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RAJASTHAN HIGH COURT (JAIPUR BENCH)

Case No: Civil Writ Petition No. 19041/2012

Gopal Lal Saini and Others		APPELLANT
	Vs	
Addl. District Judge No. 4 and Others		RESPONDENT

Date of Decision: May 15, 2014

Acts Referred:

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

Hon'ble Judges: R.S. Chauhan, J.

Bench: Single Bench

Advocate: Vijay Kumar Sharma, for the Appellant

Final Decision: Dismissed

Judgement

R.S. Chauhan, J.�The petitioner-defendants are aggrieved by the order dated 17.10.2013 passed by the Additional District Judge No. 4, Jaipur Metropolitan, whereby the learned Judge has set aside the order dated 30.4.2011 and has directed the petitioner-defendants and the respondent plaintiff to maintain the status quo.

2. The brief facts of the case are that the respondent-plaintiff filed a suit for permanent injunction against the petitioner-defendants along with an application for temporary injunction under Order 39, Rule 1 and 2 CPC. The petitioner-defendants filed their reply to the temporary injunction application and denied averments made in the plaint. By order dated 30.4.2011, the learned Magistrate allowed the temporary injunction application. Being aggrieved by the order dated 30.4.2011, the petitioner-defendants filed an appeal before the Appellate Court. By order dated 17.10.2012, the Appellate Court party allowed the appeal and set aside the order dated 30.4.2011 and directed to the parties to maintain status quo with regard to the property in dispute. Hence, this petition before this Court.

3. The learned counsel for the petitioners, Mr. Vijay Kumar Sharma, has raised the following contentions before this Court-

4. Firstly, without filing an application for specific performance, a suit for injunction is not maintainable. Secondly, since possession is with the petitioners, an injunction could not have been granted in favour of the respondent-plaintiff. Thirdly, while granting an injunction in the respondent-plaintiff, the learned Judge was required to see three factors, namely existence of prima facie case, balance of convenience and irreparable loss. However, the learned Judge has failed to notice the fact that since the possession was with the petitioners, the respondent-plaintiff did not have prima facie case in his favour. Fourthly, status quo order could not have been passed, as the respondent-plaintiff was not in possession of the suit property. To do so has caused irreparable loss to the petitioners, as they are unable to maintain the shop, which is under their possession. Lastly, the petitioners are willing to give an undertaking that in case, they are permitted to repair and maintain the shop, or to raise any further construction, they would demolish the construction, if the respondent were to succeed in the suit filed by him. They would raze the construction without seeking any compensation from the respondent-plaintiff.

5. Heard the learned counsel for the petitioner and perused the impugned order.

6. The issue whether the suit is maintainable or not is a an issue that the learned Judge could not have gone into while hearing an appeal against the order passed under Order 39 Rule 1 and 2 CPC. In the case of District Club Bundi & Ors. v. Madhukar Gupta [1997 (3) RLW 1825], this court has clearly held that while hearing an appeal against an order under Order 39, Rules 1 & 2 CPC, the appellate court should not have entered into the question of maintainability of the suit. To do so, the appellate court would overstep its jurisdiction. A similar view has also been expressed by this court in the case of Hemraj v. Executive Officer, Nagar Palika Indragarh [1999 WLC (Raj.) UC 319] Therefore, the first contention is clearly unacceptable at this stage.

7. A bare perusal of the impugned order clearly reveals that the respondent-plaintiff has relied on the agreement dated 19.5.1999 and has claimed that through the said agreement, the shop was sold to him, that he paid the entire consideration amount, although in installments, and most importantly that the possession of the shop was given to him. On the other hand, the said assertion of the respondent-plaintiff has been denied by the petitioners-defendants. According to them, since the respondent-plaintiff had failed to pay the entire consideration amount, they had rescinded the agreement and had forfeited half of the consideration amount and returned the remaining half of the consideration amount paid by the respondent-plaintiff. However, it is important to note that even in the written statement, the petitioner-defendant did admit the existence of agreement to sale dated 19.5.1999.

8. The learned Judge has clearly noticed that both the parties claimed to be in possession of the suit property. Although, photographs have been produced by the petitioner-defendants, but at this juncture photographs do not establish that the possession is that of the petitioner-defendants. Once the existence of the agreement is admitted by both the parties, once there is a dispute with regard to as to which party is in possession, the learned Judge was justified in concluding that the question of possession]can be decided only upon evidence produced by both the parties during the course of the trial.

9. The learned Judge was equally justified in concluding that since both the parties have admitted the existence of the agreement and since respondent-plaintiff claims that he is in possession of the property, prima facie, the respondent-plaintiff does have a prima facie case in his favour. Moreover, if the nature of the property is changed, or if the property is permitted to be transferred in future, it would create multiplicity of litigation. Therefore, even balance of convenience seems to be in favour of the respondent-plaintiff. Furthermore, if any construction is permitted or if the petitioner-defendants are permitted to change the very nature of the property, then irreparable loss would be caused to the respondent-plaintiff. Thus, the learned Judge has considered all the three relevant elements. But considering the fact that both the parties claim to be in possession, the learned Judge has accepted the only via media which would be available to the court i.e. to direct both the parties to maintain status quo. In case, the petitioner-defendants happened to be in possession of the shop, with status quo order, they continue to enjoy peaceful possession of the property in dispute. Therefore, the learned counsel is not justified in claiming that a status quo order should not have been passed by the learned Judge.

10. The very purpose of Order 39 Rule 1 and 2 CPC is to preserve the property, which is under dispute. If the property is permitted to be transformed or to be transferred, it would certainly lead to multiplicity of litigation. Thus, the learned Judge has passed his order keeping in mind the spirit of the Order 39, Rule 1 CPC. This Court does not find any illegality or perversity in the impugned order.

11. Thus, the writ petition being devoid of any merit is, hereby, dismissed. The stay application also stands dismissed.