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(2002) 12 AHC CK 0139

Allahabad High Court

Case No: C.M.W.P. No. 50197 of 2002

Om Veer Singh		APPELLANT
	Vs	
Additional District Judge and Others		RESPONDENT

Date of Decision: Dec. 10, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Constitution of India, 1950 - Article 226, 227
- Specific Relief Act, 1963 - Section 34

Citation: (2003) 1 AWC 510

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: B.D. Mandhyan, Satish Mandhyan, S.K. Vidyarthi and S.K. Gupta, for the Appellant; P.K. Jain, for the Respondent

Final Decision: Dismissed

Judgement

Sunil Ambwani, J.
Heard Sri B. D. Mandhyan, assisted by Sri S. K. Vidyarthi for petitioner and Sri P. K. Jain for contesting respondents.

2. Petitioner has instituted Original Suit No. 155 of 1997 against respondent Nos. 3 to 7 for permanent injunction. An application for interim injunction was rejected by trial court. By the same order, an application for injunction in counter claim was allowed. Aggrieved, petitioner filed an appeal which has been dismissed by the appellate court.

3. Counsel for petitioner submits that petitioner was a tenant of the disputed property and that in any case, his possession was permissible. He was, therefore, entitled to interim injunction. The courts below have found that the rent receipts

dated 31.12.1992, paper No. 9A, was issued by defendant Anil Kumar who is not owner of the property. He was neither authorised nor attorned to issue rent receipts by the owners, namely, Rajiv Kumar, Sanjiv Kumar and Smt. Aruna. The other rent receipts were also not executed by the owners. It was also found that petitioner is not in possession. He had taken the land for carrying on business of dairy. The Amin''s report paper No. 18C, however, did not find any dairy in existence on the disputed site. Petitioner was, as such, not found to have any prima facie case, and that the balance of convenience and Irreparable injury was also not found to be in his favour. Appellate Court justified grant of injunction in favour of defendant as they were prima facie found to be owner of the property. Shri B. D. Mandhyan submits that a person in settled possession of the property, even if he has no right to remain on property, cannot be dispossessed even by true owner except by recourse to law, and even if petitioner is tresspasser, if he has accomplished the taking over of possession, to the knowledge of true owner, the possession cannot be taken back except by authority of law. He has relied upon the Judgments In Ram Rattan and Others Vs. State of Uttar Pradesh, ; Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, ; Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others, and Shama Prashant Raje Vs. Ganpatrao and Others,

4. Sri P. K. Jain appearing for respondents has relied upon Full Bench judgment of this Court in Ganga Saran Vs. Civil Judge, Hapur, Ghaziabad and others, which has been followed by a Division Bench in Biran Devi Vs. Sechu Lal and Others, and a single Judge decision in Writ Petition No. 18241 of 2002 Abdul Haq and Ors. v. Additional District Judge, decided on 21.5.2002, holding that a writ of mandamus against private individual is not maintainable, and that a writ against interlocutory orders of civil court under Article 226/227 of the Constitution of India would be maintainable only where a writ can be issued within the ambit of well established and recognised principles laid down by Supreme Court, as well as by various High Courts in that regard. It was held by Division Bench in Smt. Biran Devi (supra), that in such cases even a writ under Article 227 of the Constitution of India will not be maintainable save and except in rarest of rare cases.

5. The submissions made by counsel for petitioner challenging the finding recorded in the present case, by both the courts below do not come within the ambit of limited scope of interference of this Court as laid down in the aforesaid decisions.

6. For the aforesaid reasons, the writ petition has no merit and is dismissed.