(2006) 1 AWC 142 : (2006) 4 CivCC 224

Allahabad High Court

Case No: C.M.W.P. No. 71288 of 2005

Anil Kumar	APPELLANT
Vs	
Smt. Kusum Kanaujiya	RESPONDENT

Date of Decision: Dec. 6, 2005

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 39 Rule 1, Order 39 Rule 2

Citation: (2006) 1 AWC 142 : (2006) 4 CivCC 224

Hon'ble Judges: Poonam Srivastava, J

Bench: Single Bench

Advocate: Pankaj Agarwal, for the Appellant; P.N. Saxena and Ravi Prakash Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

Poonam Srivastava, J.
Heard Sri Pankaj Agarwal, learned Counsel for the Petitioner and Sri P.N. Saxena, senior advocate, assisted by

Sri Ravi Prakash Srivastava, counsel for the caveator/Respondent.

2. The Petitioner claims to be owner of the House No. 2/2481 situated at Narayanpuri Gill Colony, Saharanpur. The right claimed by the

Petitioner is on the basis of Will dated 13.3.1985, executed by Jagdish Prasad Jain, father of the Petitioner. A copy of the Will is annexed as

Annexure-1 to the writ petition. On the basis of Will the Petitioner inherited half of the property whereas other half was inherited by his brother

Hans Kumar Jain. The disputed property, which was in the share of Hans Kumar Jain was let out to the Defendant-Respondent and subsequently,

the property was sold to Respondent. The present dispute relates to one room situated at the first floor of his House No. 2/2481. This room was

constructed over the portion, which was sold to the Defendant-Respondent. The Petitioner claims to be in occupation of the room. The claim of

the Petitioner is that sale deed dated 24.3.1999 in favour of the contesting Respondent details the property, which was sold and it does not

mention that first floor portion was also sold to her. The Defendant-Respondent started to demolish the constructed portion, which she had

purchased from the brother of the Petitioner. This was objected by the Petitioner on the ground that one room situated at the roof of House No.

2/2481 was Petitioner''s property. In the event, ground floor is demolished, the room in occupation of the Petitioner will be demolished and great

prejudice will be caused. Subsequently, an original Suit No. 228 of 2000 was instituted against the Defendant-Respondent claiming the relief of

permanent prohibitory injunction. An application for temporary injunction was also moved by the Petitioner, which was dismissed by the trial court

on 19.10.2000. The Petitioner preferred Misc. Appeal No. 142 of 2000, which also stood dismissed on 3.11.2005. The two orders rejecting the

application for temporary injunction are impugned in the instant writ petition.

3. Learned Counsel for the Petitioner has vehemently argued that perusal of the sale deed clearly defines the accommodation sold to the Defendant

and since room on the first floor has not been mentioned in the sale deed, it is clear that only ground floor was given to the Defendant by his

brother and not the room situated on the first floor. Sri P. N. Saxena, senior advocate, appearing for the caveator/ Respondent refuted each and

every argument of the Petitioner. He has placed the Will, which is annexed as Annexure-1 to the writ petition and recital of the Will clearly shows

that half portion was given to Petitioner Anil Kumar Jain and other half to Hans Kumar Jain, which was sold to the Defendant-Respondent. In the

circumstances, claim of the Petitioner in respect of one room is absolutely farfetched and the Courts below have rightly rejected the application for

interim injunction.

4. I have gone through both the judgment and orders. Claim of the Petitioner is that one M. K. Gupta is living in the capacity of tenant in the said

room, this has been found to be false and categorical finding of fact is recorded that the case set up by the Plaintiff-Petitioner is without any basis.

There is no prima facie right of the Petitioner regarding possession of the disputed room and, therefore, there is no balance of convenience in his

favour and no irreparable loss will be caused to the Petitioner.

5. I have given careful consideration to the arguments advanced by the counsel for the respective parties. The Petitioner has not been able to

establish his case for grant of temporary injunction. In the circumstances, the writ petition lacks merit and is, accordingly, dismissed.