

HIGH COURT OF MADHYA PRADESH : JABALPUR.**Misc. Appeal No.366/2012**

Ajay Shukla

-Versus-

Arvind Pratap Singh and others.

PRESENT : Hon'ble Shri Justice K.K. Trivedi.

Shri Ravish Agrawal, Senior counsel assisted by Shri K.S. Jha, learned counsel for the appellant.

Shri R.P. Agrawal, learned Senior counsel assisted by Shri Sanjay Agrawal, learned counsel for the respondents.

ORDER
(30.4.2012)

1 : This appeal is directed against the order dated 13.1.2012 passed in Civil Suit No.15-A/2011 by the First Addl. District Judge, Chhindwara, granting temporary injunction on an application made by respondents No.1 to 3/plaintiffs against the appellant/defendant No.1. It is contended that various facts were not considered by the Court below and improperly holding that there is a prima facie case made out in favour of respondents No.1 to 3/plaintiffs, balance of convenience in favour of the respondents and irreparable loss which may cause to the respondents No.1 to 3/plaintiffs, the injunction is granted. It is contended that in case the pleadings and evidence produced by the parties are considered by this Court, it would be clear that no case was made out to grant any

injunction in favour of the respondents No.1 to 3/plaintiffs. Thus, it is contended that the order impugned is bad in law and is liable to be set aside. The application of respondents No.1 to 3/plaintiffs for grant of temporary injunction is liable to be rejected.

2 : It is contended in reply by learned Senior counsel for respondents No.1 to 3/plaintiffs that the prima facie case was made out as was indicated by the respondents in their application. On the basis of unregistered Will, a claim was made by the appellant, whereas, the claim put forth by the respondents No.1 to 3/plaintiffs was based on a registered Will. This being so, it was rightly held by the Court below that a triable question was involved and since it was found that the respondents No.1 to 3/plaintiffs are in possession of the disputed property, in case such a protection is not extended to the respondents No.1 to 3/plaintiffs, irreparable loss would be caused to them. On the other hand, in case of failure of the suit, the appellant/defendant No.1 would not be prejudicially affected. Thus, it is contended that the order passed by the Court below is just and proper and need not be interfered with in this appeal. It is contended that the appeal is liable to be dismissed.

3 : Learned Senior counsel appearing for the appellant has tried to make out a case that there was no such case made out much less a prima facie case warranting grant of a temporary injunction in favour of respondents No.1 to 3/plaintiffs. It is contended by learned Senior counsel that there was such a situation where evidence was required to be recorded to prove certain documents and unless that is done, it will be difficult for any Court to hold that there was a specific case made out in favour of respondents No.1 to 3/plaintiffs. However, it is further contended by learned Senior counsel for the appellant/defendant No.1 that in case an order of

temporary injunction is granted, the Courts are required to make suitable arrangements, granting protection to the appellant/defendant No.1 also in case of failure of the suit. It is contended that there are specific provisions made under Order 39 Rule 2(2) of the Code of Civil Procedure making prescription of such protection, but that too has not been ordered and, therefore, it would be necessary to pass such appropriate order in this appeal, modifying the injunction order in case this Court reaches to the conclusion that interim injunction was rightly granted. Learned Senior counsel for the appellant has further pointed out that there are specific provisions made under Section 94 of the Code of Civil Procedure for such protection in case the power is exercised by the Court for grant of injunction etc. Putting reliance in the case of **Gujrat Bottling Company Limited Vs. Coca Cola Company [(1995) 5 SCC 545]** and further reading paragraph 43 of the report, learned Senior counsel for the appellant has contended that in fact, if any injunction was to be granted in favour of respondents No.1 to 3/plaintiffs, the protection should have been granted to the appellant so that in case of failure of the suit, the appellant would have been compensated adequately.

4 : Refuting the submissions made by learned Senior counsel for the appellant, learned Senior counsel for the respondents No.1 to 3/plaintiffs has contended that there was no occasion to pass such an order of directing furnishing of security etc. in respect of respondents No.1 to 3/plaintiffs, while granting temporary injunction, inasmuch as, no claim is made by the appellant in the entire suit. The fact remains that the claim made by respondents No.1 to 3/plaintiffs is being contested by the defendants, more particularly, the appellant/defendant No.1 by filing the detailed written statement, but the appellant/defendant No.1 has not filed any counter claim for perfection of his right over the property in suit. Therefore,

in case of failure of the suit, no harm would be caused to the appellant. Otherwise also he can claim the benefit or the Court can grant such benefit by way of mesne profit, while deciding the suit itself, in exercise of power under Order 20 Rule 12 of the Code of Civil Procedure, when a decree is passed on the final outcome of the suit. Even the mesne profits or a decree of possession may be granted in favour of the appellant in case it is found that respondents No.1 to 3/plaintiffs have completely failed to prove their claim as set forth in the plaint. In such circumstances, it is contended that there was no occasion to pass any order, directing furnishing of security etc. by the respondents No.1 to 3/plaintiffs, while a temporary injunction was granted in favour of the said respondents by the Court below by the impugned order. Thus, it is contended that no modification in the order is necessary.

5 : After due appreciation of the submissions made by learned Senior counsels, perusal of the record as produced before this Court, it is clear that no case is made out to interfere with the order of temporary injunction granted by the Court below. It is to be examined whether the Court below was required to pass any order of imposing any condition on the respondents No.1 to 3/plaintiffs while granting the temporary injunction. The Apex Court in the case of **Gujrat Bottling Company Limited** (supra) has considered all these aspects. The given circumstances are required to be seen. It is also held by the Apex Court that need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against the injury resulting from having been prevented from exercising the legal rights which could not be adequately compensated. What the legal rights are available to the appellant at the moment and whether on the basis of such right, any compensation is required to be granted to the

appellant is not yet established. From the record, it is clear that the respondents No. 1 to 3/plaintiffs have produced such documents in the suit which if proved, will indicate that the respondents No. 1 to 3/plaintiffs were right in claiming such rights. The Court below has found that the appellant/defendant No.1 has failed to produce such documentary evidence to indicate that he was in actual physical possession of the land in dispute. Under such circumstances, ultimately after recording of the evidence of the parties, if the Court below reaches to the conclusion that the appellant was in physical possession of the land, the Court below would be required to pass appropriate decree under Order 20 Rule 12 of the Code of Civil Procedure, granting even the mesne profits against the respondents No. 1 to 3/plaintiffs to the appellant/defendant No.1.

6 : In the considered opinion of this Court, that would be enough to compensate the appellant in case he succeeds in the suit ultimately. In the facts and circumstances of the case, it is found by this Court that there are no exceptional circumstances or facts proved that the direction to furnish any security, be issued to the respondents No. 1 to 3/plaintiffs by modifying the order of temporary injunction.

7 : In view of the findings aforesaid, there is no force in this appeal. The same deserves to be and is hereby dismissed. There shall be no order as to costs.

(K.K.Trivedi)
Judge
/04/2012

HIGH COURT OF MADHYA PRADESH PRINCIPAL
SEAT AT JABALPUR

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(K. K.Trivedi)
Judge
/04/2012