

(2011) 04 AHC CK 0176

Allahabad High Court

Case No: Writ C. No. 1493 of 2008

Bechan and Others

APPELLANT

Vs

Distt. Judge and Another

RESPONDENT

Date of Decision: April 4, 2011

Hon'ble Judges: Pradeep Kant, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Pradeep Kant, J.

I have heard learned Counsel for the Petitioners.

2. This is a writ petition challenging the order of temporary injunction passed in favour of the Plaintiff-Respondent by the appellate Court on 21.11.2007 awaiting for its preliminary hearing right from 10.1.2008.

3. The case was got adjourned at initial stage by the learned Counsel for the Petitioners himself with the result that even notice was not issued to the Respondents. More than three years have passed when the temporary injunction was granted.

4. Learned Counsel for the Petitioners is not aware about the stage of the suit i.e. whether it has been decided or is still pending. The cause, which has brought the Defendants-Petitioners to this Court, is grant of temporary injunction in the suit of permanent injunction filed by the Respondents with respect to plot No. 483 area 0.227 ayre, whereas the Defendants' case is that, in fact, the Plaintiff by wrongly including the portion of plot No. 489, of which the Defendants are the owners, obtained temporary injunction.

5. Learned trial Court has accepted the plea of the Defendants saying that the site plan, which has been filed by the Plaintiff, does not depict correct spot situation. Apparently, the same was prepared by wrongly including the land of plot No. 489 of

the Defendants and, therefore, he refused to grant injunction.

6. In appeal, the learned District Judge did not enter into the question as to whether the area over which the Plaintiff was claiming his own possession and title and was asking for injunction against the Defendants fell in plot Nos. 483 or 489 and without recording any finding even prima facie, in this regard, decided the appeal saying that there is no dispute that plot No. 483 belongs to the Plaintiff and plot No. 489 belongs to the Defendants, and, therefore, the Defendants are restrained from interfering over plot No. 483.

7. Learned District Judge did not take into account that it was the specific case of the Defendant that the area, which is being claimed by the Plaintiff is, in fact, the area of plot No. 489 of which the Defendants were recorded tenure holders. By merely saying that since plot No. 483 belongs to the Plaintiff, the Defendants are restrained from interfering with the possession, cannot be the order, which was required to be passed.

8. In a suit for injunction where temporary injunction is claimed it is but natural that no case for granting injunction will be made out unless it is known that the property is in the possession of the Plaintiff and the Defendant is forcibly trying to dispossess the Plaintiff or encroach upon his property. In such a situation, it is incumbent that the finding has to be recorded whether the Plaintiff is in possession and the Defendant is encroaching upon the property or not. However, in the instant case, since the learned Counsel for the Petitioners does not know about the stage of the suit and he prays that the petition may be disposed of with the direction that the suit pending may be decided expeditiously, I do not find any ground to interfere with the order passed by the District Judge but do observe that in terms of the order passed by the District Judge himself, the injunction would operate only in respect of plot No. 483 having an area 0.227 ayre and would not be read for any portion of plot No. 489.

9. It is further directed that in case the suit is still pending, the hearing of the same be expedited.

10. The writ petition is dismissed for the aforesaid reasons.