

RAJASTHAN HIGH COURT

Municipal Board, Niwai

Vs.

Bhura

Civil Appeal No. 287 of 1999

(Shiv Kumar Sharma, J.)

07.12.2005

JUDGEMENT

Shiv Kumar Sharma, J.

1. Plaintiff-Municipal Board, Niwai is the appellant in this second appeal which has been filed against the judgment and decree dated January 28, 1999 of learned District Judge, Tonk reversing the judgment and decree dated February 1, 1994 of learned Civil Judge (Sr. Dn.), Niwai. The parties shall be referred hereinafter in the manner as they were arrayed in the suit.

2. Contextual facts depict that the learned Civil Judge (Sr. Dn.), Niwai passed decree in favor of the plaintiff restraining the defendants from interfering in suit land. Learned District Judge, Tonk however, reversed the decree holding that the defendants were in possession of the suit land and suit for permanent injunction was not maintainable. Being aggrieved by the reversal finding of the first appellate Court instant second appeal has been preferred.

3. This appeal raises following substantial question of law:-

(i) Whether the extension of the Municipal limits by the notification in question duly published in the Rajasthan Gazette was not proper as held by the learned lower appellate Court?

(ii) Whether the learned lower appellate Court was not bound to take judicial notice of the aforesaid extension of the municipal limits and the area particularly the khasra No. 1890 in dispute was included within the municipal limits by the notification duly published in the Gazette?

(iii) Whether in the facts and circumstances the plaintiff's suit was not maintainable when admittedly the land belong to the plaintiff-Municipal Board and the allotment of the land in favor of Aladin was cancelled and the

possession having been taken from Aladin having been proved, could the learned lower appellate Court hold that the defendants were in possession of the land and as such the suit was not maintainable."

4. It is contended by learned counsel for the plaintiff that the fact of extension of the municipal limits was not properly considered by the learned first appellate Court. Since the suit land came into the municipal limits the allotment of land to defendants was cancelled and the plaintiff took the possession of the suit land. Considering this fact, learned trial Court decreed the suit and reversal finding was erroneous.

5. Having tested this contention with the material on record, I noticed that vide order dated May 13, 1981 (Ex. A. 3) the Assistant Collector, Tonk held that suit land was in possession of the defendants and restrained the plaintiff from making interference over the said land.

6. It appears that despite the pendency of litigation in Revenue Court the plaintiff approached the civil Court. In my opinion suit for injunction was not maintainable in view of Section 41 of the Specific Relief Act, 1963, according to which injunction could not be granted where equally efficacious remedy was available.

7. It is well settled that where the plaintiff does not have possession of suit property, relief of injunction cannot be granted. In *Jemma v. Raghu*, ¹ the Division Bench of Orissa High Court indicated that a plaintiff not in possession of suit property is not entitled to the relief of injunction without claiming recovery of possession.

8. Their Lordships of Supreme Court in *Bruce v. Silva Raj* ² indicated that injunction can be granted in favor of a person only if he has possession of the property. The possession of the adversary having been confirmed no injunction can be granted.

9. In *Kundan Mal v. Thikana Siryari*, ³ it was held that where the plaintiff is not in possession of the property in dispute, he cannot sue for injunction only.

10. In the instant case where the Assistant Collector, Tonk on May 13, 1981 categorically observed that the defendants were in possession of the suit land and restrained the plaintiff from making interference in the possession of defendants, the suit for permanent injunction was not maintainable. There is nothing on record that could establish that the defendants were ousted from the suit land by the plaintiff. Extension of municipal limits by notification does not mean that the defendants were automatically dispossessed from the suit land.

11. For these reasons, I find no merit in the instant appeal and the same stands dismissed without any order as to costs.

Appeal dismissed.

Cases Referred.

1. AIR 1977 Orissa 12
2. (1987 (Supp) SCC 161)
3. AIR 1959 Raj146