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ROSHINA T

v.

ABDUL AZEEZ K.T. & ORS.

(Civil Appeal No. 11759 of 2018)

B

DECEMBER 03, 2018

**[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]**

*Constitution of India: Arts.226/227 – Writ jurisdiction, invocation of – Dispute between appellant and respondent no.1 related to the possession of flat – One civil suit between the appellant and respondent No. 1 in relation to the flat in question for grant of injunction was pending in the Munsif Court – Appellant and respondent No. 1 were private individuals – Writ petition filed by respondent no.1 – High Court directed the appellant by issuing a writ of mandamus to restore the possession of flat in question to respondent no.1 – On appeal, held: Appellant and respondent No. 1 were private individuals and both were claiming their rights of ownership and possession over the flat in question on various factual grounds – The question as to who is the owner of the flat in question, whether respondent No. 1 was/is in possession of the flat and, if so, from which date, how and in what circumstances, he claimed to be in its possession, whether his possession could be regarded as legal or not qua its real owner etc. were some of the material questions which arose for consideration in the writ petition – These questions were pure questions of fact and could be answered one way or the other only by the civil court in a properly constituted civil suit and on the basis of the evidence adduced by the parties but not in a writ petition filed under Art.226 of the Constitution by the High Court – Impugned order set aside – Writ of mandamus.*

**Allowing the appeal, the Court**

**HELD: 1. A regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. 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. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High**

Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. The writ petition to claim such relief was not, therefore, legally permissible. It, therefore, deserved dismissal in limine on the ground of availability of an alternative remedy of filing a civil suit by respondent No. 1 (writ petitioner) in the Civil Court. The High Court, therefore, while so directing exceeded its extraordinary jurisdiction conferred under Article 226 of the Constitution. Indeed, the High Court in granting such relief, had virtually converted the writ petition into a civil suit and itself to a Civil Court. It was not permissible. [Paras 15, 16, 18][978-C-H]

*Mohan Pande v. Usha Rani*, 1992 (4) SCC 61 : [1992] 3 SCR 904 ; *Dwarka Prasad Agrawal v. BD Agrawal* (2003) 6 SCC 230 : [2003] 1 Suppl. SCR 336 – relied on

2. There did exist a dispute between the appellant and respondent No. 1 as to who was in possession of the flat in question at the relevant time; Second, a dispute regarding possession of the said flat between the two private individuals could be decided only by the Civil Court in civil suit or by the Criminal Court in Section 145 Cr.P.C proceedings but not in the writ petition under Article 226 of the Constitution. [Para 20]

#### Case Law Reference

[1992] 3 SCR 904	relied on	Para 15	
[2003] 1 Suppl. SCR 336	relied on	Para 15	G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11759 of 2018.

From the Judgment and Order dated 30.08.2017 of the High Court of Kerala at Ernakulam in W.P. (C) No. 15385 of 2017.

A Haris Beeran, Mushtaq Salim, Usman Ghani Khan, Radha Shyam Jena, Advs. for the Appellant.

R. Basant, Sr. Adv., Ranbir Singh Yadav, Ms. Anzu K. Varkey, Aljo K. Joseph, Ranjith K. C., Nishe Rajen Shonker, Ms. Anu K. Joy, Alim Anvar, Ms. Miranda Solaman, Nebil Nizar,, Advs. for the

B Respondents.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.**

1. Leave granted.

C 2. This appeal is filed against the final judgment and order dated 30.08.2017 passed by the High Court of Kerala at Ernakulam in Writ Petition (C) No. 15385/2017 whereby the Division Bench of the High Court allowed the writ petition filed by respondent No.1 herein and directed the appellant herein, by issuing a writ of mandamus, to restore the possession of the flat in question to respondent No.1 herein.

D 3. Facts of the case lie in a narrow compass. They, however, need mention in brief *infra* to appreciate the short question involved in this appeal.

E 4. The dispute essentially relates to the possession of a flat bearing No. 3D, 3<sup>rd</sup> floor located in building known as Royal Court-Block IV at Kozhikode (hereinafter referred to as “the flat”) and is between the appellant and respondent No. 1 herein.

F 5. Respondent No. 1 filed a writ petition being W.P.(C) No. 15385 of 2017 before the High Court of Kerala against the appellant herein and other respondents(local police authorities) seeking therein a relief of restoration of his possession over the flat in question. The appellant contested the writ petition on various factual and legal grounds including raising an objection about the maintainability of the writ petition and the reliefs claimed therein.

G 6. By impugned order, the Division Bench allowed the writ petition and directed the appellant (respondent No. 5 in the writ petition) to restore the possession of the flat in question to respondent No. 1 herein (writ petitioner in the High Court) which has given rise to filing of the present appeal by way of special leave by respondent No. 5 of the writ petition in this Court.

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7. The short question, which arises for consideration in this appeal, is whether the High Court was justified in entertaining the writ petition filed by respondent No. 1 herein and Secondly, whether the High Court was justified in issuing a mandamus against the appellant directing him to restore the possession of the flat to respondent No. 1. A

8. Heard Mr. Haris Beeran, learned counsel for the appellant and Mr. R. Basant, learned senior counsel, Mr. A.K. Joseph and Mr. Nishe Rajen Shonker, learned counsel for the respondents. B

9. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal, set aside the impugned order and dismiss the writ petition filed by respondent No. 1 herein out of which this appeal arises. C

10. In our considered opinion, the writ petition filed by the respondent No. 1 under Article 226/227 of the Constitution of India against the appellant before the High Court for grant of relief of restoration of the possession of the flat in question was not maintainable and the same ought to have been dismissed in *limine* as being not maintainable. In other words, the High Court ought to have declined to entertain the writ petition in exercise of extra ordinary jurisdiction under Article 226/227 of Constitution for grant of reliefs claimed therein. D

11. It is not in dispute that the reliefs for which the writ petition was filed by respondent No. 1 herein against the appellant pertained to possession of the flat. It is also not in dispute that one Civil Suit No. 807/2014 between the appellant and the respondent No. 1 in relation to the flat in question for grant of injunction was pending in the Court of Munsif at Kozhikode. It is also not in dispute that the appellant and the respondent No. 1 are private individuals and both are claiming their rights of ownership and possession over the flat in question on various factual grounds. E F

12. In the light of such background facts arising in the case, we are of the considered opinion that the filing of the writ petition by respondent No. 1 herein against the appellant herein under Article 226/227 of the Constitution of India in the High Court, out of which this appeal arises, was wholly misconceived. G

13. The question as to who is the owner of the flat in question, whether respondent No. 1 was/is in possession of the flat and, if so, from which date, how and in what circumstances, he claimed to be in its H

A possession, whether his possession could be regarded as legal or not *qua* its real owner etc. were some of the material questions which arose for consideration in the writ petition.

14. These questions, in our view, were pure questions of fact and could be answered one way or the other only by the Civil Court in a properly constituted civil suit and on the basis of the evidence adduced by the parties but not in a writ petition filed under Article 226 of the Constitution by the High Court.

15. It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. 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. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. (See **Mohan Pande vs. Usha Rani**, 1992 (4) SCC 61 and **Dwarka Prasad Agrawal vs BD Agrawal**, (2003) 6 SCC 230).

16. In our view, the writ petition to claim such relief was not, therefore, legally permissible. It, therefore, deserved dismissal in *limine* on the ground of availability of an alternative remedy of filing a civil suit by respondent No. 1 (writ petitioner) in the Civil Court.

17. We cannot, therefore, concur with the reasoning and the conclusion arrived at by the High Court when it unnecessarily went into all the questions of fact arising in the case on the basis of factual pleadings in detail (43 pages) and recorded a factual finding that it was the respondent No. 1 (writ petitioner) who was in possession of the flat and, therefore, he be restored with his possession of the flat by the appellant.

18. In our opinion, the High Court, therefore, while so directing exceeded its extraordinary jurisdiction conferred under Article 226 of the Constitution. Indeed, the High Court in granting such relief, had virtually converted the writ petition into a civil suit and itself to a Civil Court. In our view, it was not permissible.

19. Learned counsel for respondent No. 1, however, strenuously urged that the impugned order does not call for any interference because the High Court has proceeded to decide the writ petition on admitted facts. A

20. We do not agree with the submissions of learned counsel for respondent No.1 for the reasons that first there did exist a dispute between the appellant and respondent No. 1 as to who was in possession of the flat in question at the relevant time; Second, a dispute regarding possession of the said flat between the two private individuals could be decided only by the Civil Court in civil suit or by the Criminal Court in Section 145 Cr.P.C proceedings but not in the writ petition under Article 226 of the Constitution. B C

21. In view of the foregoing discussion, we are unable to agree with the reasoning and the conclusion arrived at by the High Court in the impugned order.

22. As a consequence, the appeal succeeds and is accordingly allowed. Impugned order is set aside. The writ petition filed by respondent No. 1, out of which this appeal arises, stands dismissed. D

23. Liberty is, however, granted to the parties to file civil proceedings in the Civil Court for claiming appropriate reliefs in relation to the flat in question for adjudication of their respective claims. E

24. We, however, make it clear that while prosecuting any civil/criminal proceedings by the parties, as the case may be, any observations and the findings recorded by the High Court in the impugned order will not be looked into because the impugned order has since been set aside by this Court. F