

In the High Court of Judicature for Rajasthan
at Jai pur Bench Jai pur

S. B. Civil Misc. Appeal No. 3075 of 2011
Badri Lal and ors
vs
Ratan Lal and ors

Date of Order : 29. 2. 2012

HON'BLE MS. JUSTICE BELA M. TRI VEDI

Mr. Praveen Jain for the appellants.
Mr. Rajneesh Gupta for the caveator-
respondents No. 1 and 2..

By the Court:

1. The present appeal has been filed by the appellants-plaintiffs under Order XLII Rule 1(C) of CPC challenging the order dated 16. 5. 2011 passed by the Addl. District Judge No. 1, Bundi in Civil Misc. Application No. 03 of 2010, whereby the trial court has dismissed the injunction application filed by the appellants under Order XXXIX Rules 1 & 2 of CPC.
2. The appellants-plaintiffs have filed the suit seeking specific performance of the agreement dated 17. 4. 1999, against respondents-defendants which is pending before the trial court. In the meanwhile, the appellants had sought temporary

injunction by filing application being Civil Misc. Application No. 03/2010 under Order XXXIX Rules 1 & 2 of CPC, which has been dismissed by the trial court vide the impugned order, against which, the present appeal has been filed.

3. It has been sought to be submitted by learned counsel Mr. Praveen Jain for the appellants that though part of land in question was acquired under the Land Acquisition Act, in the remaining part of the land, appellants are in possession and therefore, the said possession should have been protected by the trial court pending the suit. He also submitted that though there was some delay in filing the suit under specific performance, the appellants had not filed the suit as there was no dispute between the parties. According to Mr. Jain, the trial court has committed error in dismissing the application, which would result into multiplicity of proceedings if the third party interest is created by the respondents-defendants during the pendency of the suit. As against, the learned counsel Mr. Rajneesh Gupta for the caveator-respondents No. 1 and

2 has submitted that not only the suit is grossly time barred but the land in question has already been acquired under the Land Acquisition Act, and the concerned respondents have already received the compensation also. He submitted that the trial court, considering the facts and circumstances of the case, has dismissed the application which does not call for any interference of this court.

4. Having regard to the submissions made by the learned counsels for the parties, it appears that it is not disputed that the agreement in question for which specific performance has been sought for in the suit is dated 17.4.1999 and the appellants-plaintiffs has filed the suit in the year 2010. It is also not disputed that in the meanwhile part of the land has already been acquired under the Land Acquisition Act and the compensation has already been paid to the concerned respondents-defendants. The appellants-plaintiffs have also not been able to justify as to how such a suit for specific performance of agreement in respect of the land, which has already been acquired under the Land

Acquisition Act, could be filed. The trial court having rightly considered the factors like prima facie case and balance of convenience against the appellants-plaintiffs, this court is not inclined to interfere with the said order. The appeal being devoid of merits deserves to be dismissed and is accordingly dismissed.

(BELA M. TRIVEDI) J.

OM

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Om Prakash

PA