

CASE NO.:
Appeal (civil) 6792 of 2004

PETITIONER:
Maharwal Khewaji Trust (Regd.), Faridkot

RESPONDENT:
Baldev Dass

DATE OF JUDGMENT: 15/10/2004

BENCH:
N Santosh Hegde & S.B. Sinha

JUDGMENT:
J U D G M E N T

(Arising out of SLP) No. 14972 of 2004)

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

The appellant had filed a Civil Suit No.541 of 2000 for possession of the suit scheduled property with an application under Order 39 Rules 1 and 2 CPC, seeking injunction restraining the respondent herein from alienating the suit property and putting up any construction thereon. The trial court on the interim application filed by the appellant granted an order of temporary injunction, as prayed for.

The appeal filed by the respondent herein before the learned District Judge came to be allowed holding that alienation made, if any, will be subject to the law of lis pendens and constructions, if any, put by the respondent will have to be removed at his own risk and cost in the event of the suit being decreed.

A revision filed against the said order to the High Court came to be dismissed by the impugned order wherein the High Court recorded an oral undertaking given by the learned counsel which is as follows :

"Learned counsel for the respondent, on instruction from Rajinder Dass son of Baldev Dass, on the other hand, has stated that the respondent has no intention of alienating any part of the property and further that the defendant shall raise construction if any at his own risk costs without claiming any compensation. It is further stated that if the defendant inducts any tenant in any such premises so constructed, the person inducted would be made aware of the pendency of the litigation and would be bound by the judgment and decree passed in the suit."

It is in view of the above statement made by the learned counsel for the respondent that the High Court without

considering the grounds raised in the revision petition proceeded to dismiss the petition.

Mr. R.S. Sachhar, learned senior counsel appearing for the appellant, contended that generally during the pendency of litigation courts protect the status quo existing on the date of the suit and it is only in exceptional circumstances where irreparable damage is feared, the courts permit change of status quo. His further contention was that in the present case no such case is made out by the respondent and the trial court was justified in protecting the status quo as on the date of the suit.

Mr. A.V. Palli, learned counsel for the respondent, contended that both the lower appellate court and the High Court were justified in making the impugned order because the appellant has not established any prima facie case and if the suit property is to be allowed to remain in the present condition, the respondent will be put to great hardship and an irreparable loss. While it is true that the lower appellate court did go into the question of prima facie case and held that the appellant had not made out any such case, the High Court did not go into that question at all.

Be that as it may, Mr. Sachhar is right in contending that unless and untill a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored. The appeal is allowed.