The facts in brief are that the plaintiff/petitioner filed a civil suit for permanent injunction against the private respondents and the APMC. The plea of the petitioner is that he has been selling vegetables as Mashakhori in a by-lane outside Shop No.D-1395, New Subzi Mandi, Azadpur, Delhi.

4. Perusal of the lower court record indicates that the learned Trial Court while considering the application under Order XXXIX Rules 1 and 2 CPC, vide order dated 27.01.2014, had inter alia held as under:-

"Now the area where parties are working is under APMC, a statutory body vested with the administration of the entire vegetable market. Plaintiff has claimed himself to be Mashkhor. Necessarily he must be having some kind of license or permission from APMC to ply his business/trade/operate in Azadpur Subzi Mandi. In the entire plaint it has not been specified whether the plaintiff is license holder by APMC or in any manner authorized to deal at the place in respect of which he has sought permanent injunction against forcible dispossession. No document has been filed by the plaintiff in support of said assertions. Reliance is made on a letter dated 11.03.2013 addressed to the SHO Mahendra Park by Shri S.K. Kholi, Pradhan of Vegetables Traders Association (Regd.). A perusal of the said letter reveals that Rajan Kumar, the plaintiff used to ply his business from the road itself and later on Yogesh Kumar and Lokesh Kkumar had purchased the shop no.D-1395 and dispute arose between them. It is also stated that Kishori Lal and Rajan Kumar are old members of the Association, however, the place belongs to APMC and of the owner of the shop no.D-1395.

That being the situation even on the basis of the documents filed by the plaintiff the place where the plaintiff is squatting/occupying is owned either by APMC or defendants no.1 to 3 and there cannot be any injunction against a true owner. No legal right has been prima facie established/enuring in favour of the plaintiff.

The perusal of the photographs reveals that the shop of defendants no.1 to 3 is in a manner a corner shop/abutting the side street and which has been occupied by large number of person who are selling vegetables by encroaching the street/road. The said street has been converted into a Bazaar.

May be the persons sitting on the road/street and are plying their trade are the person are either authorized by the shopkeepers in and around the said place or they may be their own workers who are putting the vegetables outside the shops. It is quite possible that APMC may have permitted them to do so but it does not justify granting an injunction from the court in absence of the plaintiff having any legal right, title or interest in the place which he is occupying.

Plaintiff has urged that his possession is of long duration and settled possession and hence entitles for a stay order against forcible dispossession. In reference thereto it is an admitted fact that street vending/the vegetables market operate only a day hours and once the sun sets the entire market is closed. Thus, at the most of the plaintiff works on daily basis and his possession is not even of long duration/continuous to be called as in settled possession. Needless to say there is no construction carried out by the plaintiff to show any permanent structure of his at the said place."

5. Learned Trial Court passed the aforementioned order after taking note of the pleadings of the petitioner and the respondent Nos.1 to 3. It may be mentioned

that the respondent No.4/APMC did not appear and was proceeded ex-parte. Learned Trial Court noted that in the entire plaint it has not been specified that whether the plaintiff/petitioner is license holder by APMC or in any manner authorized to deal at the place in respect of which he has sought permanent injunction against forcible dispossession. Plaintiff was also found to have not filed any document in support of his assertions. Merely reliance was placed on the letter dated 11.03.2013 addressed to SHO, Mahendra Park by Sh. S.K. Kohli, Pradhan of Vegetable Traders Association (Regd.).

6. Learned Trial Court did not find any prima facie case nor balance of convenience in favour of the plaintiff/petitioner and thus dismissed the application under Order XXXIX Rules 1 and 2 and proceeded to frame the issues. Subsequently, while the matter was taken up on 31.08.2017, the learned Trial Court passed the impugned order and inter alia held as under:-

"Except for the fact that the plaintiff is in occupation of the by-lane outside shop No. D-1395, nothing has been placed by the plaintiff to substantiate even remotely the legality of his possession. The first and the foremost requirement for any injunction suit to be maintained is that the plaintiff must show that he has a legal right and that there was a breach of such right. The counsel for defendant No. 4 was asked as to if there is any provision for 'Mashakhori' under APMC Enactment on which basis the plaintiff is trying to justify his illegal encroachment. The counsel replied that there is no such concept either prevalent or recognized under APMC Enactment. Only the shopkeepers with permanent structures are allowed to operate that too with a license and except for these people, anybody or everybody operating from or in the by-lanes are illegal encroachers. There is no rebuttal of this argument on behalf of the plaintiff by showing any documentary proof to the contrary. When there is no provision of 'Mashakhori' under APMC Act and when no such term is legally recognized, I don't think that the plaintiff is anything more than an illegal encroacher over the Govt. land, who deserves no sympathy or leniency. A person whose case is based on illegality does not deserve to be heard qua the discretionary relief of injunction because one who seeks equity must do equity. The conduct of the plaintiff being an illegal encroacher over the Govt. land dis-entitles him from seeking any sort of relief from the Court. Hence, I shall be least hesitant to invoke inherent powers u/s 151 CPC to stop the trial forthwith with a view to reduce the perpetuation of illegalities by the plaintiff and also to reject his claim immediately."

7. The grievances of the learned counsel for the petitioner is that after the issues have been framed and the case was at the stage of evidence, the Trial Court should not have resorted to exercise its powers under Section 151 CPC and should not have dismissed the suit. Learned counsel for the petitioner further submits that the petitioner should have given an opportunity to lead evidence to prove his case in accordance with law.

8. Petitioner has invoked the revisional jurisdiction of this Court. The revisional

jurisdiction of this Court is very limited. Under the revisional jurisdiction, the Court can interfere only if there is patent illegality or manifest error in the order of the learned Trial Court. The Court while exercising this jurisdiction is also to see that whether the Court below has exceeded this jurisdiction in any manner. This Court has also to take into account that whether the person, who has approached the Court and asserted his claim has actually any claim, right, title or interest.

9. The institution is grappling with the huge pendency. One of the reasons for huge pendency is frivolous litigation. The first and foremost duty of the Court is to ensure that frivolous litigation should be nipped in the bud. The Courts do not have the luxury to continue with the litigation, which is frivolous on its face, merely because certain procedural motions have to undergo. If the petitioner has not even asserted his right, claim, title or interest, there cannot be any evidence which can be led. The basic proposition is that the evidence can be led only on the basis of the pleadings of the parties. If there is no pleading or assertions of the petitioner, there would be no purpose of continuing with the trial. In this regard, the Court is also to see the purity of the litigation pending before it. The relief of injunction is a relief of equity. One who claims equity must come with clean hands. The Court is also to ensure that illegal and unauthorized litigants may not be given an opportunity to misuse or abuse the process of the Court. The endeavour of the Court should be that if a vexatious litigation is filed, it should be dismissed on the very first date, without any further delay. If, for some reasons, such orders are not initially passed in a frivolous litigation, nothing stops the Court to put an end to such an ordeal at any stage. The Court has to bear in mind that many honest litigants and bona fide claim remain pending and the system is clogged by frivolous litigations and mischievous litigants.

10. This Court considers that the learned Trial Court has rightly exercised its jurisdiction and there is no ground to interfere with the same.

11. In view of the aforesaid, the present petition along with the pending applications stands dismissed.