
(2013) 05 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 993 of 2013

Rajeshwer Shankar Choudhary @ Rajesh Choudhary and
Another

APPELLANT

Vs

Shiv Shankar Choudhary and Others

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1

Citation : (2014) 2 RLW 1561

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : S.R. Surana, assisted by Mr. Sanjay Yadav and Mr. A.K. Choudhary, for the Appellant; J.M. Saxena for respondent Nos. 1 and 2 and Mr. K.N. Bhatt for respondent Nos. 3 to 6, for the Respondent

Final Decision : Allowed

Judgement

Bela M. Trivedi, J.—With the consent of the learned counsels for the parties the appeal is being decided finally at the admission stage. The present appeal has been filed under Order XLIII Rule 1 of CPC challenging the order dated 21.02.2013 passed by the Additional District Judge No. 13, Jaipur Metropolitan (hereinafter referred to as "the trial court") in Civil Misc. Case No. 281/2012, whereby the trial court has dismissed the application of the appellants-plaintiffs seeking temporary injunction in respect of the plot in question, pending the suit.

2. It appears that the present plaintiffs have filed the suit against the respondents-defendants seeking cancellation of the sale deed dated 28.09.2012 executed by the defendant Nos. 1 & 2 in favour of the defendant Nos. 7 to 9, and seeking the possession of the disputed plot No. A-1 and for permanent injunction restraining the defendants from putting up any construction on the said plot and from transferring or alienating or creating any third party interest in the said plot. Pending the suit, the appellants-plaintiffs had filed the application seeking temporary injunction of similar nature which was registered as Civil Misc. Case

No. 281/2012. The said application was resisted by the respondents-defendants. The trial court vide the impugned order dated 21.02.2013 dismissed the said application of the appellants-plaintiffs filed under Order XXXIX Rule 1 & 2 of CPC, however directed the defendant Nos. 1 to 6 that if they wanted to sell the disputed property to any third party, they shall make mention about the pendency of the suit in the sale deed. Being aggrieved by the said order, the present appeal has been filed.

3. It has been sought to be submitted by the learned Senior Counsel Mr. S.R. Surana that the plot No. A-2 in question was allotted by UIT way back in the year 1957 to late Shri Murlidharji, the father of the appellants, who was the judicial officer and as such the said plots were the self acquired properties of the said Murlidharji. According to Mr. Surana, the respondent Nos. 1 & 2, who happened to be the sons of late Shri Ramchanderji, the brother of Murlidharji relying upon one forged document of family settlement, had sold out part of the disputed plot No. A-1 to the respondent Nos. 3 to 6. He further submitted that even if the said plot was treated as HUF property, the same could not have been sold by the respondent Nos. 1 & 2, as no partition of HUF properties had ever taken place. According to him, if the injunction as prayed for was not granted pending the suit, it would lead to multiplicity of proceedings.

4. However, the learned counsel Mr. J.M. Saxena appearing for the respondent Nos. 1 & 2 and learned counsel Mr. K.N. Bhatt appearing for the respondent Nos. 3 to 6 vehemently submitted that the father of the appellants i.e. late Shri Murlidharji being the eldest son, his father Shri Inderlalji had purchased the said plots in his name, from the funds of HUF only. The learned counsels for the respondents further submitted that late Shri Murlidharji himself had shown the disputed property as the HUF property before the various authorities, and had also accepted the family settlement which had taken place between the brothers way back in the year 1971. The learned counsel Mr. K.N. Bhatt for the respondent Nos. 3 to 6 also submitted that the said respondents had invested huge amount while purchasing the said plot in question and irreparable loss would be caused if any injunction is granted against them in respect of the plot in question. He has also relied upon the decision of the Apex Court in case of Kishorsinh Ratansinh Jadeja Vs. Maruti Corp. and Others, to submit that the said respondents be permitted to raise the construction on the said plot subject to the result of the suit and that no equities shall be claimed by them if they lose in the suit.

5. In the instant case, it appears that there are very contentious issues involved in the suit like the issues as to whether the plot in question was an HUF property or not, whether the partition as contended by the respondents had taken place or not, whether the alleged document of family settlement is forged one or not etc. Such issues need to be decided on the basis of the evidence that may be led by the parties. Therefore, without entering into the merits of the case, it would be just and proper to direct the trial court to expedite the trial of the suit, and

during trial the respondents-defendants are directed to maintain status-quo as regards the construction, alienation or creating any third party interest in the plot in question, which otherwise would create unnecessary complications and multiply the proceedings. In that view of the matter, without expressing any opinion on the merits of the case, the trial court is directed to expedite the trial of the suit and the respondents are directed to maintain status-quo as regards the construction, alienation and creation of any third party interest in the plot in question. It is needless to say that the respondents-defendants shall be at liberty to take necessary legal recourse against the appellants-plaintiffs for the recovery of loss which they may suffer due to pendency of the suit, if ultimately the plaintiffs fail in the suit. The impugned order therefore is set-aside and the appeal stands allowed accordingly.