

(2014) 05 AHC CK 0174

Allahabad High Court

Case No: Criminal. Misc. W.P. No. 79 of 2005

Shiv Charan Lal Gautam

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 28, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145
- Specific Relief Act, 1963 - Section 6

Citation: (2014) 105 ALR 876 : (2014) 125 RD 271

Hon'ble Judges: Shashi Kant, J; Arun Tandon, J

Bench: Division Bench

Advocate: Mahesh Gautam, M.K. Gupta and V.K. Gupta, Advocate for the Appellant; M.K. Gupta and Pankaj Agarwal, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

Arun Tandon and Shashi Kant, JJ.

This writ petitioner has been filed for the following reliefs:

"(a) issue a writ, order or direction of a suitable nature commanding/directing the respondents particularly respondent No. 5 and 6 to return/hand over the key of the lock of the shop situated at Subhash Chowk "Bada Chauraha", Police Station Khair, district Aligarh belonging to the petitioners;

(b) issue a writ, order or direction of a suitable nature commanding/directing the respondents not to interfere in doing the shoe business in the shop situated at Subhash Chowk "Bada Chauraha", Police Station Khair, district Aligarh belonging to the petitioners in any manner and except in accordance with law;

(c) issue a writ, order or direction of a suitable nature commanding/directing the respondents to pay compensation to the petitioners for the damages for which the petitioner had to suffer on account of illegal action of the respondent Nos. 5 and 6."

From the records we find that the writ petition was decided under an order passed by this Court dated 5.9.2006. The order reads as follows:

"We have heard learned Counsel for the petitioners and the learned A.G.A. who has filed a counter-affidavit. We have also heard at length the learned Counsel for the intervener Sri Madan Mohan Gautam.

The writ petition alleges that the petitioners were carrying on the petty business of "shoes" in the shop in question. The petitioners also claimed that they got the sale-deed of the shop executed on 14.10.2004 in favour of the wife of the petitioner No. 1. However, Sri Madan Mohan Gautam, who is said to be an advocate, got another sale-deed executed in his favour from somebody else and on that basis tried to forcibly double lock the shop. The station officer of police station Khair reached the spot, and apparently because of the dispute took away the keys of the shop from the petitioner No. 2.

A counter-affidavit has been filed by the police and the averment of the writ petition about taking away the keys is not disputed. But it has not been disclosed as to whether there was any kind of litigation or attachment order of any kind authorising such action on part of the police.

Even, if the keys could be taken away to prevent an unpleasant situation from arising on the spot, either the matter should have been reported to a Magistrate u/s 145, Cr. P.C., or the keys should have been handed over back to the person from whom they had been collected within a reasonable and short time. The keys could not be retained by the police indefinitely.

Sri Madan Mohan Gautam has tried to justify his claim by trying to show that he has a better title. For this purpose, he relies upon the identification of the property mentioned in the two sale-deeds and the title of the previous owners who have executed the two sale-deeds, one in favour of the wife of the petitioner No. 1 and the other in favour of Sri Madan Mohan Gautam.

Having regard to the nature of dispute in this writ petition, we are not concerned with the question of title. That issue can be got adjudicated in a civil suit, which may be instituted by Sri Madan Mohan Gautam, if he is so advised. At present, we are concerned whether the petitioners were or were not in possession, and whether by this act of taking away the keys by the police, the petitioners have been locked out of the premises of which they were lawful occupants, even if not the owners, since long time.

On the issue of long settled possession we have the fact about the receipt issued by the police for the keys, which suggests that the keys have been taken from the petitioners. But more importantly Sri Madan Mohan Gautam who is an advocate does not in his affidavit claim to be carrying on any business himself in the shop in question. His affidavit also does not give any alternative to the case of business in

the shop alleged by the petitioners.

Thus, prima facie, we are satisfied that the petitioners were in possession and the act of Sri Madan Mohan Gautam and the police were apparently without any authority of law. This finding will not bar a suit u/s 6 of the Specific Relief Act, 1963.

The writ petition is therefore allowed.

The police will hand over the keys to the petitioners forthwith. The possession restored to the petitioners will abide the result of any civil suit referred above or any suit instituted on the basis of title".

2. Against the said order of the Division Bench a Special Leave to Appeal (Criminal) No. 5353 of 2006 was filed by respondent No. 7. The Apex Court after granted leave, converted the said SLP into Criminal Appeal No. 606 of 2007 and disposed of the same by means of the following order:

"We have heard Counsel for the parties.

Special Leave granted.

In this appeal the grievance of the appellant is that though he was heard before the High Court but no opportunity was granted to him to place before the High Court necessary documents. He claims to be in possession of the premises in question on which he had put a lock. According to him he was a purchaser from one Padam Chand Rohtagi, who was the lawful owner of the shop to him in defiance of an injunction order obtained by the vendor of the appellant against her. It is further submitted on behalf of the appellant that many other documents, which he wishes to produce if given an opportunity, must be seen by the High Court before any direction is made to handover possession of the shop in question to either party.

Having regard to the fact that the appellant's application for impleadment has not been finally allowed and he is not able to produce before the High Court all necessary documents, we are of the view that an opportunity may be given to the appellant to represent his case and produce documents so that the High Court may decide the matter after hearing the appellant therein. We, therefore, do not wish to express any opinion in the matter but only to enable the High Court to pass a fresh order, we set aside the impugned order. The High Court shall hear the Criminal Misc. Writ Petition afresh and call upon the appellant herein to produce such documents as he may wish to produce and after affording an opportunity of hearing to the parties, pass a fresh order. Till the time the High Court decides the matter, status quo regarding possession of the shop in question shall be maintained.

We have no doubt that if a request is made to the High Court, the High Court will dispose of the matter as soon as possible.

The appeal stands disposed of."

3. Accordingly the writ petition has been restored to its original number and is being heard and finally decided by this Court.

4. On behalf of the petitioners, a preliminary objection was raised that this Court cannot hear the matter as on earlier occasions the writ petition was heard by a different Bench but because of the change in the roster under order of the Hon"ble the Chief Justice the case was directed to be listed before appropriate Bench. The petitioner had made an application before the Hon"ble The Chief Justice for the matter being listed before the same Bench which had heard the matter earlier. The Hon"ble The Chief Justice has rejected the application vide order dated 17.1.2014 which is quoted herein below:

"Rejected.

Case is not tied up in view of 16.12.2013 decision."

5. Counsel for the petitioners, Shri Mahesh Gautam submits that he proposes to file a writ petition challenging the order of the Hon"ble The Chief Justice.

6. It is always within the discretion of the petitioner to seek such remedy as may be permissible under law, but as on date there is no interim order of any Court restraining the hearing of the petition by us as per the order of the Hon"ble The Chief Justice who is the master of the roster. We, therefore, proceeding to hear the matter on merits.

7. From the records of the present writ petition, we find that the dispute of the present writ petition is in respect of the shop situate in Subhash Chowk "Bada Chauraha", Police Station Khair, district Aligarh. The boundaries of the shop are mentioned in paragraph 4 of the application dated 2.7.2007 filed by respondent No.

7. The shop in question is said to have been purchased by the petitioners from Rani Ram Kumari through a registered sale-deed dated 14.10.2004 while respondent No. 7 Madan Mohan Gautam claims to have been purchased the same shop from Padam Chand Rohatgi and Girish Chand Rohatgi through a registered sale-deed dated 13.9.2004.

8. It is not in dispute that between the predecessor in interest of the petitioner namely Ram Kumari and the predecessor in interest of respondent No. 7 namely Padam Chand Rohatgi, Original Suit No. 961 of 1998 is pending before the competent Civil Court at Aligarh and that an application for injunction had been made in the said suit for restraining the defendant Ram Kumari from transferring the property in dispute by sale. Such injunction has been granted on 17.1.2004.

9. In order to keep the record straight, it may be noticed that the petitioners claim to have made an application for impleadment after stepping into the shoes of defendant Ram Kumari on the basis of the sale-deed dated 14.10.2004. This application was allowed vide order dated 30.4.2011. Against the said order a writ petition has been filed before the High Court by Padam Chand Rohatgi through his

legal heirs being writ petition No. 57062 of 2012 wherein an interim order has been granted by this Court staying the operation of the order of impleadment. The interim order reads as follows:

"In a suit for permanent injunction, the application of the respondents No. 3 to 9 for getting themselves impleaded has been allowed by the Court below.

The submission of learned Counsel for the petitioners is that the respondents No. to 9 are subsequent purchasers, who have purchased the suit property during the pendency of the suit that to without the leave of the Court and in violation of the injunction order.

Issue notice to the respondents.

Until further orders of this Court, the operation of the impugned order dated 30.4.2011 shall remain stayed."

10. Between the parties there is a serious dispute as to who is legally entitled and is in actual possession of the shop in question. The parties before this Court have filed large number of documents in support of their respective claims.

11. We shall proceed to decide the prayers as made in seriatim.

12. So far as the first prayer made by the petitioner is concerned, we are of the considered opinion that the police have no authority of law to intervene in a dispute between two private persons claiming possession of an immovable property, except in circumstances when there is apprehension of breach of peace/law and order problem. For the purpose proceedings u/s 145, Cr. P.C. have to be initiated. The Station House Officer, Police Station Khair has wrongly taking possession of the keys of the shop without any proceedings having been drawn u/s 145, Cr. P.C. by the Magistrate.

13. In our opinion, intervention of the police is totally unwarranted and not contemplated by law in the facts of the case. The S.H.O. is under legal obligation to return the keys to the person from whom he has taken possession thereof. It is in the interest of the parties to settle their rights, both in the matter of possession as well as title over the shop in question through competent Court.

14. Therefore, we have no hesitation to grant the prayer No. 1. We direct that the keys of disputed shop shall be handed over to the person from whom the keys have been so taken possession of by the S.H.O.

15. So far as the prayer No. 2 is concerned, we find it difficult to enter into the issue of title or possession. Such issues of title and possession require examination oral as well as documentary evidence. Writ is not the proper remedy. The parties may be asked to get their rights adjudicated by a competent Civil Court and if any civil suit is pending between the predecessor in interest of the petitioner and the respondent No. 7 seek impleadment or they may file their own suit for declaration of

title/possession. We are not inclined to grant prayer No. 2 and would insist upon the parties to seek their remedy before the competent Civil Court.

16. We find that the impleadment application made by the present petitioner had been granted by the competent Court in Original Suit No. 961 of 1998. He is at liberty to get the stay order passed in writ petition No. 57062 of 2012 vacated and thereafter pursue his remedy in the said suit by making an appropriate application or else to file his own civil suit. With the aforesaid observations/direction, the present writ petition is partly allowed.