

Amrish Kilachand and Another

Vs

Indian Commercial Co. and Others

Civil Appeal No. 685 of 1997

(B. P. Jeevan Reddy, S. B. Majmudar JJ)

05.02.1997

ORDER

1. Though this special leave petition is preferred against an interlocutory order, we are inclined to entertain it having regard to the peculiar facts and circumstances of the case.

2. The plaintiff filed a suit under Section 6 of the Specific Relief Act alleging that he was in joint possession along with the defendant of the suit premises and that during his absence from the country he was dispossessed from the said joint possession on 8-5-1996. He prayed for restoration of the joint possession. In the said suit he took out a Notice of Motion asking for several reliefs including the following relief :

"Pending the hearing and final disposal of the suit, the Court Receiver, High Court, Bombay be appointed Receiver of the said premises with all powers under Order XL, Rule 1 of the Code of Civil Procedure, 1908 including a direction to put the plaintiffs in possession of the said premises on such terms and conditions as this Hon'ble Court deems fit and proper."

3. The learned Single Judge, however, rejected the said Notice of Motion observing inter alia, that appointment of receiver would result in dispossession of the defendant who is, even according to the plaintiff's case, in possession of the premises now. He also opined that at this stage of the suit, the plaintiff cannot be put back in joint possession since that would amount to decreeing his suit at this interlocutory stage itself. However, the learned Single Judge recorded a clear prima facie finding in his order that until 8-5-1996, the plaintiff was indeed in joint possession of the said premises along with the defendant and that the plaintiff has been dispossessed from such joint possession forcibly.

4. The plaintiff has come forward with this special leave petition against the said order.

5. Leave granted.

6. Having heard learned counsel for both the parties at some length, we think that the following order would be eminently appropriate in the facts and circumstances of the case.

1. The learned Single Judge shall appoint a Commissioner to ascertain whether it is possible to carve out a portion out of the said premises - portion being less than half the area of the premises in question - and if it is possible to carve out a separate portion with separate access, he shall direct it to be done and place such carved out portion in possession of the plaintiff. This will be an arrangement pending the suit

and without prejudice to the rights and contentions of the parties of the suit.

2. If it is found that such a course is not feasible or possible, having regard to the layout of the premises, then the learned Single Judge shall appoint a Court Receiver, High Court, Bombay, as the Receiver of the said premises and the defendant shall be in possession of the premises as the agent of such Receiver. The defendant shall not change the status quo obtaining as on today with respect to the nature of the said premises. The learned Single Judge shall consider and dispose of the suit on expeditious basis within a period of three months, as far as possible, of the receipt of the copy of the order.

3. This order is passed without prejudice and without affecting the orders already made in this suit.

7. The appeal is disposed of with above directions. No costs.