

(1993) 09 AHC CK 0028

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28315 of 1993

Bhartiya Sanskrit Mahavidyalaya Samiti, Registered Society"
and Others

APPELLANT

Vs

Civil Judge and Others

RESPONDENT

Date of Decision : 20-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 AWC 14 : (1994) 2 UPLBEC 882

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : V.K. Shukla, for the Appellant; Ramesh Chandra Sinha, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri V.K. Shukla, learned counsel appearing for "the Petitioners and Sri Ramesh Chandra Sinha, learned counsel representing the Respondent no. 7, at length and in detail.

2. This petition, under Article 226 of the Constitution of India, is directed against the order and judgment dated 21st July, 1993 passed by the Civil Judge, Haridwar, Respondent no. 1, in Misc. Appeal No. 22 of 1993 Mangat Ram Sharma and Ors. v. Bhartiya Sanskrit Mahavidyalaya Samiti and Ors. whereby exparte injunction order dated 31st May, 1993, passed by the Munsif, Roorki, District Haridwar, Respondent no. 2, in Original Suit No. 131 of 1993, has been set aside and the matter has been remanded to the Court of learned Munsif for consideration of the question of grant of ad-interim injunction denovo, after considering the respective cases of the parties and material produced by them.

3. The exparte injunction order dated 31st May, 1993, which has been set" aside by the learned appellate Court, was passed on the application moved by the Petitioners under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908. This

application bears no. 6-Ga/2. The result of the setting aside of the ex parte injunction order is that the injunction application 6-Ga/2 is restored and shall be deemed to be pending for disposal again, leaving the learned Munsif free to consider the matter afresh and pass such order as may be warranted by the circumstances of the case.

4. Learned" counsel for the Petitioners contends that the effect of the order impugned in this petition is to deprive the Petitioners of the order of injunction which they are in law entitled to.

5. Suffice it to say that the question as to whether the Petitioners are entitled, to the injunction prayed for by them has not been conclusively decided. It is still pending, and is to be decided by the learned Munsif.

6. The controversy between the Petitioners and the Respondents giving rise to the instant petition is basically a dispute between private persons for which the remedy is under, the general civil law and not writ petition under Article 226 of the Constitution of India. In its decision rendered in Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, , the Hon"ble Supreme Court of India observed thus:

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 real 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 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.

7. In these circumstances, the appropriate remedy for the Petitioners is to pursue their application for injunction which is already pending before the learned Munsif and not writ petition under Article 226 of the Constitution of India.

8. The Court is of considered opinion that it will not be a sound exercise of discretion under Article 226 of the Constitution of India to interfere with the impugned order.

9. In the result, the petition fails and is dismissed summarily. The interim order dated 20th August 1993 shall stand discharged.