

(1989) 05 AHC CK 0015

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17224 of 1987

Rakesh Sigal and Another

APPELLANT

Vs

Vth Addl. Distt. and Sessions Judge and Others

RESPONDENT

Date of Decision : 16-05-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 151
Constitution of India, 1950 — Article 226

Citation : (1989) 2 AWC 1360

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : S.N. Verma, for the Appellant; Ajit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Singh, J.—The present petition is directed against an order dated 17-8-1987 passed by the Vth Additional District Judge, Bulandshahr dismissing the Petitioner's revision.

2. The Petitioners filed a suit No. 409 of 1985 for injunction restraining the Defendants from interfering with the construction of the wall.

3. The suit was filed on the ground that by means of sale deed dated 27-7-1981, they became the owners of the land shown by letters (Aa, Ba, Sa, Da, Ya, Ra). There was a way of 16 feet in width towards the north of their house and towards the north of that passage Defendants' house was situated. Towards the West and South of the disputed passage is a main road connecting the same. This passage belonged to him and he has a right to raise the wall.

4. An application for interim injunction was also moved on 25-10-1985.

5. The learned Civil Judge granted the ex-parte interim injunction restraining the Defendants-Respondents from obstructing the constructions of the wall. On the basis of this order, the Petitioner completed the constructions.

6. After the notices were issued to the Defendants, they filed an objection. It was stated that the Plaintiffs obtained the interim order by concealment of material facts. The passage is a public path way of 12 feet in width, on which, the Plaintiff has constructed the wall under the protection of injunction order resulting in narrowing down the passage by 6 feet. The map attached to the plaint was also misleading. Neither, the sale deed nor its copy has been filed along with the plaint which would have clarified the claim of the Plaintiff.

7. The Defendants moved an application (20-C) for removing the constructed wall raised on the basis of injunction order. The Court exercising its power u/s 151 CPC ordered for removal of the same on 13-7-1987. A revision was filed by the Petitioner before the learned District Judge against the said order which was dismissed on 17-8-1987. The present petition is directed against this order.

8. Heard Sri S.N. Verma appearing on behalf of the Petitioners and Sri Ajit Kumar appearing on behalf of the Respondents.

9. The only point which has been argued by the learned Counsel for the Petitioner was that the court has no jurisdiction to pass an order of demolition of the said wall which has been completed. His further contention was that passing of the impugned order amounted to adjudication of the case finally at the interim stage without permitting the parties to lead the evidence.

10. In order to examine the worth of this argument, few relevant facts ought to be looked into. The Plaintiff filed suit on the basis of the sale deed dated 27-7-1981. It is the document of title and the basis of the suit. It has not been filed along with the plaint. It has been deliberately withheld by the Plaintiff. The purpose of the suit appears to be to encroach upon the 6 feet wide passage and include the same within the boundary wall. The learned Civil Judge granted the injunction on mere statement in the injunction application and the plaint which were in no way sufficient for granting such an injunction. If the Plaintiff had filed the sale deed, then probably, the court would not have passed that order. The Petitioner has definitely misled the court in obtaining the said order. The learned Civil Judge, should have been more Careful in dealing with such matters.

11. In my opinion, the learned Civil Judge had committed a serious mistake in granting such an injunction. In doing so, he has practically decreed the entire suit. It was a fit case, either not to grant injunction order if the court felt that there was a necessity, the Defendants should have been heard before passing such an order.

12. In the garb of the injunction order, the Plaintiff completed the constructions.

13. After raising the wall, he made an application for withdrawal of the suit as the purpose of the suit has been achieved by the injunction order. This application was definitely not a bonafide one. The learned Civil Judge rejected this application but on revision, the court allowed the same conditionally on 4-2-1987. That order is not the subject matter of controversy in the present writ

petition. So, this Court is not called upon to adjudicate about the correctness of the same.

14. The Defendants' application (20-C) was u/s 151 Code of Civil Procedure--praying for demolition of the wall. The Plaintiff thereafter filed an application (7-C) praying that the injunction application be dismissed as not pressed. This too was not a bonafide application.

15. The record of the case indicates that the Petitioner has not come to the court with clean hands inasmuch as he obtained an ex parte injunction order by misleading the court. He completed the construction and thereafter, he prayed that the injunction application may be dismissed as not pressed and made an application for withdrawal of the suit. This, he did after the mischief has been done successfully at his instance and the desired construction has been completed.

16. Now, the question is whether the court is helpless in undoing the wrong, so done.

17. Probably, the Petitioner has forgotten that the powers of the court are unfettered and it has wide jurisdiction to deal with such matters. The learned Civil Judge has allowed the application (20-C) filed by the Defendants for demolition of the wall under its inherent powers. On account of the said wall public at large was also suffering. The order of demolition passed by the learned Civil Judge was perfectly justified the Plaintiff succeeded in constructing the wall by playing fraud on the court. The jurisdiction of the court is not confined only to the cases coming within the purview of Section 144 Code of Civil Procedure. It is inherent in the general jurisdiction of the court to pass an Order of restitution independently of that provision with a view to secure complete justice between the parties.

18. Section 144 CPC deals with the powers of the court for making of an order of restitution in particular class of cases. The section is not exhaustive but is only enumerative, in those cases, where Section 144 CPC is not attracted as such, the principle can be borrowed and made applicable in dispensing with substantial justice under its inherent powers.

19. In the instant case, I am of the view that a relief by way of restitution has rightly been granted by the court below.

20. Thus, in the instant case, even if Section 144 is not applicable, Section 151 is there to undo the wrong done by the court on being satisfied that the order was passed on being misled by the Petitioner.

21. The facts mentioned above, clearly indicate that the Plaintiff has not come to the court with clean hands. Under no statutory machinery, he is entitled for discretionary reliefs under Article 226 of the Constitution of India.

22. I, find no merits in the petition. The petition is, accordingly dismissed at the

admission stage with cost