

CASE NO.:
Appeal (civil) 5807 of 2005

PETITIONER:
Col. Anil Kak (Retd.)

RESPONDENT:
Municipal corporation, Indore & Ors.

DATE OF JUDGMENT: 19/09/2005

BENCH:
G.P. MATHUR & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 11940 OF 2003)
WITH

SPECIAL LEAVE PETITION (CIVIL) NO.11771 OF 2003

P.K. BALASUBRAMANYAN, J.

1. These two petitions arise from the claim for an interim injunction by the petitioner before us in a suit filed by him. The suit was for a permanent injunction restraining the respondents, the defendants in the suit, from interfering with the possession of the suit land allegedly held by the petitioner including the school buildings constructed thereon and not to demolish or take any steps for removal of the constructions. An interim injunction along the same lines to enure during the suit was sought. That application was opposed. Respondent No.3, in turn sought an injunction restraining the petitioner \026 plaintiff from putting up any construction outside an area of 16,000 Sq. ft. The trial court granted an interim injunction in favour of the petitioner but confined it to an area of 16,000 Sq. ft. and the construction thereon and also restrained him from putting up any construction outside it but included in the plaint schedule. The petitioner appealed against those orders and the Additional District Judge allowed the appeals and modifying the order of injunction granted by the trial court, made the injunction operative in respect of the entire plaint schedule property and the structures thereon. The respondents originally filed a revision invoking Section 115 of the Code of Civil Procedure (for short 'the Code') before the High Court challenging the order of the first appellate court. In view of a decision rendered by that High Court that no revision under Section 115 of the Code could be entertained against an order of injunction since the order was purely interlocutory in nature, the respondents herein sought a conversion of their revision into a petition under Article 227 of the Constitution of India. This prayer was allowed by the High Court which decided to treat the proceedings as one under Article 227 of the Constitution of India. It is challenging that order that the petitioner before us has filed Special Leave Petition(C) No.11771 of 2003. Proceeding on the merits thereafter, the High Court modified the order of the first appellate court and restored the order of the trial court and thereby confined the interim order of injunction to an area of 16,000 Sq. ft. and the structures thereon. Feeling aggrieved by this modification, the petitioner before us - the plaintiff in the suit, has filed SLP(C) No.11940 of 2003. Since both matters arise from the same proceedings, they are taken up together for final disposal.
SLP(C) No.11771 of 2003

2. All that the High Court has done is to treat the petition filed before it under Section 115 of the Code as a proceeding initiated under Article 227 of the Constitution of India. The respondents had filed the revision originally and during the pendency of that revision the High Court

appears to have taken a view that an order in an appeal arising from a proceeding under Order 39 Rules 1 and 2 of the Code, could not be challenged under Section 115 of the Code since the order was in the nature of an interlocutory order. In such a situation, in our view, the High Court rightly decided to permit the revision petitioners before it, to convert the same as a proceeding under Article 227 of the Constitution of India. After all, the court could have done it on its own, even without a motion in that behalf by the petitioner. We see absolutely no ground to interfere with the said order on the grounds raised in this special leave petition. Hence, this special leave petition is dismissed.

SLP(C) No.11940 of 2003

Leave granted.

3. In this appeal, the appellant - plaintiff who had filed a suit, inter alia, for a permanent injunction restraining the defendants in the suit from interfering with his possession of the plaint schedule property and the structures thereon allegedly put up by him, challenges the order of the High Court by which that court set aside the order of the first appellate court and restored the limited order of interim injunction granted by the trial court. The trial court, after hearing both sides had confined the interim order of injunction to an extent of 16,000 Sq. ft. and the structures thereon and had declined relief to the plaintiff in respect of the rest of the plaint area, and the constructions allegedly put up by him outside the 16,000 Sq. ft, which alone was the subject matter of an admitted lease. In appeal, the lower appellate court modified the order passed by the trial court and made the injunction operative in respect of the whole of the suit property including the disputed portion and the structures in the entire property including the ones allegedly put up in the disputed portion. The High Court found that no prima facie case was made out by the plaintiff- the appellant before us, for an injunction in respect of the property outside the 16,000 Sq. ft. and the structures thereon and the appellate court was not justified in modifying the order of the trial court. The High Court set aside the order of the appellate court and restored the order of the trial court. Thus, the High Court confined the order of injunction to an area of 16,000 Sq. ft and the structures thereon.

4. This Court by order dated 12.7.2003, stayed the operation of the order of the High Court as also any action for demolition until the matter was heard in this Court. On 14.7.2003, while issuing notice on the petitions for special leave to appeal, this Court also ordered that until further orders, the order dated 12.7.2003 shall continue to remain in operation. Thus, the order passed by this Court on 12.7.2003 continues to be in operation, meaning thereby that the proposed demolition of structures outside the area of 16,000 Sq. ft. remains stayed.

5. We find that in the schedule property including the disputed portion, an educational institution is functioning. It is seen that there are a number of litigations between the parties, including a suit for specific performance of an agreement to lease filed by the appellant against Respondent No.3 before us apparently in respect of the area outside the 16,000 Sq. ft. The suits are all pending. Taking note of the salient fact \026 and no other fact \026 that an educational institution is being run in the property in question including the disputed portion and taking note of the fact that from 12.7.2003 the order of stay of demolition granted by this Court has been in operation, we feel that it is not necessary or appropriate to go into the merits of the disputes between the parties at this stage. We feel that it would be appropriate to continue the order of this Court dated 12.7.2003 and to keep it operative till the disposal of the suit, with a direction to the trial court to try and dispose of the suit as expeditiously as possible, preferably within a period of six months from the production before it of a copy of this order by either of the parties. We have thought it fit not to go into the merits of the controversy vehemently projected before us by counsel on either side, only in our view, that the status quo should be maintained in view of the fact that an educational institution is said to be functioning in the property.

6. Learned counsel for Res.No.3 submitted that under the cover of this order, the appellant is attempting to put up constructions in the disputed

property and it is just and necessary to prevent him from doing so. We think that this prayer deserves to be granted, especially, in the context of the fact that we are trying to maintain the status quo until the suit is finally disposed of. We, therefore, restrain the appellant - the plaintiff in the suit, from putting up any further construction and from altering or modifying any existing construction until the disposal of the suit. In other words, there will not only be an injunction against the defendants for demolishing the constructions in the entire plaint schedule property including the disputed portion, but there would also be an injunction restraining the appellant from making any further construction and from altering or modifying any existing construction in the plaint property including the disputed property. We also make it clear that the fact that we are permitting the structures in the disputed portion of the property to continue to exist, will not confer any right on the plaintiff, if he is not able to establish his case for relief in the suit.

7. There is a further submission on behalf of Respondent No.3 that the appellant has not paid the rent for the premises which was admittedly leased out to him. Counsel for the appellant submits that there is no arrears, as claimed. We do not think it necessary to decide this controversy. But we grant the appellant a time of one month from the date of this order to clear all the rent in arrears (if any), either by tendering the same to Respondent No.3 or depositing the same in the trial court.

8. We also clarify that if the suit is not disposed of within the time fixed by us and the defendants have a case that the plaintiff was deliberately delaying the disposal of the suit, the respondents before us would have the liberty to move this Court for any appropriate modification of this order.

9. This appeal is, thus, disposed of by maintaining the order of this Court dated 12.7.2003 until the disposal of the suit and with an injunction against the plaintiff as indicated above and the other directions as contained hereinabove. We once more clarify that we have not gone into or dealt with any contention on merits and leave all questions open, to be decided by the trial court and our order maintaining the order dated 12.7.2003, is only because of the fact that an educational institution is located, and is functioning in the suit property, including in the disputed portion. The parties are directed to bear their own costs.