
(2013) 11 RAJ CK 0157
In the Rajasthan High Court
Case No : Civil Writ Petition No. 20582 of 2013

Rajkumar Saini

APPELLANT

Vs

The District Judge, Jhunjhunu and Others

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0157

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Sunil Kumar Singodiya, for the Appellant;

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The present petition filed under Articles 226 and 227 of the Constitution of India is directed against the order dated 7th November, 2013 passed by the District Judge, Jhunjhunu (hereinafter referred to as "the Appellate Court") in Civil Misc. Appeal No. 45 of 2013, whereby the Appellate Court has dismissed the said appeal, and confirmed the order dated 18th October, 2013 passed by the Civil Judge (Senior Division), Nawalgarh, District Jhunjhunu (hereinafter referred to as "the Trial Court"), rejecting the application of the petitioner seeking temporary injunction under Order XXXIX Rules 1 and 2 of CPC. In the instant case, it appears that the petitioner-plaintiff has filed the suit seeking permanent injunction against the respondent Nos. 3 to 6-defendants for restraining them from taking the possession of the suit shop from the plaintiff. In the said suit, the petitioner had also filed an application seeking temporary injunction, which was dismissed by the Trial Court, against which the appeal was preferred, and same has also been dismissed by the Appellate Court vide the impugned order.

2. It has been sought to be submitted by the learned counsel Mr. Sunil Kumar Singodiya for the petitioner that the petitioner was not the party in the earlier proceedings of eviction filed by the respondents, and therefore the said decree

could not be said to be binding to him. He submitted that the petitioner should not be dispossessed from the suit premises without following the due process of law.

3. Having regard to the submissions made by the learned counsel for the petitioner, and to the impugned orders passed by the Trial Court as well as by the Appellate Court, it appears that this is one of the gross cases of the misuse and abuse of process of law. It appears from the record that earlier the decree of eviction in respect of suit premises was passed in favour of the respondents-plaintiffs against the brother of the present petitioner named Nandlal Saini. The said decree was confirmed by the First Appellate Court as well as by the Second Appellate Court. In the execution proceedings, the present petitioner had filed an objection application, which was also dismissed by the Executing Court. After having failed in all the proceedings, the petitioner-plaintiff has filed the suit, which is not only not maintainable in the eye of law, but it appears to have been filed misusing the process of law. The Trial Court as well as the Appellate Court, after having considered the factual and legal aspects in the matter have not believed the prima facie case of the petitioner, have dismissed the application seeking temporary injunction and the appeal, which orders are just and proper, and do warrant any interfere of this Court.

4. The petitioner plaintiff having filed the suit as well as the present proceedings misusing the process of law, the present writ petition deserves to be dismissed with exemplary costs of Rs. 5,000/- (Rupees: Five Thousand Only). The petitioner is directed to deposit the said amount in the Trial Court within two weeks from today, which shall be paid to the respondents-plaintiffs in the Trial Court. If the said amount is not paid as directed, the Trial Court shall take necessary action against the petitioner, in accordance with law. With these directions, the writ petition is dismissed in limine.