

**S.B.Civil Writ Petition NO.4746/2004**

**Abdul Jabbar & Anr.**

**vs**

**ACJ, Bhilwara & Ors.**

**DATE OF ORDER : - 17.12.2004**

**HON'BLE MR. PRAKASH TATIA,J.**

Mr. Sachin Acharya,for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order of the trial court dated 5<sup>th</sup> Oct., 2004 by which the trial court rejected the petitioner's application filed under Order 16 Rule 6 CPC. According to learned counsel for the petitioner, the petitioner tried to obtained the copies of the relevant documents from the Municipal Council, Bhilwara as well as Urban Improvement Trust, Bhilwara relating to the alleged licence of the defendants-non-petitioners, but both the local authorities did not supply the copies to the petitioner, therefore, petitioner submitted an application for summoning the documents from the UIT, Bhilwara as well as Municipal Council, Bhilwara.

According to learned counsel for the petitioner, the proceedings

taken to grant licence to the defendants-non-petitioner by the local bodies were completed in a day or two day and thereby the defendants could obtain the licence from the local authorities. Therefore, these documents are relevant for just decision of the even temporary injunction application filed by the petitioner. Learned counsel for the petitioner submits that the petitioner was unnecessarily blamed for delaying the matter whereas delay was not caused by the petitioner-plaintiff as is clear from the proceedings of the trial court. The proceedings clearly reveal that the time was taken by the defendants-non-petitioners for filing the replies only. It appears from the facts of the case that plaintiff filed the suit for permanent injunction alleging that his land is situated in Arajji No.2038 measuring 1 Bigha 14 Biswa and part of it was got converted by the plaintiff no.1. The measurement of the converted land is given in para no.2 of the plaint. According to plaintiffs-petitioners, the plaintiffs are owner of the property in question. According to plaintiffs the defendants have no right, title or interest over the property, which is described in para no.4 of the plaint, but the defendants tried to encroach upon the land. Therefore, petitioner filed the suit for injunction.

The defendants-non-petitioners submitted written statement and came with a case that the defendants are having licence in their favour duly issued by the competent authority for the land in dispute and,

therefore, plaintiff has no case for grant of injunction. The copy of the written statement is placed on record as Annex.3.

In view of the facts mentioned above itself, it is clear that plaintiff has come with a positive case of having his title over the land in dispute. The plaintiff can destroy the case of the defendants only by proving his own title and he may not even need to assail the title of the defendants because if title of the plaintiff is established for the land in dispute, no other can issue licence for the land in question. It appears from the fact mentioned above that the plaintiffs and defendants are claiming their right over the land in dispute flowing from different authorities. It is not the case that one authority has passed on rights or title of the property in favour of the plaintiffs and respondents. In such situation, on proving his own title, the plaintiffs may submit that the deed executed by any other authority is not binding upon them and is of no effect so far as their rights are concerned.

It will be worthwhile to mention here that according to plaintiff, the plaintiff is claiming his right in Araj No.2038 and its part, which is converted by the order of the competent authority whereas according to learned counsel for the petitioner the defendants are claiming their title over a different Araj Number. It is so then the title deed of the other party may not be relevant at this stage in view of the fact that the

plaintiffs are not at all concerned with the property of others as he can succeed in his suit by proving his title for his land. It appears that the dispute is about the location of the land, rather than the title or right to possess. The plaintiff may succeed on proving his title as well as by proving location of his land and, therefore, if the trial court has rejected the application of the petitioner for summoning of the document, the trial court has not committed any illegality.

In view of the above, even if the petitioner has not committed any delay for moving the application for summoning of the document even then at this stage, summoning of document is not necessary.

Hence, the writ petition of the petitioner is disposed of. However, the petitioner would be at liberty to move application in the suit at appropriate stage again for summoning the documents, if it becomes necessary and that depends upon the subsequent development in the suit, but there is no reason for keeping the injunction application for the documents.

**(Prakash Tatia), J.**

c.p.goyal/-

