
(1978) 09 BOM CK 0022

Bombay High Court

Case No: Civil Revision Application No. 270 of 1978

Punja C. Dhotrale

APPELLANT

Vs

Vithoba L. Dhotrale

RESPONDENT

Date of Decision: Sept. 1, 1978

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1

Hon'ble Judges: R.M. Kantawala, C.J

Bench: Single Bench

Advocate: P.S. Patankar and V.M. Limaye, for the Appellant;

Final Decision: Partly Allowed

Judgement

R.M. Kantawala, J.

The defendant has filed this revision application against the order dated April 13, 1978, passed by the learned District Judge, Nasik, whereby he confirmed the order passed by the trial Court refusing to grant temporary injunction, but gave further directions as under :---

"However, on receipt of record and proceedings of this case, the learned Civil Judge should appoint an Advocate to act as a receiver. The receiver should hold auction in respect of the suit land every year, until further order, before the cultivation season starts, and, in that auction he should allow the plaintiff and the defendant to bid along with other bidders. The highest bidder should be allowed to cultivate the land, for one year, during the cultivation season, and, the sale proceeds of the auction, should be deposited by the Receiver in Court."

It is this part of the order that has been passed by the learned District Judge that has been challenged by the defendant in this revision application.

2. The suit, being Regular Suit No. 88 of 1977, was filed by the plaintiff on April 5, 1977, in the Court of the Civil Judge, Junior Division, Sinnar, claiming perpetual

injunction against the defendant on the ground that he was obstructed in possession and cultivation of the suit land. An application for temporary injunction was made. The trial Court prima facie came to the conclusion that the plaintiff failed to establish that he was in possession of the suit land on the date of the institution of the suit. He, therefore, rejected the application for temporary injunction. In an appeal preferred by the plaintiff, the learned District Judge, Nasik held that the claims made out by both the sides are weak, and he felt that both the parties should not indulge in such an activity by claiming to be in possession of the suit land. It is after this conclusion that the order indicated above was passed by the learned District Judge.

3. The defendant has challenged the order pertaining to the appointment of Receiver, which is indicated earlier.

4. Mr. Patankar, on behalf of the defendant, submitted that in a suit for more perpetual injunction, unless the plaintiff makes out a prima facie case that he is in possession of the suit land, he would not be entitled to obtain temporary injunction pending the hearing and final disposal of the suit. In the present case, such an application was rejected by the learned trial Judge on the ground that the plaintiff failed to establish that he was in possession of the suit land. In an appeal preferred by him, the learned District Judge on the point of possession merely observed that the case of either side is of weak type and confirmed the order rejecting the application for temporary injunction, but appointed a receiver and gave directions as indicated above. He submitted that unless the plaintiff makes out a prima facie case that he is in possession, the course that has been adopted by the learned District Judge is erroneous and unjustified in law. In fact, unless on the material produced, the Court is in a position to come to the conclusion that prima facie the plaintiff is in possession, a relief by way of temporary injunction can never be granted in a suit for more perpetual injunction.

5. Mr. Limaye, on the other hand, on behalf of the plaintiff, submitted that the course that has been adopted by the learned District Judge is just and proper and this Court in exercise of its revisional powers ought not to interfere therewith.

6. In a suit for a more perpetual injunction, in order to entitle the plaintiff to a temporary relief by way of an interim injunction, it is obligatory on the plaintiff to prima facie establish possession on the date of the suit property. If he fails to make out such a prima facie case regarding his possession, then an application for temporary injunction must fail. The trial Court clearly came to the conclusion that the plaintiff has not produced prima facie material to show that on the date when the suit was instituted he was in possession of the suit land. So far as the Appellate Court was concerned, it has distinctly observed that the case of either side is weak. If that was so, then the plaintiff's application for temporary injunction cannot be granted.

7. It, however, appears that the course that has been adopted by the learned trial Judge is somewhat unusual, bearing in mind the nature of the suit. If the plaintiff had filed a suit for perpetual injunction and in the alternative for possession thereof if he was not found in possession of the suit property then in such a suit if the Court prima facie is satisfied that the plaintiff is the owner of the property, then an order of the type that has been passed by the learned District Judge will be justified. But the present one is not a suit of that nature. In a mere suit for injunction, unless the plaintiff is in possession of the property, he will not be entitled to a relief by way of temporary injunction. Thus, in my opinion, the part of the order that has been passed by the learned District Judge whereby he appointed an Advocate as a Receiver pending the hearing and final disposal of the suit and gave him power to give the land for cultivation in every season by auction is unjustified bearing in mind the nature of the suit instituted by the plaintiff. In a suit for perpetual injunction, such a course is not permissible and ought not to have been adopted by the learned District Judge.

8. In the result, the revision application is partly allowed, and the order passed by the learned District Judge is substituted by the following order :---

"Application of the plaintiff for grant of temporary injunction is rejected and the rest of the order passed by the learned District Judge is set aside, except the order as regards costs. So far as costs of this revision application are concerned, the same will be costs in the suit."