(1999) 02 P&H CK 0023

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4545 of 1998

Bimal Rai	APPELLANT
Vs	
Lajja Kumari	RESPONDENT

Date of Decision: Feb. 18, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151, 39

Citation: (1999) 121 PLR 825 : (1999) 2 RCR(Civil) 650 : (1999) 1 RCR(Rent) 489

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: J.R. Mittal and K.K. Garg, for the Appellant; B.R. Mahajan, for the Respondent

Final Decision: Dismissed

Judgement

Swatanter Kumar, J.

The plaintiff Lajja Kumari filed three different suits against different defendants for ejectment and recovery of rent. Alongwith the suits, she filed applications under Order 39 Rules 1 read with Section 151 C.P.C. praying for injunction restraining the defendants in the suits from carrying on the commercial activities in the suit property. It was averred by the plaintiff that the commercial use of the premises is not permissible and the defendants despite notice failed to stop the misuser. The Haryana Urban Development Authority has already resumed the property and is intending to take eviction proceedings against the plaintiff as well as the respondents.

2. The suit was contested by the defendants. According to the defendants the property was rented out for commercial purposes and it was not disputed that the commercial activities were being carried on in the suit property. The very right of the plaintiff to recover the possession was challenged as the Haryana Urban Development Authority has resumed the property. Various other pleas were also taken by the respondents. The learned trial Court vide its order dated 6th April, 1998

dismissed the application of the plaintiff for injunction in all the three suits. Dissatisfied with the decision of the learned Trial Court, the plaintiff filed appeal before the learned first appellate Court. All the three appeals preferred by the plaintiff were accepted and the order of the learned trial Court was set aside, vide order dated 25th September, 1998, giving rise to three revisions.

3. The parties to the suit are at issue in regard to the purpose of letting the suit property as well as whether the plaintiff is entitled to eviction on the grounds pleaded by her. These are the controversies, which have to be decided by the learned trial Court upon the conclusion of the evidence by the parties to the suit and not at this stage.

4. The basic contention raised on behalf of the petitioner is that the learned first appellate court has erred in law in granting injunction in a suit for ejectment and recovery. He further contended that the respondent in this petition has waived his rights on the principle of acquiescence, in any case, at least for the relief of granting of interim injunction. I am afraid both these contentions are not well founded. This fact is not disputed on record that on the ground of misuser of property for commercial purpose, resumption order has been passed by the Haryana Urban Development Authority, which itself is a matter of litigation between the owner and the Haryana Urbana Development Authority. Even if it is assumed for the sake of arguments that the premises were not rented out for commercial purpose, as alleged, even then after show cause notice and order of resumption, the tenant is duty bound to stop such misuser or face the consequences in accordance with law. The tenant cannot take protection under the terms of an agreement (in the present case, admittedly there is no written agreement) to avoid the statutory provisions of another enactment or terms and conditions of the user imposed by the paramount title holder of the property i.e., Haryana Urban Development Authority.

5. The power of the Court to grant injunction not only arises from the provisions of Order 39 of the CPC or under the provisions of the Specific Relief Act. It is a settled principle of law that the cases which are not covered under the provisions of Order 39 of the Code, the Court can still grant injunction under the provisions of Section 151 of the Civil Procedure Code. The inherent power of the Court to grant injunction to meet the ends of justice or to prevent a breach of law or public policy, which would vest in the plaintiff with an irreparable loss and damage in relation to the property suit, can be granted by the Court. Even otherwise, it has been held by the Hon''ble Supreme Court in the case of Smt. Rajnibai @ Mannubai v. Smt. Kamla Devi and Ors. J.T. 1996(1) S.C. 76 that injunction could be granted in a suit simplicitor for declaration. The court has held as under: -

"....The trial Court granted the injunction but on appeal it was reversed by the learned Single Judge in the impugned order. The High Court has concluded that when there is no dispute as regards the incorporeal right in litigation, the declaratory suit is only a right to the property but not to the right itself. Order 39

Rules 1 and 2 CPC could be availed of only when the property, the subject matter thereof, is in danger of being wasted, damaged or otherwise being dealt with. In a simple suit for declaratory nature without any consequential relief there cannot be any dispute as regards the property because the dispute is not about the property but to the entitlement of the right sought in respect of the property which itself is directly involved in the suit but not in an interlocutory order. Consequently, it was held that the grant of interim injunction is beyond the jurisdiction of the Court under Order 39 Rule 1 and 2. We are of the view that the view expressed by the High Court is hot correct in law. In a suit for declaration of title simplicitor, the Court has power under Order 39 Rules 1 and 2 or even in Section 151 to grant ad interim injunction pending suit."

6. Further in the case of Shah Builders Pvt. Ltd., v. Thapar Agro Mills Ltd. and Ors. 1994(2) RRR 317 a Single Bench of the Delhi High Court, after discussing the law in detail held as under:-

"In these circumstances, what is needed to be ordered upon whether the plaintiff is entitled to an injunction prayed for, that is to say an injunction restraining the defendants from using the premises which is being used by the defendants for commercial purposes.

Accordingly, I restrain the defendants from using rooms No. 101, 102, 103 and 104 in premises No. W-50, Greater Kailash, Part-II, New Delhi for non-residential purposes."

7. At this stage, reference can also be made to the case of Smt. Chander Kanta Vs. Smt. Sunita Jain and Others, where the Court held that injunction could be granted in somewhat similar circumstances and in fact granted.

8. In another case, the Hon''ble Supreme Court in the case of Dr. K. Madan Vs. Smt. Krishnawati and another, held as under: -

".....Where, in the written statement filed on behalf of the Land and Development Office in response to the notice issued under S.14 (II), it was stated that the question of regularisation/condoning the breach permanently did not arise implying that reply contemplated an undertaking being given by the Landlord for removal of breach otherwise there is a threat of re-entry, the payment of misuse charges would only amount to temporary regularisation of the earlier misuser and the Land and Development Officer clearly insisted on the stoppage of the misuser and that being so, the question of the Controller requiring payment of penalty or compensation and permitting continued misuser would not be in accordance with law."

9. In relation to the question of acquiescence or estoppel, the learned Counsel for the petitioner placed reliance on the decision of a Full Bench of this Court in the case of Ram Gopal Bansari Dass v. Satish Kumar (1985)88 P.L.R. 457 (F.B.) while on the other hand, learned Counsel for the respondent has relied upon the cases of Sat Pal

Verma Vs. Smt. Paramjit Kaur, and Tata Oil Mills Company Ltd., v. Manmohan Verma (1982)84 P.LR. 633, to contend that principle of estoppel and acquiescence was not applicable to the present case.

10. Having considered the above facts, it is clear that the principle of acquiescence or estoppel could hardly be of any avail to the petitioner. Once paramount title holder of the property i.e., HUDA has persisted upon the stoppage of misuser of the property, no choice is given to either of the parties i.e., the landlord or the tenant. A Division Bench of this Court in case of Vinod Kumar and Ors. v. State of Haryana and Ors. 1997(2) P.L.J. 372 while disposing of the bunch of writ petitions has clearly directed that wherever inspite of notices issued by the Haryana Development Authority, misuser is not stopped, the Haryana Development Authority shall take action in accordance with law even for resumption of property. However, the landlords who were not personally responsible for misuser of the property are provided some relief.

11. In these circumstances, the landlord has no choice but to take recourse to the process of eviction as well as injunction. The respondent is threatened of dispossession, while order of resumption already stands passed. In fact, the petitioner himself, on the one hand pleas that resumption order has been passed and thus the landlord has no title and on the other hand, refuses to adhere to the relevant provisions of public policy of maintaining user for residential purpose. The conduct of the present petitioner is neither fair nor entitles him for relief of equity.

12. I do not see any infirmity in the order passed by the learned first appellate court and as such the revision petition is dismissed, leaving the parties to bear their own costs. However, keeping the urgency in mind, I would request the learned Trial Court to endure its best to conclude the suits as expeditiously as possible.