

N. Umapathy

Vs

B. V. Muniyappa

Civil Appeal No. 2535 of 1997

(K. Ramaswamy, D. P. Wadhwa JJ)

25.03.1997

ORDER

1. Leave granted.

2. We have heard counsel for both the parties.

3. This appeal by special leave arises from the judgment of the Karnataka High Court, made on 28-8-1996 in CRP No. 2780 of 1995. The admitted position is that the predecessor of the respondent had a mining lease in S. No. 14 of Venkatapura Village. The High Court has noted as under :

"Admittedly, in the case on hand, the plaintiff (respondent herein) having purchased the machinery plant installed over the said extent of the suit land from his vendor, had been in continuous actual possession thereof since November 1989. It is also an undisputed fact that the plaintiff's vendor was in possession and enjoyment of suit property from 1984 till November 1989 on which date he delivered possession to the plaintiff under the said agreement. Admittedly, the Government is the true owner of the suit property."

4. In view of the above undisputed factual position, the only question for consideration is : Whether the respondent is entitled to ad interim injunction pending suit under Order 39, Rules 1 and 2, Code of Civil Procedure, 1908, though the trial court had not granted the injunction and the appellate court reversed it ? The High Court on the above facts maintained ad interim injunction, pending the suit.

5. It is also an admitted case that the appellant has mining lease in respect of 1 acre 16 gunthas of land in the same survey number in which the respondent has by a lease deed dated 29-11-1993. The respondent cannot unlawfully be dispossessed from the lands nor his possession and enjoyment interdicted except in accordance with the due process of law.

6. Under these circumstances, though the appellant had a lease, he cannot be given possession by the Government except after duly ejecting the respondent in accordance with law. It would appear that subsequently on a representation made by the respondent, the Government acknowledged the factum of his possession and agreed to ratify his continuance in possession subject to his paying Rs. 12 lakhs and odd per acre and further amount as contemplated by the government order.

7. Under these circumstances, the injunction granted by the High Court is in accordance with law and the respondent is entitled to the protection of his lawful possession by way of ad interim

injunction.

8. The appeal is accordingly dismissed. No costs.