

(2020) 02 RAJ CK 0501

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12636 Of 2019

Rampratap And Ors

APPELLANT

Vs

Ramkumar

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

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

Citation : (2020) 02 RAJ CK 0501

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Varun Goyal, Moti Singh

Final Decision : Allowed

Judgement

This writ petition is directed against the orders dated 8/7/2019 (Annex.5) passed by Civil Judge, Nohar and dated 31/7/2019 (Annex.6) passed by

Addl. District Judge No.2, Nohar, whereby, the application filed by the respondent under Order XXXIX Rule 1 and 2 CPC has been accepted and the

appeal filed by the petitioner has been rejected, respectively.

The respondent filed a suit for declaration of his status as Punjari of temple Thakur ji and for consequential reliefs and permanent injunction. It was

inter alia claimed that the suit was filed with the submissions that predecessors of the plaintiff were Pujari of the temple in question and none else is

Pujari. For the maintenance of the family of Pujari, agriculture land was provided by the erstwhile State of Bikaner. In the revenue record, name of

plaintiff's adoptive father Likhmi Das was recorded and, thereafter, the same is recorded in his name. Further declaration in this regard has also

been given by the Assistant Collector & SDO by judgment and decree dated 29/6/2017.

It was alleged that the defendants-appellants are attempting to appropriate the land in question and have been taking thumb impression on plain papers

and claiming themselves to be Pujaris of the temple. It was further alleged that a partition deed has also been got executed by the defendants by

deceit, which land was not liable to be partitioned and, therefore, the plaintiff was not bound by the said document. Based on the said averments,

declaration as indicated hereinbefore was sought along with injunction.

Along with the suit, an application under Order XXXIX Rule 1 & 2 CPC was also filed seeking injunction against the defendants from interfering with

the plaintiff's possession on the land in question.

The application was contested by the petitioner-defendants, wherein, averments made in the plaint were denied. It was also claimed that the

predecessor of defendants, Salagram Ji, was the Pujari and, thereafter, his son Phusa Ram and Budh Ram became Punjari, who have been doing the

needful. Averments pertaining to the rights of Pujari in the land were also contested. It was claimed that on account of dispute pertaining to the land in

question, the partition deed was executed and thumb impression was placed by the plaintiff in the presence of witnesses named therein and that the

plaintiff was bound by the same. It was claimed that the defendants were in possession of the land in question, wherein, the plaintiff attempted to take

forcible possession regarding which criminal proceedings by filing FIR were initiated. It was prayed that the suit be dismissed. The application under

Order XXXIX Rule 1 & 2 CPC was also responded to and it was claimed that the defendants were in possession of the land in question.

After hearing the parties on application seeking temporary injunction, the trial court by its order dated 8/7/2019 came to the conclusion that as to

whether the partition dated 2/5/2017 was concocted could only be decided after the evidence is led by the parties, the documents produced by the

plaintiff established prima facie case and that in case the injunction was not granted, the same would result in multiplicity of the litigation and

consequently restrained the defendants from interfering with the possession of the plaintiff.

Feeling aggrieved, the petitioners-defendants filed appeal. The appellate authority after noticing the contentions of both the parties came to the

conclusion that both the parties have produced affidavits of the residents and

neighbours pertaining to their possession, the issue of possession could only be decided after evidence is led by the parties and no opinion at this stage can be expressed. The appellate court also noticed that the contentions raised by the appellants have not been accepted by the SDO, however the appeal was filed, which has been rejected and that the suit was pending before the revenue courts, which is yet to be decided.

The appellate court also came to the conclusion that the trial court has used its discretion while deciding the issue of prima facie case, which is not required to be interfered with and consequently rejected the appeal.

Learned counsel for the petitioners made vehement submissions that both the courts below did not record any finding on prima facie case as to who was in possession and restrained the petitioners from interfering with the land in question, whereas, the petitioners are in possession of the land in question and, therefore, there was no question of any interference.

Submissions were made that while deciding the issue of prima facie case, nothing has been considered and the court has jumped on to the conclusion pertaining to prima facie case and the appellate court also failed to exercise its jurisdiction indicating that the trial court has used its discretion while coming to the conclusion that there was prima facie case, which aspect cannot be decided at the discretion of the court and is required to be decided on merits of the case and, therefore, the orders impugned deserve to be quashed and set aside.

Learned counsel for the respondent, with reference to various documents available on record including the revenue records, made submissions that the courts below were justified in accepting the application filed by the plaintiff and rejecting the appeal filed by the petitioners and the concurrent findings do not call for any interference and the petition deserves to be dismissed.

It was emphasized with reference to the material available on record that the claim based on partition of the property cannot be sustained under any circumstance and, therefore, the petition deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It would be appropriate to notice the finding recorded by the trial court in relation to prima facie case, which reads as under:

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03.05.2017

03.05.2017

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A perusal of the above finding would reveal that the trial court insofar as the document relied on by the defendants is concerned, observed that as to

whether the document was fraudulent or concocted would be decided after the evidence is led by the parties and by merely referring to the

documents relied on by the plaintiff, jumped to the conclusion about there being prima facie in his favour without discussing the contents and/or the

nature of the said documents.

The appellate court went a step further, wherein, it inter alia observed that in the order of trial court, there is no clear indication pertaining to

possession. While discussing the documents, it came to the conclusion that the land in question prima facie belongs to idol of the temple (â??Mandir

Murtiâ??) and observed that the revenue suit in this regard is pending, however, qua the finding of prima facie case recorded by the trial court, it was

inter alia observed as under:

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As noticed earlier, the appellate court indicated that the trial court used its discretion for deciding the issue of prima facie case, which was not open to

interference.

The determination made by the appellate court and observation that the discretion used for deciding the issue of prima facie case is not required to be

interfered with, is wholly unjustified and against the settled position of law, inasmuch as the issue of prima facie case cannot be decided at the

discretion of the court. The court is required to record reasons and the reasons must be based on material available on record.

As quoted hereinbefore, the trial court in a wholly cursory manner recorded a finding of prima facie case and the appellate court by simply indicating

the said decision as discretion of the trial court, skirted the issue, which cannot be countenanced.

Further, despite noticing that there was no prima facie finding pertaining to possession of the land in question i.e. whether the plaintiff-applicant was at

all in possession of the land in question or not, may be prima facie only, has granted the injunction. Once the defendants have contested the fact of

possession and both the courts have noticed affidavits having been filed in this regard, it was incumbent on both the courts to indicate their prima facie

finding in this regard, and failure thereto, has apparently vitiated both the orders passed by the trial court and appellate court.

So far as the submissions made by learned counsel for the respondents regarding the courts below having passed the concurrent orders and under

Article 227 of the Constitution of India this court must be slow to interfere with the same is concerned, looking to the nature of orders passed,

wherein, guiding principles for deciding the application under Order XXXIX Rule 1 & 2 CPC have been violated by the courts below and the rights of

the parties are prejudiced on that count, the exercise of jurisdiction cannot be denied only because the orders passed by the courts below are

concurrent.

In view of the above discussion, the writ petition filed by the petitioners is allowed. The orders dated 8/7/2019 and 31/7/2019 passed by Civil Judge,

Nohar and Addl. District Judge No.2, Nohar, respectively, are quashed and set aside. The matter is remanded back to the trial court to re-decide the

application filed by the plaintiff under Order XXXIX Rule 1 & 2 CPC keeping in view the observations made hereinbefore.

Till such time the application is decided by the trial court, the parties shall maintain status quo qua the land in question.

Passing of the above order shall not be taken as an expression of opinion on merits of the case of either of the parties and the trial court would be free

to pass appropriate orders in accordance with law.