

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 21st OF JANUARY, 2025

MISCELLANEOUS PETITION NO.3034/2020

Smt. Rachi Devi

VS.

Anil Kumar alias Lallu & Others

Appearance:

Petitioner by Shri A.K. Jain - Advocate.

**Respondents No.1 to 6 by Shri Satyendra Prasad Dubey – Advocate
on caveat.**

Reserved on : 19.11.2024

Pronounced on : 21.01.2025

ORDER

This petition was languishing to see its fate since 2020 which arose out of the order passed in a pending civil suit and the learned counsel for the parties agreed to argue the matter, therefore, it was heard finally on 19.11.2024 and today the order is being pronounced.

2. This petition is filed under Article 227 of the Constitution of India challenging the impugned orders dated 04.09.2020 and 02.03.2020

passed by the courts below rejecting the application filed by the petitioner-plaintiff under Order XXXIX Rule 1 & 2 of CPC seeking injunction against the defendants for restraining them to interfere in the petitioner's possession over the land purchased by her.

3. The encapsulated facts are that the plaintiff-petitioner filed a suit seeking a decree of permanent injunction over the land shown in the plaint-map attached to the plaint and possession thereof may not be disturbed by the respondents-defendants and they may also not sell the land which is in possession of the plaintiff. The said plaint was accompanied with an application under Order XXXIX Rule 1 & 2 of CPC seeking injunction that the respondents-defendants be restrained from disturbing the possession of the property purchased by the plaintiff as shown in the plaint map. The application was replied by the defendants saying that though the sale-deed was executed in favour of the plaintiff-petitioner in respect of the land belonging to khasra No.844, but that khasra is divided into several parts and the land purchased by the petitioner and its proper location is not identified and not shown in the plaint map because the land purchased was in joint possession of the land owners and without there being any partition, the land got purchased. It is specifically denied by the defendants that the land of the plaintiff-petitioner is not adjoining to the National Highway-135, however, it is averred that the suit has been filed with an intention to claim that the land purchased by the plaintiff is adjoining to the National Highway so as to get the benefit of proceeds of valuable land after acquisition and thus she is not entitled to get any injunction.

4. The learned trial court considered the application under Order XXXIX Rule 1 and 2 of CPC and rejected the same mainly on the ground that though the plaintiff has claimed that she purchased the land

by way of registered sale-deed of the land belonging to khasra No.844/6, 845/2, 845/3 and the said land according to her is adjoining NH-135. Although, according to the trial court from the documents produced by the plaintiff and also by the defendants, it is not clear whether the land purchased by the plaintiff and as per the boundaries shown, is adjacent to NH-135 or not. It is also observed that the order of revenue authorities on which the plaintiff has placed reliance is not in existence and therefore at the time of granting injunction it is to be seen whether the plaintiff is in possession of the land or not. The court has observed that the disputed land having no clear demarcation and there is no Naksa Tasmeen and therefore it appears to be a dispute of boundaries and it is difficult to ascertain actual position and as such *prima facie* case is not made out and therefore rejected the application.

5. The appellate court has also affirmed the order passed by the trial court observing that though in the revenue record the name of the plaintiff is recorded over the land bearing khasra No.844/6, 845/2, 845/3, but it is not clear as to whether the land belonging to these khasras is adjacent to NH-135 or not. The dispute is about boundaries and possession of the plaintiff is also not specific so as to determine on which land she is in possession. The appellate court has observed that when *prima facie* it is difficult to ascertain the possession over any specific land, injunction cannot be granted.

6. Learned counsel for the petitioner submitted that when the ownership is not disputed and the entries in the revenue record are available, which were also acknowledged by the courts below, then non-grant of injunction over the land on which the petitioner-plaintiff is in possession, is not proper.

7. E-converso, learned counsel for the respondents submitted that when both the courts below have specifically given finding about the *prima facie* case and not granting injunction, the High Court in exercise of power under Article 227 of the Constitution cannot disturb the said finding and cannot substitute the opinion of the courts below by thrusting its own opinion. He placed reliance on the decision of the Supreme Court in the case of **Pooja Mittal v. Rakesh Kumar** rendered in **Civil Appeal No.2737/2020** holding that when no *prima facie* case is made out by the plaintiff, then granting the order of status quo by the High Court is not proper. He also placed reliance on the decision of this court in the case of **Shubhalay Villa and others v. Vishandas Parwani & others** rendered in **M.P.No.4187/2019** on 03.08.2023.

8. I have heard the submissions of learned counsel for the rival parties and also perused the documents available on record.

9. Indeed, the ownership of the plaintiff-petitioner in respect of the land belonging to khasra No.844/6, 845/2, 845/3 is not in dispute. The dispute is only with regard to the location of the land and that the land purchased by the plaintiff is not adjacent to NH-135. Both the courts below have observed that it is a boundary dispute. The courts have also observed that the plaintiff is in possession of the land, but it is unclear whether her possession is confined to the land purchased by her or not. In the considered opinion of this court, the courts below have erred in holding that *prima facie* case is not made out in favour of the plaintiff. On fathoming the depth of observation made by the courts below, it comes to the surface that the courts below as if have given the final verdict and decided the suit without recording the evidence holding that the land of the plaintiff is not adjoining to NH-135 whereas at the same time courts below have observed that it is a dispute of boundaries

and the location of land purchased by the plaintiff is not specific. In such a situation, when the possession of the plaintiff is certain over some portion of the land then injunction restraining the defendants from interfering with the possession could have been granted. Essentially, it will be decided at the time of final adjudication or deciding the suit finally as to whether the land of the plaintiff is adjacent to NH-135 or not and it is for the plaintiff to prove the boundaries of land purchased by her. When admittedly in view of both the courts below, the dispute is of boundaries between the parties, then not granting status quo, would not be proper.

10. At this juncture, it is expedient to get a glimpse of the order of the Supreme Court in the case of **Pooja Mittal** (supra), which reveals criticism of the order of High Court granting status quo when admittedly there was no material on record to indicate that the suit property was purchased by the plaintiff and on the contrary it was found that the suit property was owned by the respondents and their predecessors-in-interest. But in the case at hand, the factual matrix is altogether different. The ownership of the plaintiff has been admitted and there is no dispute about possession over the land, though boundaries are not specific is also admitted, the dispute of boundaries is also admitted by the courts, thus not granting any injunction directing the parties to maintain status quo retaining their possession is in my opinion, absolutely a perverse finding.

11. In view of the facts and circumstances, it is clear that the plaintiff-petitioner has proved the *prima facie* case. The observations of both the courts below refusing to grant injunction is *de hors* the law indicating that the courts have exceeded its jurisdiction and virtually given a final verdict that too at the time of deciding the application

under Order XXXIX Rule 1 & 2 of CPC. Thus, it is a fit case in which the parties can be directed to maintain status quo in respect of possession of their land inasmuch as it will be decided at the time of deciding the suit finally whether the land of the plaintiff and her possession is over the proper land and otherwise the court may direct while deciding the suit to retain possession of the land which has been purchased by the plaintiff by registered sale-deed, which is not in question.

12. In view of the above, the petition is allowed. The impugned orders dated 04.09.2020 and 02.03.2020 are set aside. The parties are directed to maintain status quo in respect of their possession over the land in question. Simultaneously the trial court is also directed to expedite the hearing and pass a final order within a period of one year from the date of receipt of copy of this order.

13. The petition is allowed and disposed of.

**(SANJAY DWIVEDI)
JUDGE**