

PREMJI RATANSEY SHAH AND ORS.

A

v.

UNION OF INDIA AND ORS.

JULY 22, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

B

Specific Relief Act, 1963 : Section 41(j) Injunction—Grant of—Whether discretionary and equitable relief—Plaintiff must have personal interest—Right not in existence cannot be protected by injunction—Injunction cannot be issued against true owner or in favour of a trespasser.

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Certain lands were acquired for the railways. The award given by the Collector became final and the possession of the land was also handed over to the railways. As a result of these acquisition proceedings the original land owners were divested of their title and had interest to alienate the land acquired. However the petitioners filed a suit for declaration that they were successors in title to certain lands of defendants Nos. 3 and 4 and for injunction not to interfere with their possession, Their case was that defendants No. 3 and 4 purchased the land from the original land owners under a sale-deed dated August 21, 1966 and that on January 21, 1973 the said defendants entered into an agreement of sale with the petitioners and also handed over the possession of the land to them.

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The Trial Court held that the petitioners were in possession of land but a Single Judge of the High Court dismissed the petitioners' suit. The Division Bench of the High Court also dismissed the petitioner's appeal holding that possession was handed over to the railways and the railways had been in possession of the land. Against the decision of the High Court, Special Leave Petition was filed in this Court.

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Dismissing the petition, this court

HELD : 1. Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest or

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- A right not shown to be in existence, cannot be protected by injunction.

[120-F-G]

2. It is equally settled law that injunction would not be issued against the true owner. Therefore, the Courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner under these circumstances, there is no ground warranting interference with the judgments and decrees of the Court below.

[120-G-H; 121-A-B]

CIVIL APPELLATE JURISDICTION : Special Leave Petition No. 10792 of 1994.

- D From the Judgment and Order dated 3.1.94 of the Bombay High Court in Appeal No. 457 of 1992.

Ashok H. Desai, P.H. Parekh, K.V. Shah, Takker and S.Uday Sangal for the Petitioners.

- E The following Order of the Court was delivered :

The unsuccessful plaintiffs in both the Courts below are the petitioners. Their suit for declaration that the appellants are successors in title to certain land of the defendant Nos. 3 and 4, namely, Sule and Thakkar, who were said to be its owners, which formed a portion of land admeasuring 33 acres 2 guntas in Survey No. 103A/pt. at Kirol and for injunction not to interfere with their possession etc., was dismissed by a Single Judge sitting on the original side of the Bombay High Court. A Division Bench of the same Court dismissed the appeal No. 557/92 of the petitioner by the impugned judgment and decree dated January 31, 1994. The facts not in dispute are that a Notification under Section 4(1) of the land Acquisition Act, 1894, was initially published on May, 4, 1959 proposing acquisition of 48.26 acres of land in Survey No. 103A invoking the urgency clause under Section 17. The enquiry under Section 5-A was dispensed with. A declaration under Section 6 was followed. Thereafter, another notification was issued on May 28, 1959 under Section 4(1) of the

Act acquiring 13 acres and 33 guntas in Survey No. 228 situated at Kurla. When possession was handed over to the railways on May 24, 1960, it was found that they got possession of an excess of 12 acres 12 guntas in Survey No. 103A. Therefore, third notification under Section 4(1) was published on July 13, 1965 and the enquiry under Section 5-A was conducted and Section 6 declaration was made. For the lands covered in the first two notifications, award was made only July 30, 1966 and for the land covered by the third notification, an award was made on May 26, 1968. Thus, the award had become final. As stated earlier, possession was already taken and was handed over to the railways on February 24, 1960. Consequently, the original owner Mrs. Maibai @ Jamnabai had been divested of her title and had no interest to alienate part of land which 3rd and 4th defendants claimed to have purchased from her under a sale deed dated August 21, 1966, in that it had, by then, stood vested in the railways free of all encumbrances. Thereby, the purchasers got under the sale deed no right, title or interest in the land which had gone to the Central Government by them.

It is the case of the petitioners that defendant Nos. 3 and 4, namely, Sule and Thakkar, entered into an agreement of sale with the petitioners on January 21, 1973 coupled with a power of attorney etc. and delivered possession of the land to the extent of 12 acres and 12 guntas. As stated earlier, possession was already taken over by the railways. After the award was made, the defendants No. 3 and 4 made an application before the land Acquisition Officer claiming proportionate compensation for the land said to have been purchased by them. The Land Acquisition Officer had not accepted it but made a reference to the Civil Court under Section 30. In the reference made to the High Court under Section 30, the defendants No. 3 and 4 remained ex parte and an award was made by the High Court declaring that Maibai @ Jamnabai was entitled to the entire compensation. The award also had become final, though the petitioners subsequently gave up the relief of declaration that the plaintiffs are the successors in title to the lands purchased by Sule and Thakkar in respect of 33 acres and 2 guntas, claimed a declaration that the acquisition of land of 60 acres 38 guntas pursuant to the award dated July 13, 1966 and May 26, 1968 as illegal, *null and void* of no effect and injunction.

It is true that the trial Judge recorded a finding that the appellants were in possession of the land and directed them to give possession but

- A ultimately the Single Judge dismissed the suit. On appeal, the division bench found that possession was handed over to the railways and the railways had been in possession of the land. Shri Ashok Desai, learned senior counsel for the petitioners, contended that there was a dispute as to the identification of the land. The petitioners' land was not the subject-matter of the acquisition and that, therefore, when the learned trial Judge had found that possession of the land was with petitioners, the division bench had committed error in holding that the petitioners were not entitled to declaration or injunction. In view of the finding by the trial Court that the petitioners were in possession, unless they are lawfully dispossessed, no interference with their possession was called for and, therefore, they are entitled to the injunction sought for. We find no substance in the contention.

- D It is seen that a suit as originally framed, they sought for a declaration that the award made in respect of the land was void, inoperative and does not bind the petitioners. But that relief had been given up. Thereby, the title of the land of the railways have not been questioned. With the award made under Section 30, the vendors of the petitioners got themselves bound by the above award under Section 12 of the Act. It is also seen that the two awards had become final and possession was delivered to the railways by the Land Acquisition officer on February 24 1960. Thus Defendant Nos. 3 and 4 had no ghost of right, title or interest in the lands acquired from the original owner Maibai. The said sale is a void sale and the petitioners, therefore, cannot derive any interest under the agreement of sale to resist the possession of the lawful owner nor could the declaration sought for be given. The question, therefore, is whether an injunction can be issued against the true owner. Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest or right not shown to be in existence, cannot be protected by injunction.

- H It is equally settled law that injunction would not be issued against the true owner. Therefore, the Courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their

possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner, pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner. A

Under these circumstances, we do not find any ground warranting interference with the judgments and decrees of the courts below. The special leave petition is dismissed with exemplary costs of Rs. 30,000 which shall be payable to Supreme Court Legal Aid Committee. In case the petitioners do not pay the costs within two months, the Supreme Court Legal Aid Committee could proceed to recover the same by resorting to execution. B C

T.N.A.

Petition dismissed.