

PETITIONER:
MOHAN PANDEY AND ANOTHER

Vs.

RESPONDENT:
SMT. USHA RANI RAJGARIA AND ORS.

DATE OF JUDGMENT 19/08/1992

BENCH:
SHARMA, L.M. (J)
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SHARMA, L.M. (J)
RANGNATHAN, S.

CITATION:
1993 AIR 1225 1992 SCR (3) 904
1992 SCC (4) 61 JT 1992 (4) 572
1992 SCALE (2) 220

ACT:

Constitution of India, 1950:

Article 226- Writ jurisdiction of High Court-Special and extraordinary-Not to be exercised casually and lightly-Not to be used for enforcement of a private right to immovable property claimed by and against private individuals- Not to replace ordinary remedies available by way of suit, application etc. under the general law.

HEADNOTE:

During the pendency of a suit for eviction of the appellants from the property of Respondent No.1, the appellants were alleged to have trespassed beyond the area which was the subject matter of the suit and indulged in several illegal activities. Thus according to Respondents, the appellants were guilty of mischievous conduct. The Respondents instead of filing a suit in the Civil Court or making appropriate prayer for amendment of the plaint in the pending suit filed a Writ Petition before the High Court for issuance of appropriate direction restraining the appellants from disturbing the lawful possession of the respondents. The Administration and Commissioner of Police were also impleaded as parties and a direction sought against them not to register any further false and vexatious complaints against the Respondents since undue Police help to the appellants was apprehended.

The High Court gave certain directions to the appellants as regards Respondents' access to the backyard. The present appeal by special leave, is against the said orders of the High Court.

On the question whether the Writ jurisdiction of High Court would be available for enforcement of a private right to immovable property claimed by and against private individuals:

Allowing the appeals, this Court

HELD: 1. A regular suit is the appropriate remedy for settlement

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of disputes relating to property rights between private persons and that the remedy under Article 226 of the Constitution shall not be available except where violation

of some statutory duty on the part of statutory authority is alleged. And in such a case, the Court will issue appropriate direction to the authority concerned. [907 E, F]

2. If the real grievance of Respondent No.1 is against the initiation of criminal proceeding and the orders passed and steps taken thereon, she must avail of the remedy under the general law including the Criminal Procedure Code. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extra-ordinary and should not be exercised casually or lightly, [907 F-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3284 of 1992

From the Judgement and Order dated 18.2.1992 of the Delhi High Court in Civil Writ Petition No. 2259 of 1991.

R.K. Garg, K.L. Vohra, Rajeev Sharma and D.K. Garg for the Appellants.

Arun Jaitley, V.B. Saharya, Ashok Bhan and B.K. Prasad for the Respondents.

The Judgement of the Court was delivered by

SHARMA, J. Heard the learned counsel for the parties. Special leave is granted.

2. The respondents in this appeal have successfully invoked the jurisdiction of the High Court under Article 226 of the Constitution for enforcement of a private right to immovable property against the appellants who are two brothers and who are resisting the claim. The question is as to whether the writ jurisdiction in the High Court is available for the enforcement of such a right claimed by and against private individuals.

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3. The dispute relates to a house-property in Delhi. A suit for eviction of the appellants from the building is pending in the trial court. According to the case of the respondent no. 1, who is the owner of the property, she had let out the same to one Shri B.K. Pandey who later illegally handed over the possession thereof to the appellant no.1. According to the further case of the respondent, the portion of the said house-property which is subject matter of the present case is beyond the purview of the pending suit. The occasion for initiating the present proceeding with respect to this portion arose, it is said, on account of the high-handedness of the appellants who illegally trespassed beyond the area which is the subject matter of the pending suit, and indulged in several illegal activities. In other words, the appellants are trespassers and are guilty of mischievous conduct. However, instead of filing a suit in the civil court or making an appropriate prayer for amendment of her plaint in the pending suit, she through respondent no.2 holding power of attorney, approached the High Court directly by a writ petition under Article 226 for issuance of appropriate direction restraining the appellants from disturbing the lawful possession of the respondents. The Delhi Administration and the Commissioner of Police, Delhi, were also impleaded as parties with a prayer that appropriate order should be issued against them also and they should be directed not to register any further false and vexatious complaint against them at the instance of the

appellants. It is her case that the appellants have been getting undue police help and are being encouraged to commence frivolous criminal cases against respondent no.1 and her agent.

4. The appellants denied the allegations of fact made against them and also challenged the maintainability of the writ petition.

5. Although the fact that a suit between the parties was already pending in the civil court was known to the High Court, it proceeded to pass a short order stating:

"There is already a civil suit pending between the parties. Except the prayer in regard to access to the backyard, no other relief can be granted in this writ petition.

We direct respondents 3 and 4 to remove the grill for access

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to the backyard in the presence of the police and representatives of the petitioners on Sunday, 23rd February 1922 at 11.00 a.m. so that the access of the petitioner to the servants quarters is not stopped."

6. Mr. Arun Jaitley, the learned counsel appearing on behalf of respondent no. 1 has supported the impugned judgement on the ground that prayer for issuing a direction against Delhi Administration and Commissioner of Police who were respondent nos. 1 and 2 was also made. It has to be appreciated that the present appellants were respondent nos. 3 and 4 before the High Court; and the High Court has by the impugned order, considered it fit to allow the prayer of the respondents against them for removal of the grills for access to the backyard. According to the stand of the landlord-respondent, since the police were taking a partisan attitude against her, the filing of a writ petition became necessary. We are unable to follow this argument. There is no doubt that the dispute is between two private persons with respect to an immovable property. Further, a suit covering either directly a portion of the house-property which is in dispute in the present case or in any event some other parts of the same property is already pending in the civil court. The respondent justifies the step of her moving the High Court with a writ petition on the ground of some complaint made by the appellants and the action by the police taken thereon. We do not agree that on account of this development, the respondent was entitled to maintain a writ petition before the High Court. It has repeatedly been held by this court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged. And in such a case, the court will issue appropriate direction to the authority concerned. If the grievance of the respondent is against the initiation of criminal proceedings, and the orders passed and steps taken thereon, she must avail of the remedy under the general law constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant.

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The jurisdiction is special and extra-ordinary and should not be exercised casually or lightly. We, therefore, hold that the High Court was in error in issuing the

impugned direction against the appellants by their judgement under appeal. The appeal is accordingly allowed, the impugned judgement is set aside and the writ petition of the respondents filed in the High Court is dismissed. There will be no order as to costs.

G.N.

Appeals allowed.

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JUDIS