

(1993) 10 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Revision Petition No. 932 of 1992

Rajendra Mohan Joshi

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1993) 2 RLW 669 : (1994) 1 WLC 741 : (1993) WLN 580

Hon'ble Judges : K.C. Agrawal, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This revision, u/s 115 of the Code of Civil Procedure, has been filed by Rajendra Mohan Joshi for injunction restraining the respondents Nos. 1 and 2 from disposing him from the premises in his possession.

2. The relevant facts briefly are these. The petitioner was carrying on his business at the Ajmeri Gate Sabzi Mandi since long. On 1.2.1986, a meeting was convened in the office of the Krishi Upaj Mandi (Fruit & Vegetable) Samiti for allotment of shops and sheds for shifting the Sabzi Mandi from Ajmeri Gate, Johari Bazar, Sanganeri Gate to the Lal Kothi Sabzi Mandi area. In that meeting, it was decided that the "Krishak "ka" Varg Dalal" would be allotted a covered chabutara of 30" X 12". The allotment letters were, thereafter, issued on 3.2.1986 by the respondent No. 2. In the allotment letter amongst others, the terms and conditions were to the following effect

;g LFkku iw.kZr;k vLFkbbZ gksxk A tc dHkh Hkh e.Mh ds ikl LFkku ;k nqdku miyC/k gksxh rks ;g LFkku [kkyh djuk gksxk A

9-mijksDr "krZ 5@& ds LVkEi isij ij fyf[kr es e; gLrk{kj dk;kZy; es lkr fnol es izLrqr djuh gksxh A

3. The petitioner claimed that the received another letter dated 13.3.1989 from

the respondent No. 2 to get fresh agreements executed and the petitioner was directed to execute fresh agreements in the enclosed proforma on a stamp paper of Rs. 5/-and to submit the same on or before 31.3.1989. In pursuance of the said letter, the petitioner submitted a duly stamped paper before 31st March, 1989 with the hope to get a permanent right settled in his favour. Under the new agreement, the petitioner was conferred a right to seek electric, water and telephone facilities in his name at his expenses.

4. The petitioner alleged that he executed the agreement as per the terms and conditions settled, but it was to his utter dismay that OR 25.8.1989 he was informed that the allotment made to him was temporary and for getting permanent settlement, he was required to submit a prescribed form by 5.9.1989.

5. Upon the aforesaid letter being received, the petitioner filled a writ petition in this Court against the respondents Nos. 1 and 2. The writ petition was ultimately dismissed with the observations that the petitioner's remedy lay in filling a civil suit.

6. Thereafter, the petitioner filed the suit for specific performance of the contract and for injunction restraining the respondents from evicting him from the premises in his possession. The application for temporary injunction was also filed. The petitioner claimed that he had the permanent right settled in his favour and by virtue of the intimation dated 13.3.1989 he did everything required of him. Consequently, as the contract had come into existence, the respondents Nos. 1 and 2 could not evict the petitioner from the premises in his possession.

7. The application was contested by the defendants Nos. 1 and 2 denying that the petitioner had any right or title over the land in dispute. He had no right to occupy the land and that the letter dated 13.3.1989 did not create any right. It was no contract in between the parties came into existence and, as such, the defendants Nos. 1 and 2 could not be restrained by temporary injunction from evicting the petitioner.

8. The trial court granted injunction in the terms prayed for. This was vacated by the appellate court in appeal with the finding that the petitioner had no title or right over the land in dispute. The intimation dated 13.3.1989 did not confer any right. No. contract could be arrived at unless there was an offer and acceptance.

9. In the revision, the learned Counsel for the petitioner urged that the petitioner was a permanent lessee or licensee of the site in his occupation and that the Krishi Upaj Mandi Samiti had created a right for which considerations had also been paid. Consequently, the eviction of the petitioner would be unauthorised and illegal.

10. No document or paper had been filed on behalf of the petitioner for the period before 13.3.1989. The petitioner might be carrying on a business, but carrying on that business did not create any contractual relationship.

11. A contract is a promise for a set of promises for the breach of which the law

gives a remedy, or the performance of which the law in some way recognizes as a duty. The petitioner brought the suit for specific performance of the contract. That would mean that a contract had come into existence. A contract is an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others. To get specific performance of the contract does not create any right by itself. It is not enforceable. The letter dated 13.3.1989 was not a document executed by the parties as an operative fact in itself and as lasting evidence of their having performed other necessary acts expressing their intentions. The petitioner did not have any right on the basis of which he could get the injunction.

12. In an injunction, the party is required to establish that he has a prima facie case and that balance of convenience lay in his favour and in case the injunction was not granted, irreparable injury would be caused. An interlocutory injunction is granted where it is just and convenient in a case to do so. It was said by Lord Denning in *Hubbard v. Vosper* (1972) 2 QB 84

In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead... The remedy by Interlocutory Injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.

Thus, the law requires a Court to consider cases of both the sides and weigh the balance of convenience. It is wrong to assume or hold that justice always maintained the status quo. If that is so, courts would have to grant injunction invariably in each case without considering the merits by examining the rival contentions. Status quo is advisable where all other considerations relevant to the case are also in his favour.

13. The Addl. District Judge found that the plaintiff did not have a prima facie case in his favour and also gave the finding of balance of convenience and irreparable injury against him.

14. The defendants have erected shops in that very Mandi. It would accommodate the petitioner and Ors. of the connected cases. It has tin sheds and all the conveniences which could be made available in a Mandi. The petitioner's counsel did not dispute that his client would get a shop under the proposed scheme. His contention, however, was that the shop to be given was not of the same size which he is in occupation of. He further contended that the land on which action takes place was in his occupation, whereas in the event of shop being allotted he will get some other place.

15. These all are arguments of dismay and unsustainable and that the lower

appellate court rightly set aside the order of the trial court which was based on incorrect appreciation of the controversy involved.

16. u/s 115 C.P.C. this Court has power to interfere only when the subordinate court appears-(a) to have exercised a jurisdiction not vested in it by law; (b) to have failed to exercise a jurisdiction so vested; and (c) to have acted in the exercise of his jurisdiction illegally or with material irregularity.

17. The learned Counsel for the petitioner tried to bring his case under Clause (c) of Section 115 of the Code of Civil Procedure.

18. The errors pointed out under this clause relates to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law. It must be something independent of the decision itself an irregularity or illegality in the manner of arriving at it, not in the conclusion reached. This view finds support from the decision of the Supreme Court in Keshardeo Chamria Vs. Radha Kissen Chamria and Others,

20. The Court below had authority in law to interfere as the order of the trial court was erroneous in many points.

21. For the reasons given above, the revision petition fails and is dismissed with costs.