

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

C. Rev No. 211/2007

C. Rev. No. 210/2007

Date of Order: 31.7.2009

Omkar Singh

Vs.

Sain Singh & Ors.

Coram:

HON'BLE MR. JUSTICE SUNIL HALI, JUDGE

Appearing counsel:

For Petitioner (s) : Mr. P.N. Goja, Advocate.

For Respondent (s): Mr. Suresh Kumar, Advocate.

i/ Whether to be reported in
Press, Journal/Media : Yes/No

ii/ Whether to be reported in
Digest/Journal : Yes/No

Dispute relates to the land measuring 13 marlas under Khasra No. 1695 min situated at village Khour Tehsil Akhnoor District Jammu. Claiming to be owners of the property, the respondents filed two suits before the trial court. A suit for permanent prohibitory injunction restraining the defendants from raising the construction, alienating, dispossessing or interfering into the peaceful possession of the plaintiffs over the land in question. Another suit in the nature of declaration seeking cancellation of the agreement to sell alleged to have been executed between petitioner and one Soma Devi mother of defendant No.2 on 24.7.1984 and agreement dated

14.9.1984 alleged to have been executed between petitioner and plaintiffs No. 1 to 3 and father of plaintiff No.4 as null and void. The case of plaintiffs is that Soma Devi is occupancy tenant and did not have the authority to execute the agreement to sell in favour of the petitioner/defendant No.1. After the death of the occupancy tenant the property was to be reverted back to the original owners.

The case of the petitioner/defendant No.1 is that an agreement to sell has been executed with him for 10 marlas of suit land. Ever since the execution of the agreement, he is in possession of the suit land as an owner. This stand is affirmed by the revenue record in the shape of Khasra Girdawari. It is further asserted that on the asking of the parties the trial court was pleased to appoint Naib Tehsildar of the area as a Commissioner who after conducting on the spot verification found that the petitioner was in possession of the land from 1984.

In both these suits the application was filed under Order 39 Rule 1 and 2 of CPC seeking restrain on defendants not to raise any construction and alienate the property. Both the applications came to be disposed of by a common order by the trial court. It is pertinent to mention here that on filing of the suit, an application for ad-interim injunction was also filed. Ad-interim injunction was issued by the trial court. After hearing the parties, trial court modified the

order of status quo and directed the petitioner/defendant No.1 to construct house and shops as per the plan submitted by the Municipal Committee, Khour. He was directed not to alienate the land till the final disposal of the suit. In the event of failure in the suit, he will dismantle the house and shops at his own cost and hand over the possession of the property to the plaintiffs.

Two appeals were preferred against this order before the 1st Additional District Judge, Jammu and by a common order, appeals were allowed. The appellate court while allowing the appeal held that the petitioner had no legal title to the property as there is no sale deed as is envisaged under Sections 138 and 139 of the Transfer of Property Act. It is further stated by the trial court that if the petitioner/defendant No.1 is allowed to raise the construction, plaintiffs shall suffer irreparable loss which will result in multiplicity of the litigation. This finding has been recorded by the court on the basis of the documents placed on the record by the petitioner/defendant No.1. Accordingly, the order of the trial court was set aside and parties were directed to maintain status quo on the spot. Both these orders are subject matter of challenge before this court in the separate petitions.

I have heard the learned counsel and perused the record.

The outcome of the suit on basis of the material placed before it will ultimately decide the fate of this case. The agreement relied upon by the petitioner is in nature of agreement to sell which undoubtedly does not confer any title unless a proper sale deed is executed. However, while dealing with the question whether an order of injunction can be passed or refused during the pendency of the suit, is the issue which is required to be decided in the present revision petitions. The trial court has relied upon the report of the Naib Tehsildar and the revenue record that the petitioner is in possession of the property from 1984. This possession is uninterrupted. This possession is not disputed by the plaintiffs also. I, say so because that the application has been filed seeking restrain on the petitioner/defendant No.1 from raising construction on the disputed land. The appellate court has also not disputed this possession but refused to confirm the order of the trial court on the ground that the title of the petitioner/defendant No.1 on the suit property based upon the documents relied by him is faulty. This is an issue which ultimately will determine the fate of the suit after the conclusion of the trial. At present, the only concern of the court is to protect the lis.

For the above mentioned discussion, I, am not inclined to agree with the appellate court in not permitting the petitioner to raise

the construction on the disputed land as it will result in multiplicity of litigation. In the event the plaintiffs succeed in the suit, the petitioner/defendant No.1 has no other option but to hand over the possession of the disputed property to the plaintiffs for which an undertaking has already been obtained by the trial court from the petitioner/defendant No.1. It is also to be noted that the plaintiffs have taken the plea of adverse possession. The same is also required to be gone into by the trial court. He claims to be in possession of the property to the knowledge of the plaintiffs. It will be appropriate to allow the petitioner/defendant No.1 to raise the construction as permitted by the trial court. However, he will not alienate or create any third party interest in the property during the pendency of the suit.

I, accordingly, set aside the judgment dated 30.11.2007 of the appellate court and confirm the trial court order dated 12.8.2006 and 10.2.2006 respectively. Revision petitions are allowed.

The parties are directed to appear before the court below on 02.09.2009.

Jammu
31.7.2009
Ajit

(SUNIL HALI)
Judge

