

Rajnibai Alias Mannubai

Vs

Kamla Devi and Others

Civil Appeal No. 2425 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

12.01.1996

JUDGMENT

1. Leave granted.

2. We have heard the counsel on both sides. This appeal by special leave arises from the order of the single Judge of the Madhya Pradesh High Court at Jabalpur Bench Dated January 20, 1993 made in M. A. No. 337/91.

3. The appellant laid the suit for declaration of prescriptive title to the property from 1974 in his own right and perfected the title thereto by adverse possession. He also filed an application under Order 39 Rules 1 and 2, CPC seeking temporary injunction restraining the respondent from interdicting his possession pending the suit. The trial Court granted the injunction but on appeal it was reversed by the learned single Judge in the impugned order. The High Court has concluded that when there is no dispute as regards the incorporeal right in litigation, the declaratory suit is only a right to the property but not to the right itself; Order 39 Rules 1 and 2, CPC could be availed of only when the property, the subject matter thereof, is in danger of being wasted, damaged or otherwise being dealt with. In a simple suit for declaratory nature without any consequential relief there cannot be any dispute as regards the property because the dispute is not about the property but to the entitlement of the right sought in respect of the property which itself is directly involved in the suit but not in an interlocutory order. Consequently, it was held that the grant of interim injunction is beyond the jurisdiction of the Court under Order 39 Rules 1 and 2. We are of the view that the view expressed by the High Court is not correct in law. In a suit for declaration of title simpliciter, the Court has power under Order 39, Rules 1 and 2 or even in Section 151 to grant ad interim injunction pending suit.

4. Admittedly, the appellant is in possession of the property. In view of his apprehension that there is a threat to his possession, his only remedy would, be whether he will be entitled to the declaration sought for. When he seeks to protect his possession, if he is otherwise entitled according to law, necessarily the Court has to consider whether protection is to be given to him pending the suit. Merely because there is no dispute as regards the corporeal right to the property, it does not necessarily follow that he is not entitled to avail the remedy under Order 39, Rules, 1 and 2, CPC. Even otherwise also, it is settled law that under Section 151 CPC, the Court has got inherent power to protect the rights of the parties pending the suit. Under these circumstances, the view expressed by the High Court that application itself is not maintainable is clearly illegal and erroneous. The application under Order 39, Rules 1 and 2 is maintainable.

5. The matter is remitted to the High Court to consider the case on merits and dispose it of according to law, since the High Court did not consider the case on merits.

6. Status quo would continue till the disposal of the appeal in the High Court. The appeal is accordingly allowed. No. costs. Appeal allowed.