
(2014) 05 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9909 of 2012

Sirajuddin

APPELLANT

Vs

Abdul Gaffar and Others

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

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

Citation : (2015) 3 CDR 1319

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : M.C. Jain, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.

1. The petitioner-defendant, Sirajuddin @ Vajir Miyan, is aggrieved by the order dated 22.3.2012 passed by the Additional District Judge No. 2, Ajmer whereby the learned Judge has set aside the order dated 22.12.2011 passed by the Civil Judge (Jr. Div.) West, Ajmer wherein the learned Magistrate had dismissed the application for temporary injunction filed by the respondents-plaintiffs, and has directed the parties to maintain status quo. The brief facts of the case are that the respondents-plaintiffs had filed a suit for permanent injunction. They claimed that they are the heirs of Late Shri Gosh Mohammad @ Chhotu Chobdar and of his daughter, Mst. Muniran Bivi. According to them, there is a burial ground recorded at Sr. No. 85 wherein they have been burying their forefathers and carrying out prayers for the departed souls. However, on 13.12.2011, the petitioner and few other persons threatened them and tried to dispossess them from the said burial ground. Thus, the plaintiffs filed a suit for permanent injunction against the petitioners and other defendants. Alongwith the suit, the respondent-plaintiffs filed an application under order 39, Rules 1 & 2 CPC.

2. On the other hand, the petitioner and other defendants filed their written

statement and pleaded that the petitioner had bought the said plot in 1984 from Niyaz Mohammad through an agreement. Ever since then, the petitioner has been in possession of the property. By order dated 22.12.2011, the learned Magistrate dismissed the application for temporary injunction. Since the respondent-plaintiffs were aggrieved by the said order, they filed an appeal before the learned Judge. By order dated 22.3.2012, the learned Judge allowed the appeal and set aside the order dated 22.12.2011. The learned Judge also directed both the parties to maintain status quo. Hence, this petition before this court.

3. Mr. M.C. Jain, the learned counsel for the petitioner, has contended that the learned Magistrate was justified in passing the order dated 22.12.2011 as he did not find any prima facie case in favour of the respondents-plaintiffs. However, despite the fact that no prima facie case exists in favour of the respondent-plaintiffs, still the learned Judge has granted a stay in their favour. Therefore, the impugned order deserves to be set aside.

4. Heard the learned counsel for the petitioner and perused the impugned order.

5. A bare perusal of the impugned order clearly reveals that the property in dispute is claimed by both the parties to belong to them, and to be under their possession. While the respondent-plaintiffs claimed the property in dispute to be a burial ground, the petitioner and other defendants claimed that the property has been bought by them and it is under their possession. However, who is the true owner and under whose possession the property lies is a disputed question of fact. The said question of fact can be decided only on the basis of evidence produced by both the parties. Considering the conflicting claims made by both the parties, considering the fact that the property in dispute may well be a burial ground, considering the fact that in case both the parties were not restrained it may lead to flaring of tension between the parties, and lastly considering the fact that in case the respondent-plaintiffs were to win the suit, the petitioner and other defendants would be required to remove their construction, the learned Judge was certainly justified in passing the impugned order.

6. The teamed Judge has also showed her sensitivity towards the possible antagonism which may erupt between the parties as once the bodies are interred, it may be difficult to exhume the bodies in case the respondents-plaintiffs are not stopped from carrying out further burial at the site. Hence, the learned Judge has balanced the conflict of interest by restraining both the parties and from directing them to maintain status quo over the property in dispute.

7. It is the duty of the court to ensure that peace and harmony is maintained in the society and amongst the warring parties; it is a duty that the learned Judge has fulfilled by passing a restrain order on both the parties to the suit. For the reasons stated above, this court does not find any illegality or perversity in the impugned order. This petition being devoid of any merit, is hereby dismissed. The stay application also stands dismissed.