

RAJASTHAN HIGH COURT

Rania

Vs.

Jagdish Chandra

Civil Misc. Appeal No. 176 of 2001

(Prakash Tatia, J.)

20.11.2001

JUDGEMENT

Prakash Tatia, J.

1. Heard learned Counsel for the parties.

2. Learned Counsel for the appellant submitted that the trial Court has committed serious illegality in granting injunction order against the true owner. According to learned counsel for the appellant the agreement alleged by the respondent is forged one and the respondent forcibly took over possession for which a criminal case was registered and challan was filed under Section 427 and 447, Indian Penal Code and it was also submitted by learned Counsel for the appellant that the agreement, which was alleged to have been executed on 30th April, 1997 was never shown to have been acted upon by the plaintiff. It is also submitted by allegation of giving Rs. 14,90,000/- by the defendant- respondent is also absolutely false allegation of fact and, therefore, the trial Court should not have granted any injunction against the appellant, the true owner. This is nothing but giving premium to the trespasser.

3. Learned Counsel for the respondent vehemently submitted that in this case the respondent has parted with huge amount of Rs. 14,90,000/- and Rs. 10,000/- is due in respondent. The trial Court rightly granted the injunction. The appellant has no right to forcibly dispossess the respondent from the land in dispute because respondent is entitled to use the land as respondent wishes.

4. I perused the facts of the case and it is plaintiff's allegation that the agreement was concluded on 30th April, 1997 and it is also submitted by the respondent that on that

day Rs. 14,90,000/- was paid and, thereafter, the agreement was executed. The above amount alleged to have been paid by the respondent to the appellant is said to be paid in cash. It appears that even according to plaintiff himself the offer was made only on 13th April, 1997 and on the same day the huge amount of Rs. 14,90,000/- was alleged to have been paid. The suit was filed in the year 1999. The challan has been filed against the respondent-plaintiff under Sections 427, 447, IPC.

5. In view of the above facts it is an admitted case that respondent is in possession of the property, though it is alleged that as trespasser. The passing of the consideration is seriously disputed and it will be examined in the trial of the suit. Prima facie at this stage the possession of the respondent is an admitted fact. Learned Counsel for the appellant relied upon the judgment of this Court delivered in S.B. Civil Misc. Appeal No. 282/2001 decided on 12th Sept. 2001 wherein the condition was imposed upon the plaintiff, who sought specific performance of contract of depositing of the mesne profit.

6. In this case any observation on merit of the case may prejudice the case of the either party. Therefore, in the interest of justice the order dated 10-10-2000 is modified to the extent only that during the pendency of the suit, the land in dispute shall not be alienated by the appellant-defendant and the appellant-defendant shall not interfere with the peaceful enjoyment of the disputed land, which is in possession of the plaintiff on the condition that respondent-plaintiff shall deposit Rs. 25,000/- per annum till the decision of the suit before the trial Court and appropriate order will be passed by the trial Court at the time of final decision of the suit with respect to the deposited amount. The first instalment of the amount will be deposited by the respondent in the month of January, 2002 before the trial Court and shall go on depositing Rs. 25,000/- in the month of January of each succeeding year till the decision of the suit.

7. With the above modification the appeal of the appellant is partly allowed. The trial Court is directed to decide the suit expeditiously.

Appeal partly allowed.