
(1994) 12 AHC CK 0040
In the Allahabad High Court
Case No : Writ Petition No. 2828 (M/S) of 1993

Ravindra Nath Mehrotra

APPELLANT

Vs

2nd Addl.Distt.Judge, Rae Bareli and others

RESPONDENT

Date of Decision : 05-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 12 AHC CK 0040

Hon'ble Judges : D.K.Trivedi, J

Final Decision : Dismissed

Judgement

D. K. Trivedi, J.—By means of this writ petition under Article 226 of Constitution of India, the petitioner has challenged the orders passed by the opposite parties nos. 1 and 2 rejecting the application for issue of temporary injunction restraining the opposite parties nos. 3 and 4 from raising any construction over the land in dispute.

2. The petitioner is the plaintiff and the opposite parties nos. 3 and 4 are the defendants in the suit. The plaintiff filed a suit (Regular Suit no. 85/93) against the opposite parties nos. 3 and 4 for injunction alongwith an application for interim injunction stating therein that the plaintiff is bhumidhar of the plot in dispute and the defendants have no right or title over the land but they are threatening to take forcible possession of the plot in dispute. The opposite parties nos. 3 and 4 contested the suit and filed objection stating that the petitioner has no title or possession over the land in suit and in fact the opposite parties are the owners of the land in dispute. It is also alleged by them that the plaintiff has lost his case finally in second appeal against Durga Prasad about plot no. 7. It is said that Durga Prasad executed a sale deed in favour of the opposite parties. The learned Munsif, Rae Bareli after considering the evidence on the record rejected the application for issue of temporary injunction holding that the plaintiff failed to prove prima facie case. The petitioner/plaintiff filed an appeal against the said order before the District Judge Rae Bareli but the same was also

dismissed by the II Addl. Distt. Judge, Rae Bareli vide order dated 28793. The learned II Addl. Distt. Judge, Rae Bareli after considering the evidence on the record in great detail recorded a finding that the plaintiff has failed to prove his prima facie case and, therefore, no injunction can be issued against the defendants. The plaintiff aggrieved by the said judgment and order filed the present writ petition.

3. I have heard the learned counsel for the petitioner as well as Sri K. K. Singh, the learned counsel for the opposite parties nos. 3 and 4.

4. The contention of the petitioner's counsel is that the courts below have committed an error in considering the evidence on the record and holding that the plaintiff has failed to prove his prima facie case. According to him the earlier suit contested between the plaintiff and Durga Prasad was in respect of the other land but the court below committed an error in not considering this fact and held that the plaintiff has failed to prove his prima facie case.

5. On the other hand the contention of Sri K. K. Singh, the counsel for the opposite parties nos. 3 and 4 is that the present writ petition is misconceived and is in fact not maintainable. According to him this Court cannot issue a writ in the nature of Mandamus to a private person because the plaintiff is not under any statutory duty or to perform a public duty. In support of his contention he also relied upon a Full Bench case of Ganga Saran v. Civil Judge, Hapur, Ghaziabad and others, AIR 1991 Allahabad 114 : (1991(9) LCD 149). He further contended that apart from this there is no illegality apparent on the face of it in the order passed by the court below, therefore, also the same cannot be quashed by this Court.

6. I find force in the contention of Sri K. K. Singh, the counsel for the opposite parties nos. 3 and 4.

7 In the instant case the land in suit is plot no. 7/1. According to the plaintiff, he is in possession over the plot in dispute. On the other hand it is disputed by the defendant and it is alleged that there was a litigation between the plaintiff and one Durga Prasad who executed sale deed in favour of the concerned opposite parties. Upto this Court and further the said suit was finally decided in favour of Durga Prasad. It is also alleged that the concerned opposite parties are in peaceful possession over the plot in dispute and the said plot is not cultivatory land. Both the courts below have considered the evidence adduced by the parties in great detail and thereafter recorded a finding that the plaintiff has failed to prove prima facie case, therefore, he is not entitled for interim injunction. It is settled law that the injunction cannot be issued unless and until the plaintiff proves three relevant conditions namely; prima facie case, balance of convenience and irreparable injury. As pointed out above, both the courts below recorded finding of fact that the plaintiff has failed to prove his prima facie case, therefore, in my opinion no illegality has been committed by the courts below in refusing the interim injunction. Apart from this the Full Bench of this Court,

Ganga Saran (Supra) has framed Question no. 2 as follows :

"2. Whether a writ lies against a civil court's decision ? In short whether an appellate order passed by the District Court or an order passed by it in exercise of its revisionary power conferred upon it by S. 115, CPC (As amended by U. P. Amendment Act, 1978) is amenable to writ jurisdiction of this Court ?"

8. The Answer to Question no. II given by the Full Bench of this Court is as follows :

"Answer to Question No. II :

In the affirmative only to this extent that where it is found from the order impugned that fundamental principle of law has been violated and further such an order causes substantial injustice to the party aggrieved, the principle that ordinarily interlocutory order passed in the civil suit is not amenable to extraordinary jurisdiction of the High Court, will not preclude such a writ petition being issued by the High Court under Article 226 of the Constitution within the ambit of well established and recognised principles laid down by the Supreme Court."

9. No doubt, following the decision of the Supreme Court in a case of Qamruddin v. Rasul Baksh reported in 1990 Allahabad Weekly Cases at page 308 (1989(7) LCD 534) this Court cannot issue a writ of Mandamus to a private party unless he is under statutory duty or to perform a public duty but as pointed out above, and the principles enunciated in the Full Bench that if the order impugned shows that fundamental principle of law has been violated and further such an order causes substantial injustice to the party aggrieved then the same can be quashed by this Court under Article 226 of Constitution of India. On the other hand, it can be said that if the Court is considering the legality of the order regarding grant or refusal of the temporary injunction in the writ jurisdiction then it is the duty of the court to see as to whether there is any fundamental wrong committed by the court below. If there is no jurisdictional error in the order or error of law or irregularity then, the order cannot be quashed in the writ jurisdiction. As pointed out above, the orders passed by the courts below are well reasoned orders & it cannot be said at this stage that the courts below have committed any fundamental wrong or error of law or irregularity and, therefore, in my opinion, the present writ petition is misconceived.

10. The present writ petition is, therefore, dismissed accordingly. The parties shall bear their own costs.

(Petition dismissed.)