

5 22.12.2022

gd/ssd

MAT/1882/2022
IA NO: CAN/1/2022
MRS. FARIYA SALUJA
VS
MRS. JAMALARA SALUJA AND ORS.

Mr. Syed Shamsul Arefin,
Ms. Kaniz Kulsum,
Ms. Nadira Abedin
...for the Appellant.

Mr. Banibrata Datta
...for the State.

Mr. Khwaja A. Rahman,
Mr. Raish Ahmed
...for the Respondent No.1.

By this intra court appeal the respondent no.6 in the writ petition (appellant herein) has challenged the order of the learned Single Judge dated 23.11.2022 whereby the learned Single Judge has disposed of WPA 18519 of 2022 filed by the respondent no.1 herein (writ petitioner) directing the police authorities to visit the premises of the writ petitioner and ensure that the appellant and her children do not visit the residence of the writ petitioner. The said order restrains the appellant from entering and visiting the writ petitioner's premises.

A perusal of the writ petition reveals that the appellant is the daughter-in-law of the writ petitioner and in the petition the petitioner had raised the plea that she is a senior citizen and her son is working in the

city of Riyadh in Saudi Arabia. Earlier the appellant was staying with the husband, but later she had returned to India along with the children. In the petition a plea was raised that the appellant is residing in a separate premises at Joka and visits the writ petitioner's premises with her kids and tortures the writ petitioner. In the said background a prayer was made in the writ petition to restrain the appellant from visiting the premises of the writ petitioner and causing any disturbance. The prayer has been allowed by the learned Single Judge.

The submission of learned counsel for the appellant is that the writ petition was disposed of on the first date itself, therefore, appellant had no opportunity to place her stand on record and that the appellant along with her children is residing in the same premises where the writ petitioner is residing and that the premises in question is a tenanted premises taken on rent by the father-in-law of the appellant who has died, therefore, now the mother-in-law as well as the husband of the appellant are entitled to be a tenant in the said premises. He has further submitted that the premises does not belong to the writ petitioner and incorrect plea was taken in the petition.

Learned counsel for the respondent/writ petitioner has submitted that the writ petitioner being a

senior citizen wants to live peacefully in the premises and the appellant along with her children is residing in a different premises and that she has admitted two children in the nearby school only recently with a view to cause disturbance to the writ petitioner and the writ petitioner has no other premises whereas the appellant has her own house at Joka.

Learned counsel for the State has also taken the stand that the dispute is a family dispute and that it is not a case of police inaction.

We have heard the learned counsel for the parties.

A perusal of the writ petition reveals that the dispute between the mother-in-law and daughter-in-law has been brought to the Court by way of the writ petition. It is a purely civil dispute which involves disputed questions of fact which can only be adjudicated by permitting the parties to lead evidence. That apart, the impugned order has been passed by the learned Single Judge on the first day itself, therefore, the appellant did not have the opportunity to place on record her stand but in the appeal the appellant has disclosed her stand to substantiate the plea that the petition was filed with the false factual plea.

Law in this regard is very well settled by Hon'ble Supreme Court that for such a civil dispute writ petition cannot be maintained. Hon'ble Supreme Court in the

matter of ***Radhey Shyam vs. Chhabi Nath*** reported in **(2009) 5 SCC 616** has held:

“9. From the aforesaid narration of events, it is clear that the proceedings in this case arose out of purely civil disputes relating to property and the parties have filed suits before the civil court, and the suits are pending. The parties to the proceedings are all private individuals. Neither the State nor “State” nor an authority under Article 12 is a party to this proceeding. This is clear from the cause-title of this appeal. Now the question is: whether private individuals are amenable to the jurisdiction of writ court in connection with the private disputes relating to property, possession and title between private individuals?

10. As early as in 1957, a Constitution Bench of this Court in *Sohan Lal v. Union of India* held that a writ of mandamus or an order in the nature of mandamus is not to be made against a private individual. A writ of and/or in the nature of mandamus normally is issued asking a person to do a particular thing which is in the nature of his public duty.

11. In *Sohan Lal* rival claims of property were in issue and the learned Judges held in para 5 that the writ courts should refrain themselves from entering the said field. Since in view of the Court such an exercise calls for

“entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a court exercising the prerogative of issuing writs” (emphasis supplied) (see AIR p. 531, para 5).

The learned Judges held that if only it can be proved that the appellant Sohan Lal acted in collusion with Union of India in evicting the respondent Jagan Nath, then

an order of mandamus can be issued (see *Sohan Lal case*, AIR p. 532, para 7), but it will not issue otherwise.

12. Only in the case of a writ of habeas corpus, can it be issued against a private individual, if it is proved that the private individual is illegally holding another person in detention (see *Mohd. Ikram Hussain v. State of U.P.*).

13. Following the aforesaid principle, this Court fails to understand how can the writ court intervene in a dispute over property rights between private individuals.

14. Apart from the decision in *Sohan Lal*, subsequently in *Mohd. Hanif v. State of Assam* a three-Judge Bench of this Court explaining the general principle relating to the High Court's jurisdiction under Article 226 held that the jurisdiction of the High Court is extraordinary in nature and is vested in the High Court not for the purpose of declaring the private rights of the parties but it is conferred for the purpose of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of the jurisdiction (see SCC p. 786, para 5).

15. The learned Judges in *Hanif case* reiterated the principle further by saying: (SCC p. 786, para 5)

“5. ... In a proceeding under Article 226 the High Court is not concerned merely with the determination of the private rights of the parties; the only object of such a proceeding under Article 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction.”

16. The learned Judges in *Hanif* referred to the decision of this Court in *T.C. Basappa v. T. Nagappa* and held that: (*Hanif case*, SCC p. 786, para 5)

“5. ... It is obvious that the remedy

provided under Article 226 is a remedy against the violation of the rights of a citizen by the State or statutory authority. In other words, *it is a remedy in public law.*”

(emphasis supplied)

This principle holds good till today.”

In view of the above factual legal position, we are of the opinion that the order of the learned Single Judge cannot be sustained, which is, accordingly, hereby set aside.

We make it clear that this order will not come in the way of the writ petitioner in availing such other remedies, which are available in law.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

M