

RAJASTHAN HIGH COURT

Mullu Ram

Vs.

Kashi Ram, (Rajasthan)

Civil Misc. Appeal No. 1154 of 2004

(Prakash Tatia, J.)

09.08.2004

JUDGEMENT

Prakash Tatia, J.

1. Heard learned counsel for the parties.
2. This appeal is against the order dated 29th July, 2004 by which the trial Court dismissed the injunction application filed by the appellant-plaintiff.
3. Brief facts of the case are that plaintiff filed the suit for specific performance of contract dated 13-1-1984 before the trial Court on 23rd Dec., 1999. According to appellant, the appellant is in possession of the land in dispute in pursuance of the agreement to sell and, therefore, his possession is protected by Section 53-A of the Transfer of Property Act. It is submitted that because the land was not transferred in the name of the appellant, therefore, the name of the respondent continued in the revenue record. It is also submitted that the trial Court ignored the important material piece of evidence, which is the report given by the Tehsildar of the area showing the possession of the appellant. It is also submitted that the trial Court was under influence at the order passed by the revenue Court in a suit filed by the respondent-defendant in the revenue Court and ignored the fact that the order of injunction, which was passed by the Court of Asstt. Collector, Anoopgarh was modified by the order of the revenue appellate authority on the basis of interim order passed by the Civil Court and both the parties were directed to maintain the status-quo even by the revenue appellate authority.
4. Learned counsel for the appellant further submitted that the ad-interim order to maintain the status-quo passed by the Civil Court on 27th March, 2000 and it was

continued till it was vacated by the impugned order dated 24th July, 2004. It is submitted that the suit has been transferred to the Fast Track Court and, therefore, the suit is likely to be decided in short time. Therefore, the trial Court should not have vacated the order to maintain the status-quo and should not have dismissed the injunction application filed by the appellant.

5. Learned counsel for the respondent vehemently submitted that the plaintiff in claiming right on the basis of the agreement of the year 1984 and has filed the suit in the year 1999. Before plaintiffs filing the present suit, the defendant already approached the revenue Court to protect his right. The revenue Court not only passed the interim order, but directed the appellant not to dispossess the respondent from the land in dispute. Therefore, at the time when suit was filed by the appellant there was no occasion for the appellant for grant of injunction. It is also submitted that the revenue appellate authority merely passed the order on the basis of order passed by the Civil Court regarding maintaining the status-quo. It is also submitted that there are serious contradictions in the stand taken by the plaintiff. It is also submitted that all the relevant records showing the possession, discloses the possession of the defendant and the trial Court after appreciation of the evidence, held that *prima facie* the appellant is not in possession of the property in dispute.

6. I considered the submission of learned counsel for the parties. The facts, which cannot be disputed are that agreement was of the year 1984 and suit was filed in the year 1999, before seeking injunction from the Civil Court by the appellant, the defendant moved revenue Court for protecting his rights in accordance with law where the Court granted ad interim injunction order and, thereafter confirmed the injunction order. The trial Court also considered the documentary evidence and gave a detail and reasoned order. The trial Court also considered the orders passed by the revenue Court. It may be observed that mere continuation of injunction order for a long time itself cannot be a ground for confirming the stay order. There may be several reasons for continuing the ad-interim order. It is true that sometimes it may be relevant factor because by permitting an order for a long period of time, the parties virtually accept the position by which they want to abide.

7. Here in this case, the order to maintain status quo was in force as passed by the trial Court in this case. Before that there was an order of the revenue Court and it was confirmed on 16th May, 2001. The revenue appellate authority passed the order on 22nd July, 2002 and directed both the parties to maintain the status quo. Therefore, the ultimate fact remained is that the order to maintain the status quo continued till it

was vacated on 24th July, 2004. The peculiar fact is that since both the Courts below were under impression that there is order passed by the other Court, therefore, accordingly, they should pass the order. The fact remained is that the order to maintain the status quo was continued by both the Courts. In the peculiar facts of this case. I do not find that the trial Court should have passed the order than to maintain the status quo.

8. Looking to the reason that the matter is pending in the Fact Track Court, where the suit is likely to be decided in short time, therefore, in the interest of justice, exercising power under Section 151, Civil Procedure Code it is ordered that both the parties should maintain the status quo with respect to the property in dispute and the trial Court is requested to decide the suit expeditiously within a period of six month from today.

9. In view of the above observation, the appeal of the appellant is partly allowed.

Ordered accordingly.