

Bikramjit Arora Vs Soma Devi and Another

Court: Delhi High Court

Date of Decision: Aug. 26, 2003

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

Citation: (2003) 6 AD 228 : (2003) 106 DLT 522 : (2003) 71 DRJ 55

Hon'ble Judges: S.K. Mahajan, J

Bench: Single Bench

Advocate: Rajat Aneja, for the Appellant; Rajan Saluja, for respondent no.1, for the Respondent

Judgement

S.K. Mahajan, J.

The appellant had filed suit against the respondents on the allegations that he was a tenant of respondent no.1 with

regard to a stall situate at Sadar Bazaar, Delhi Cantonment, New Delhi at a monthly rent of Rs.200/-. Alleging that the respondents were

threatening to dispossess the appellant by force, the appellant filed a suit against the respondents for an injunction restraining the respondents from

dispossessing the appellant otherwise than by due process of law. In the suit the stand taken by respondent no.1 was that the appellant was not her

tenant; that the stall in question was allotted to her by Delhi Cantonment Board on license basis and as she was a widow, she had only permitted

the appellant to run the said stall without creating any right in his favor. Though, in certain other proceedings, respondent no.1 had admitted

appellant to be her tenant and had undertaken not to dispossess him forcibly, however, in these proceedings respondent no.1 denied appellant to

be her tenant. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was also filed by the appellant for grant of an ad-interim

injunction restraining the respondents from dispossessing the appellant by force or in any other manner otherwise than by due process of law.

2. By the impugned order, the learned Additional District Judge (Vacation Judge) dismissed the application of the appellant for the grant of ad-

interim relief. It was observed by the Court that the stall had been allotted in favor of respondent no.1 by respondent no.2 and respondent no.2

had now resolved to shift respondent no.1 to some other place. It was observed by the Court that since there was no privity of contract between

the appellant and respondent no.2, the appellant cannot get any relief against the said respondent. The Court, Therefore, by the impugned order

dismissed the application of ad-interim injunction, aggrieved by which the appellant has filed the present appeal.

3. It is not denied by learned counsel for the appellant that there is no privity of contract between the appellant and respondent no.2. It is also not

denied that the stall in question was allotted by respondent no.2 in favor of respondent no.1. The contention of learned counsel for the appellant,

however, is that since the appellant is in possession of the stall, he has a right to protect his possession even against respondent no.2 and the

appellant was thus entitled to the grant of an injunction restraining both the respondents from dispossessing him otherwise than by due process of

law.

4. I have heard learned counsel for the parties and have also perused the record but am not impressed with the arguments advanced by learned

counsel for the appellant. The appellant has no right whatsoever in respect of the said stall insofar as respondent no.2 is concerned. The right, if

any, is only against respondent no.1. Respondent no.1 has already made a statement in other proceedings that she will not dispossess the appellant

otherwise than by due process of law. In case respondent no.2 is intending to shift the stall to some other place, the appellant cannot resist the said

respondent from shifting the said stall as he has no right against the said respondent. Since the appellant has no right against respondent no.2, in my

opinion, he was not entitled to any order of restraint against the said respondent. However, as admittedly respondent no.1 had made a statement in

earlier proceedings that she will not dispossess the appellant otherwise than by due process of law, in my opinion, she cannot take law in her own

hands and dispossess the appellant with force. I, accordingly, dispose of this appeal restraining respondent no.1 from dispossessing the appellant

from the stall otherwise than by due process of law. This order, however, will not come in the way of respondent no.2 to either shift the stall to

some other location or to take action against respondent as may be permissible in law. With these observations, the appeal stands disposed of.

5. The trial Court record be sent back immediately.

6. Interim order passed earlier stands vacated.