

CIVIL REVISION APPLICATION NO. 2171 OF 1995

CORAM: S.D. SHAH, J.

Date: 31st January, 1996

ORAL ORDER

1. In the suit instituted by petitioner plaintiff and on application for permanent injunction with respect to parcels of land bearing Survey Nos. 919, 736 and 294 of village Bhersam, the case of the petitioner plaintiff was that the possession thereof was given to him under a lease deed duly registered for 999 years and therefore he prayed for injunction restraining the defendants from interfering with his possession. The defendants have resisted the suit and contended that in fact they have taken loan of Rs. 11,000/- from the plaintiff who was a moneylender and that possession of the land was never parted with and they were all throughout in possession. The trial court as well as the lower appellate court have on appreciation of pleadings as well as documentary evidence, at this interlocutory stage, found that defendants were successful in proving at this stage that they were in possession of the suit lands; that since 1947 to 1959 their names appeared in the Revenue Record; that they also paid the land revenue and the receipts thereof were also produced; that when the Consolidation Scheme was introduced in the village as back as 1959, notice was to the defendant No.1 and possession was also issued in the name of defendant No.1 and that their names thereafter also continued in the revenue record and therefore the courts have come to the conclusion that the defendants were in possession of the lands and that the plaintiff was not in possession. In view of such findings reached by two courts below concurrently, the courts have refused injunction. However, Mr. S.M. Shah, learned Counsel appearing for the petitioner plaintiff has placed much reliance upon the lease deed, wherein a stipulation is contained that the plaintiff was put in possession of the suit lands. Both courts not found this part of the recital in the lease deed to be correct at this stage because the revenue record and the record of the Consolidation Scheme do not support the plaintiff. It is in this view of the matter that no interference of this Court is called for when concurrent findings of facts reached by two courts below in favour of the defendants.

2. However, it is an admitted fact that the defendants have received an amount of Rs. 11,000/- as

back as 1947. They have admitted that they have not returned the amount. Therefore, with a view to seeing that the interest of the plaintiff is safeguarded in case the plaintiff succeeds ultimately in the suit, consistent with the observations made by the Apex Court in large number of recent decisions, the defendants are required to be put to some terms, so that at least the amount allegedly borrowed by the defendants is safeguarded. The defendants are therefore directed to deposit in the trial court amount of Rs.40,000/- (Rupees forty thousand only), i.e. Rs. 20,000/- to be deposited within a month from today and the balance amount of Rs. 20,000/- to be deposited by 30th of April, 1996. The trial court is directed to deposit the said amount by way of Fixed Deposit Receipt in any nationalised bank for a period of five years with further direction to accumulate interest and to pass appropriate order at the time of finally deciding the suit.

3. Subject to the aforesaid direction, this Civil Revision Application fails and the same is rejected. Writ of this order to be sent down to the trial court forthwith. Notice is discharged.

4. In case the aforesaid direction is not complied with by the defendants, the order of status quo which is granted earlier in this proceeding shall revive and shall continue to operate.

(S.D. SHAH, J.)

Date: 31st January, 1996