
of her service. If the competent authority had taken trouble to go through the record of the petitioner, it could not have been possible for her to direct the termination of petitioner's service. We, therefore, hold that the order terminating the service of the petitioner has been passed in a casual and arbitrary manner and, therefore, it is not only violative of Article 14 of the Constitution but suffers from malice in law.

(20) For the reasons mentioned above, the writ petition is allowed. Order dated 8th January, 1998 is quashed. For the harassment and humiliation suffered by her on account of the termination of service, the petitioner shall get costs of Rs. 10,000 from the respondents. The Government shall be free to recover the same from the officer who may be found responsible for having passed wholly arbitrary order terminating the petitioner's service.

R.N.R.

Before Swatanter Kumar, J

THAKUR DAS,—*Petitioner*

versus

CHANDER PARKASH,—*Respondent*

C.R. No. 2298 of 1998

9th July, 1998

Code of Civil Procedure, 1908—Order 39 rules 1 & 2—Petitioner seeking injunction restraining landlord from interfering in his possession over shop & plot—Written document inducting petitioner in shop does not mention plot—Rent receipts do not depict plot as part of tenancy—Status of petitioner in regard to plot would be unauthorised—Unauthorised occupant cannot claim injunction against the real owner.

Held, that where a document is executed by the parties normally the parties would be bound by the terms and conditions of that documents and cannot derive any benefit contrary to the

terms and conditions stated therein. In normal circumstances, the receipt could show that it is the shop and the area adjacent to the same which is being rented out to the petitioner. Admittedly, the document did not so record. There could be no presumption in regard to the facts which have been pleaded by the petitioner. This finding arrived at by the learned Courts below concurrently, appears to be a correct view at least prima facie. Once this view is accepted, the status of the present petitioner in regard to the plot in question would be unauthorised possession even if his possession is admitted for the sake of argument. A person in unauthorised possession of the property cannot claim injunction against the true owner.

(Para 3)

P.K. Mutneja, Advocate, *for the petitioner.*

J.C. Nagpal, Advocate, *for respondent caveator.*

JUDGMENT

Swatanter Kumar, J.

(1) This revision is directed against the order passed by the learned Additional district Judge, Karnal, dated the 5th February, 1998 *vide* which the learned 1st Appellate Court dismissed. The appeal preferred by the plaintiff-appellant against the order of the learned trial Court dated the 30th September, 1997 dismissing his application for injunction under order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure.

(2) When this revision came up for admission at the motion stage Shri J.C. Nagpal, Advocate, had appeared for the caveator to oppose the grant of any interim order to the petitioner. With the consent of the learned counsel for the parties, the revision itself was heard on merits.

(3) The plaintiff had filed a suit for permanent injunction restraining the respondent from interfering in his peaceful possession over the shop along with plot as described in the plaint.

The plaintiff claimed to be in possession of the shop in 1980 as a tenant and the shop and plot were being used for the purpose of running his business of Kabari. It was alleged that the defendant in the suit was attempting to forcibly dispossess the plaintiff from the suit premises. An application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure was filed for grant of interim injunction. This application was opposed by the defendant. It was the case of the defendant that the plaintiff was tenant in regard to the shop in question and was so inducted by a rent note dated the 10th March, 1983. It was pleaded that he had got no right over the plot in question. The learned trial Court *vide* its order dated the 30th September, 1997 found that the plaintiff had no *prima facie* case nor the balance of convenience was in his favour, consequently, it dismissed the injunction application. As already noticed, this order was unsuccessfully assailed in appeal by the plaintiff resulting in the filing of this revision by the plaintiff-petitioner. It is contended that the plot has been in possession of the tenant and, as such, he was entitled to injunction in that regard against the owner. The photographs which were placed on record showed that the door of the shop in tenancy of the present petitioner opened towards the not. It needs to be noticed that the appellant after institution of the suit had moved an application for appointment of the Local Commissioner which was dismissed by the learned trial Court and the order of rejection was never assailed in revision or otherwise. There is a written document between the parties under which the petitioner was inducted as a tenant. This document dated the 10th March, 1983 clearly shows that the petitioner was inducted as a tenant in the shop and the rent receipt does not depict that the plot is also under the tenancy of the petitioner. Where a document is executed by the parties normally the parties would be bound by the terms and conditions of that documents and cannot derive any benefit contrary to the terms and conditions stated therein. In normal circumstances, the receipt could show that it is the shop and the area adjacent to the same which is being rented out to the petitioner. Admittedly, the document did not so record. There could be no presumption in regard to the facts which have been pleaded by the petitioner. This finding arrived at by the learned Courts below concurrently,

appears to be a correct view at least *prima facie*. Once this view is accepted, the status of the present petitioner in regard to the plot in question would be unauthorised possession even if his possession is admitted for the sake of argument. A person in unauthorised possession of the property cannot claim injunction against the true owner. It needs to be noticed that in paragraph 2 of the plaint the petitioner had claimed to be a tenant of the shop and plot since 1980 at the rate of Rs. 300 per month. In the written statement it was specifically pleaded that there was a rent note written between the parties wherein only shop had been rented out to the petitioner w.e.f. 1st March, 1983 at a rate of Rs. 400/- per month and plot was not part of the tenanted premises. The copy of the document dated 10th March, 1983 was produced on record. These averments remain undisputed on record.

(4) At this stage, when the Court has to form a *prima facie* view a written document, between the parties cannot be ignored or read at variance to its contents. Relying upon the judgment of the Supreme Court in the case of '*Lallu Yeshwant Singh through L.R.s v. Rao Jagdish Singh and others* (1), it was contended that the landlord has no right to re-enter upon the property in the event of extinguishment of tenancy. The facts of this case are totally different; the extent of the property in tenancy was not in dispute but it was the extinguishment of the tenancy right which was subject matter of dispute. Furthermore, no order of mandatory injunction has been passed by the Court giving possession to the landlord. What has been declined to the petitioner is an equitable relief of injunction as the petitioner has failed to establish a *prima facie* case, balance of convenience and any legal or legitimate right on the property in question. The reliance upon the judgment of the Hon'ble Supreme Court in the case *Walter Louis Franklin through L.Rs. v. George Singh through L.Rs.* (2), is equally misplaced. In this case, the Hon'ble Apex Court held that there was a clear recital in the sale deed which was held to be binding on the parties i.e. the respondent in that case and it stated that appellant was in possession, consequently, grant of perpetual injunction by the trial Court was upheld by the Hon'ble Supreme Court.

(1) A.I.R. 1968 S.C. 620

(2) 1997 (3) S.C.C. 503

(5) In view of the above discussion, I am unable to be any error of jurisdiction in the impugned orders. The view taken by the learned courts below in declining the equitable relief of injunction to the petitioner does not call for any interference within the well established canons of law governing the exercise of revisional jurisdiction by this Court under Section 115 of the Code of Civil Procedure.

(6) Finding no merit in this revision, the same is dismissed.

J.S.T.