

Ganesh Das Bajaj Vs. Municipal Committee, Delhi

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Court : Punjab and Haryana

Decided On : Nov-27-1950

Reported in : AIR1955P& H112

Judge : Kapur, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 -Order 39, Rule 1; Punjab Municipal Act - Sections 173

Appeal No. : Civil Revn. Petn. No. 363 of 1950

Appellant : Ganesh Das Bajaj

Respondent : Municipal Committee, Delhi

Advocate for Def. : Bishen Narain, Adv.

Advocate for Pet/Ap. : K.L. Gosain, Adv.

Judgement :

ORDER

Kapur, J.

1. This is a rule directed against and order of Mr. Sundar Lal, Sub-Judge, refusing to give an injunction restraining the municipal committee from removing the structure put up by the plaintiff. This order was on appeal affirmed by Mr. Tek Chand Vijnh on 18-7-1950.

2. Mr. Gossain has put in an affidavit before me which has not been contradicted by a counter-' affidavit that the municipal committee leased out a certain area of the loot-path to the plaintiff for the purpose of construction of a stall at a rent of Rs. 27- per foot per mensem and that he has put up a construction which has cost him Rs. 5000/- & has put in goods worth Rs. 25,000/-in that construction. Counsel for the municipal committee submits that this is not a lease but a mere licence and that he is under the law entitled to revoke the licence at any time he likes which is a power given to him under Section 173, Punjab Municipal Act. These are matters which have to be decided on evidence and are matters which should be decided in the suit itself and it would not be proper for me to give any findings without any evidence at this stage of interlocutory proceedings.

Besides, in my opinion, in this particular case the balance of convenience is in favour of the petitioner because if the stall is removed and he subsequently succeeds it may

cause him a very great injury and almost an irreparable loss. I, therefore, think that the municipal committee should be restrained from removing the construction put up by the petitioner during the pendency of the suit and I, therefore, make this rule absolute and issue an injunction on the condition that 'the petitioner will deposit in Court a sum of Rs. 650/- within two months and if he does not do so this revision will stand dismissed. The municipal committee will be entitled to take this money but will have to refund it should the case be decide against them.

3. I direct that this case be heard by the learned Subordinate Judge in the month of January 1951. Parties should see that their evidence does appear on the date or dates when the case is fixed and the learned Judge will not allow any adjournment or postponement of the case if the parties are not diligent in producing their evidence. This case must be finished within three month? from today & If it is not finished, It will be open to any of the parties to move this Court for necessary orders. There will be no orders as to casts of this petition. Parties have been directed, to appear before the learned Judge on 11-12-1050.

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