

(2002) 03 J&K CK 0019

Jammu & Kashmir High Court

Case No: CIMA No's. 161 to 166 and 171 of 2001

Prem Nath and Others

APPELLANT

Vs

Shri Mata Vaishno Devi Shrine
Board

RESPONDENT

Date of Decision: March 1, 2002

Acts Referred:

- Jammu and Kashmir Civil Procedure Code, 1977 - Order 39 Rule 1
- Jammu and Kashmir Easements Act, 1977 - Section 52
- Jammu and Kashmir Transfer of Property Act, 1977 - Section 105

Citation: AIR 2003 J&K 1 : (2010) 4 JKJ 799

Hon'ble Judges: Sudesh Kumar Gupta, J

Bench: Single Bench

Advocate: S.S. Lehar, Nitin Bhasin and B.S. Slathia, for the Appellant; Parmodh Kohli and Rohit Kapoor, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Gupta, J.

Heard Mr. S.S. Lehar, learned senior Advocate as well Mr. B.S. Slathia, learned Advocate, for the appellants and Mr.

Parmodh Kohli, learned senior counsel for the respondents.

2. This batch of appeals, arising out of a common judgment dated 4-12-2001 propounded by learned Additional District Judge, Reasi, involving

Identical question, are being disposed of by a common order. By the aforesaid judgment, the learned Additional District Judge, Reasi dismissed

the plaintiffs' applications for grant of temporary injunction.

3. Simultaneously, with the launching of a suit for declaration in claiming to be tenant of Shop No. 3 at Mata Ka Bagh and a Store Room No. 14

appurtenant thereto located in Dhar Bhawan Darbar Mata Vaishno Ji, Trikuta Hills, Katra leased out in lieu of pre-existing Shop No. 43 with a

Store attached thereto, forcibly demolished by the defendant/respondent, with a further relief of permanent injunction restraining the defendant from

forcibly evicting the plaintiff/ appellant, from the demised premises otherwise than In due course of law. Application supported by an affidavit also

came to be initiated for grant of temporary injunction restraining the defendant from evicting the plaintiff under provisions of Order 9. Rules 1 and 3

and Section 151 of the CPC. On the filing of the disclaimer by the defendant/respondent, hearing the rival contentions of the parties and

considering the material available on record, the Trial Court declined to grant interlocutory injunction in holding that the plaintiff has not succeeded

to establish a prima facie case for the grant of interim relief in his favour vide judgment dated 4-12-2001. Aggrieved by the impugned order drawn

by the Additional District Judge, Reasi, plaintiff/appellant, Prem Nath, canvassed its correctness in this appeal.

4. Setting in facts of the case, in resuming plaintiff/appellant claimed to be tenant of Dharmarth Trust on an annual rent of Rs. 5,280/- prior to the

coming up of Shri Mata Vaishno Devi Shrine Act, 1986 (Governor's Act), subsequently replaced by 1988 Act and u/s 20(3) of the said Act, he

became tenant of Shrine Board. To support his contention, plaintiff/appellant has placed reliance on a certificate dated 10-1-1994 issued by

Secretary Dharmarth and a Circular issued by the Chief Executive officer, Shrine Board dated 27-2-1988 demanding a rent from all the tenants of

Shrine Board. It is further pleaded in the plaint that the plaintiff was evicted from original Shop No. 43 in the intervening night of 9th/10th

September, 1994 by the officers of the Shrine Board with the help of the police forcibly. After being evicted, the plaintiff was summoned by the

Additional Chief Executive Officer of the Shrine Board and offered a shop at an enhanced yearly rent of Rs. 62,500/-. It is further averred in the

plaint that the possession of Shop No. 3 at Mata Ka Darbar together with Store No. 14 was delivered to the plaintiff as an alternative shop in lieu

of the premises under its tenancy, which has been demolished forcibly by the defendant/respondent. That the plaintiff is running his business peacefully in the tenanted premises, but the defendant/respondent threatened to forcibly evict the plaintiff. Plaintiff-appellant also asserted the existence of jural relationship of landlord and the tenant between the parties.

5. The specific stand of the defendant/ respondent, Shrine Board, in its demurrer is that the plaintiff voluntarily surrendered the possession of Shop

No. 43 on 10th September, 1994, of which he happened to be licensee of the Dharmarth Trust and thereafter alternative shop was provided to

him and allowed user of Shop No. 3 on license basis for a space of two years. This new shop was allotted to plaintiff/appellant after about nine

months on 29-5-1995. A license deed to this effect was executed between the parties on 29-5-1995. A tender notice has also been placed on

record. On the basis of tender notice and circular issued by Dharmarth Trust, the plaintiff/appellant was mere licensee of the Dharmarth Trust and

after taken over by Shrine Board in 1986 continued to be so. The plaintiff was allowed to use the shop as licensee on payment of license fee for a

period of two years. It was further asserted, by the defendant/respondent that Section 20(3) of the Act protects tenancy (of) only those persons,

who were tenants under Dharmarth Trust and does not even protect the licensee or convert the license into tenancy. It is also asserted by the

defendant/respondent that the plaintiff was a mere licensee and had no right to stay in the suit premises on the expiry of the license with efflux of

time. It was further submitted that the shop premises was permitted to be used by the licensee on a payment of license fee for a fixed term of two

years and after the expiry of the license period, the plaintiff had no right to stay in the said premises.

6. In case Kuldeep Kumar v. SMVD Shrine Board (CIMA No. 166/2001), plaintiff entered into partnership with Suraj Parkash in whose name

Shop No. 9 along with Room No. 64 appurtenant thereto was allotted in Durga Bhawan. After the retirement of Suraj Parkash from the business,

plaintiff/appellant claims to have become the tenant under the defendant/respondent. His further claim is that the shop stood demolished by the

Board on 9th/10th September, 1994 and in lieu thereof, shop No. 6 along with storage accommodation at Mata Ka Bhagh Shopping Complex was allotted to him.

7. Similarly, in case Ravinder Bakshi v. SMVD Shrine board (CIMA No. 165/2001), plaintiff stated to have been allotted shop No. 19 with

Room No. 24 at Mata Ka Bagh by Dharmarth Trust as tenant. He also claimed to have been evicted from the said shop on the intervening night of

9th/10th September, 1994. However, Shop No. 2 at Mata Ka Bhagh with Store No. 9 at Pannishala was allotted to him by the Board and a

deed/document to this effect was also got executed.

8. In case Ravi Kumar v. SMVD Shrine Board (CIMA 162/2001), it is stated that Dharmarth Trust allotted Shop No. 39 to the plaintiff as tenant

wherefrom he was evicted in September, 1994. Subsequently, a new shop No. 1 at Ad-kuwari came to be allotted in pursuance of some

document executed by him in this behalf.

9. In case Ashok Kumar Mengi v. SMVD Shrine Board (CIMA No. 164/2001), Shop No. 3 with Room No. 16 is claimed to have been allotted

at Durga Bhawan on rent to the plaintiff. He was, however, evicted from the premises in September, 1994, but in lieu thereof. Shop No. 3 with

store No. 4 at Bairown Gatti was allotted by the defendant on the execution of a document by the plaintiff.

10. In case Ashok Kumar v. SMVD Shrine Board (CIMA No. 163/2001), Shop No. 18 with store Room No. 27 at Darbar Mata Vaishno Devi

is stated to have been allotted to him on rental basis. The plaintiff alleged to have been evicted from the said shop in September, 1994 by the

defendant/ respondent, but later on, Shop No. 1 with Room No. 27 at Mata Ka Bhagh, on execution of a document, was allotted.

11. In case Babu Ram v. SMVD Shrine Board, (CIMA No. 171/2001), plaintiff alleged to have taken on rent Shop No. 3 at Sanji Chhat. This

shop is stated to have been subsequently demolished for widening the passage and in lieu thereof, new Shop No. 3 was allotted to the plaintiff as

licensee.

12. In all the aforesaid referred cases, the facts and the plea taken are similar to the case of Prem Nath for the grant of temporary injunction and

the stand taken by the defendant/respondent on the grounds urged of the same as put forth in these cases.

13. The principles which govern the grant or refusal of Interim injunction in aid of the plaintiffs' right are all well settled and they depend upon a variety of circumstances. In the nature of things, it is impossible to lay down, any set, rigid or general rule on the subject by which the discretion of the Court ought in all cases be regulated. As the plaintiff, by the interim injunction undoubtedly seeks to interfere with the rights of the opponent before the plaintiffs right is finally established, the injunction is not granted as a matter of course and it is necessary for the plaintiff to make out a strong prima facie case in support of the right that he asserts. The plaintiff should next make out that the Court's interference is necessary to protect him from an injury or mischief, which is imminent and it is at the same time irreparable. Lastly, which again is a very important consideration, is that in considering whether an interim injunction should be granted, Court must have due regard to the conduct and dealings of the parties, before the application is made to the Court, by the plaintiff to preserve and protect his rights.

14. The main plank of plaintiffs'/appellants' contention is that, they were the tenants of the Dharmarth Trust on an annual rent before coming into operation of Shri Mata Vaishno Devi Shrine Act, 1986 (Governor's Act) replaced by 1988 Act and thereafter they became tenants of the Shrine Board. To support their contention, reliance has been placed by the plaintiffs on a certificate issued by Secretary Dharmarth Trust dated 10-1-1994 and a Circular dated 27-2-1988 by Chief Executive Officer, Shrine Board, demanding rent from the tenants. Whereas the defendant(s)/respondent(s) in controverting the contention pleaded that the plaintiffs voluntarily surrendered the possession of the Shops on 10th September, 1994 of which they were licensee under Dharmarth Trust and thereafter allotted shops and allowed user of shops for a period of two years on license basis on execution of license deed.

15. It is meaningful to point out that the tender notice issued by Dharmarth Trust for the grant of license for the shops enroute Holy Shrine and the Circular of Dharmarth Trust under Clause (v) clearly and in unequivocal terms indicate about the grant of license in respect of the shops/hotels at

Vaishno Devi. These documents clearly belied of the plea taken by the plaintiffs/appellants to be tenants under Dharmarth Trust. Even Section 20(3) of the Act protect tenancy of only those persons who were tenants under Dharmarth Trust and does not even protect the license or convert the license into tenancy. The status of the plaintiffs/appellants, further gatherable from the plenary reading of the tender notice and also circular of the Dharmarth Trust, is that of a mere licensee of the Dharmarth Trust. It is not disputed that after the shops in possession of the plaintiffs were demolished in September, 1994, the shops were allotted to them by the defendant(s)/respondent(s) on execution of license deed dated 29-5-1995 allowing its user for a period of two years on license fee payable in instalments indicated in Clause (ii) of the said deed. Assuming but not admitting, whatever may be the relationship between the plaintiffs/appellants and the defendant(s)/respondent(s) prior to the subsequent allotment of the shops in pursuance of a license deed, that relationship came to an end after the possessions of the shops were taken from them in September, 1994 and culminated into a new arrangement, which came into existence effective from 30th May, 1995 on the basis of a license deed dated 29-5-1995 executed between the parties.

16. It is settled proposition of law that when the document is executed between the parties with regard to the possession of any premises, their relationships are governed in terms and conditions specified in the said document. Texture of the license deed evidently shows that user of the shops was allowed for a space of two years on a license fee payable in the manner provided therein. Document is to be read as it is to gather the intention of the parties there from. The conditions with regard to the user of the shop indicated in the deed can only be imposed on a licensee and not a lessee of the premises. It is no longer *res integra* that if a contract is merely for the use of property in a certain way or on certain terms, while it remains in possession and control of the owner, it is a license. This makes it abundantly clear that the provisions of the document (license deed) were entirely consistent with the grant of a license and did not agree with the creation of a lease.

17. To ascertain whether a document created a license or lease, the substance of document must be preferred to the form and the real test is the intention of the parties, whether they intended to create a lease or a license. If the document created an interest in the property, it is a lease, but if it only permits them to make only use of the property of which legal possession continues with the owner, it is a license. It, therefore, follows that a licensee's possession is not that of a person in settled possession and he is not, thus, entitled to say that he has right to continue in possession until evicted under some decree or order of the Court, he is entitled to continue in possession. The contentions raised by Mr. Lehar that the plaintiffs are the tenants of the demised premises does not fit in the substance of the document admittedly executed between the parties in pursuance whereof or in lieu of allotment of the said premises came into existence.

18. Another limb of argument advanced by Mr. Lehar is that the Shrine Board vide its Circular dated 27-2-1988 demanded a rent from the tenants and, thus, a clear exhibition of relationship of landlord and tenants between the parties. It is apt to point out that the fact the word "rent" was used did not alter the real nature of the transaction. The word was used in broad sense to mean payment for use and occupation of the premises by the licensee. It is settled proposition of law that a status of a person can be gathered from the intention of the parties and in case there is a written document, the intention emanated from the substance of such document. The contentions raised and arguments put across by Mr. Lehar are neither factually borne out from the material on record nor legally sound to merit acceptance. The intention of the parties is evident from the tenor of the license deed dated 29-5-1995 executed between them, which creates only a license and not a lease. No evidence of the contents of a documents is admissible except the document itself under the Evidence Act. In case of Babu Ram v. SMVD Shrine Board, the plea taken by Mr. B.S. Slathia that there is no license deed executed between the parties, in refuting the plea of the defendant/respondent that plaintiff/appellant is a licensee on the demised premises. It is significant to point out that where the demised premises are allowed to be used in a certain way or on

certain terms, while it remains in the possession and control of the owner, it is a license. This makes the contention put forth by Mr. Slathia, learned counsel for the appellant, devoid of any legal force. To support their contentions, judgments referred to by the learned appellants' counsel do not apply to these cases for being clearly distinguishable on facts.

19. Mr. Parmodh Kohli, learned counsel appearing for the defendant(s)/respondent(s), submitted that after the termination of the license, the licensor is entitled to deal with the property as he likes and to treat the licensee as a sheer trespasser. This right he gets as an owner of his property. On the other hand, substance in the contention put across by Mr. Kohli from the material assembled on record is that, if an injunction in favour of the licensee is granted, it would be only permitting him to do what is unlawful. If a license is validly the right of the licensee to do or continue to do in or upon the immovable property of the licensor anything in enjoyment of that license would come to an end, the result of which will be to make further exercise of that right unlawful.

20. The existence of a legal right and its infringement is sine qua non for grant of an injunction. In my opinion, Plaintiffs/appellants, from the material on record, happened to be licensee of the premises for a limited period and after the expiry of license by efflux of time does not vest any right to remain on the said premises or ask for injunctive relief through judicial apparatus. The Plaintiffs/Appellants having failed to establish a strong prima facie case to support, the right they assert, on the strength of the material placed on record, does not justify the grant of temporary injunction.

21. I do not find any legal infirmity or factual frailty in the order impugned propounded by the Trial Court to justify interference.

22. For the foregoing reasons, I do not find any merit in the claim of the Plaintiffs/Appellants to be entitled to grant of interim injunction from any point of view against the respondent(s)/defendant(s). The Appeals, therefore, fail and are hereby dismissed. The cost shall abide the result throughout. Any observations made hereinabove, however, shall remain confined to the disposal of these appeals having no bearing on the merit of the cases. Interim direction, if any, shall stand vacated in resultant thereof. Disposed of accordingly.

23. It is at this stage that a prayer has been made by the appellants' counsel, Mr. S.S. Lehar, for a time to resort to legal remedies available under law and sought a time to pursue the same. Mr. Rohit Kapoor, Advocate appearing for the respondents, however, did not object to the grant of prayer of the appellants counsel for a short time. Status quo as it exists on today shall be maintained by the parties till 6-3-2002.