

S. No.9
Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

MA No. 141/2013

M/S M. R. INDUSTRIES

... Appellant(s)

Through: -Mr. Nissar Ahmad Bhat, Advocate.

Vs.

STATE OF J&K AND ORS

...Respondent(s)

Through: -Mr.Zahid Qais Noor, GA

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

Dated:17.12.2024

1. The appellant through the present Miscellaneous Appeal has challenged order dated 22.07.2013, passed by learned Additional District Judge, Srinagar, whereby application of the appellant for grant of temporary injunction has been dismissed.

2. It appears that the appellant/plaintiff has filed a suit before the Court of learned Additional District Judge, Srinagar, inter alia, seeking an injunction against the respondents/defendants restraining them from interfering with the use and occupation of plot of land bearing No.63-C situated at Industrial Estate Zainakote, Srinagar.

3. In the plaint, the case set up by the plaintiff is that it is a Small Scale Industrial Unit, to which 2 kanals of land, situated at Industrial Estate Zainakote, Srinagar, was allotted by the respondents in terms of lease deed dated 28.06.2006. It has been pleaded that the plaintiff was permitted to undertake additional activities by the respondents, whereafter, he was tacitly allowed by the respondents to utilize the additional space in the form of adjacent plot of land bearing No.63-C. According to the plaintiff he has been paying ground rent charges to the respondents for use of said plot of land. It has been further pleaded that the plaintiff has approached the defendants time and again with a request to issue a formal allotment order in its favour in respect of aforesaid plot of land in consonance with the industrial policy of defendant No.1. However, according to the defendants the plaintiff has encroached upon the additional plot of land which is a migrant property. It is the case of plaintiff that stand taken by the defendants is not correct and that plaintiff has been tacitly allowed to use the additional plot of land. Therefore, the defendants cannot evict the plaintiff from the occupation of Plot No.63-C, without following due process of law as mandated in terms of Public Premises (Eviction of Unauthorised Occupants) Act.

4. It seems that defendant did not file any written statement but filed an application seeking stay of the suit in terms of Section 10 of the CPC. The learned trial Court after hearing the parties dismissed the application of the plaintiff for grant of interim injunction by

observing that there is a litigation going on in respect of plot of land bearing No.63-C before High Court, in which a stay order has been passed, as such, no interim injunction can be passed in favour of the plaintiff.

5. Plaintiff/appellant has challenged the impugned order passed by learned trial Court on the ground that in absence of written statement by the defendants it was not open to the trial Court to dismiss the application of the plaintiff. It has been further submitted that the plaintiff is in settled possession of the additional plot of land in question, as such, he is entitled to be granted protection from eviction otherwise than in accordance with law. During the course of arguments, learned counsel for the appellant has further submitted that even the writ petition, reference whereof is made in the impugned order, stands dismissed, as such, there is no impediment in passing of interim injunction in favour of the appellant/plaintiff.

6. I have heard learned counsel for the parties and perused the record of the case.

7. It is a settled law that a civil Court while considering grant or refusal of interim injunction has to analyse the pleadings of the parties, so as to come to a conclusion whether or not there is a prima facie case in favour of the plaintiff and whether withholding of an order of injunction would cause irreparable loss to the plaintiff. The Court has also to consider the balance of convenience while passing an order of interim injunction.

8. Adverting to the facts of the present case, it is correct that defendants/respondents have not filed any written statement to the suit filed by the appellant, but then it does not absolve the trial Court from analyzing from the averments made in the plaint and the documents annexed thereto, as to whether there is a prima facie case in favour of the plaintiff. In the absence of written statement it cannot be assumed that the averments made in the plaint are admitted by the defendants.

9. The appellant/plaintiff in this case claims that he was allowed to use the suit plot by the defendants tacitly but he admits that suit plot was never allotted in its favour. According to the plaintiff he was in use and occupation of plot in question for the last two years. It has been submitted that the defendants claimed that the plot of land belongs to a migrant and they further claimed that the plaintiff is an encroacher. The question arises whether merely on the basis of admission of the defendants that the plaintiff is in occupation of plot in question, he is entitled to interim injunction against the defendants. In order to answer this question we need to have a look at the legal position on the subject.

10. The Supreme Court in the case of **Maria Margarida Sequeira Fernandes and Ors vs. Erasmo Jack De Sequeira (Dead) through LR's**, AIR 2012 SC 1727, has crystallized the principles of law for grant or refusal of injunction in the following manner:-

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by

long possession of years or decades such person would not acquire any right or interest in the said property.

2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

11. From the aforesaid law laid down by the Supreme Court, it is clear that if a person has been allowed to stay in the premises gratuitously, he does not acquire any title over the property and the Courts would not be justified in protecting the possession of any person who was allowed to occupy the premises for some time gratuitously. The protection can only be granted or extended to a person who has a valid subsisting rent agreement, lease agreement or license agreement in his favour. Therefore, a person holding a premises gratuitously and whose initial entry in the premises is questionable, would not acquire any right or interest in the property and even long possession in that capacity would be of no legal consequence.

12. In the instant case, as per plaintiff's own case he was allowed to occupy the additional plot of land in question by the defendants without any formal allotment. The plot of land admittedly belongs to a third person who is a migrant. Therefore, there is no legal right or interest created in favour of the plaintiff in this case, so as to entitle him to remain in possession of the suit land. Thus, there is no prima facie case in favour of the appellant/plaintiff. For this reason alone, the appellant/plaintiff is not entitled to grant of interim injunction.

13. For the foregoing reasons, I do not find any ground to interfere with the impugned order passed by the learned trial Court. The appeal lacks merit and is dismissed accordingly.

(SANJAY DHAR)
JUDGE

SRINAGAR
17.12.2024
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No