

(1994) 04 AHC CK 0033

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12511 of 1994

Committee of Management, Ratan Muni Jain Inter College
and another

APPELLANT

Vs

III Additional Civil Judge, Agra and others

RESPONDENT

Date of Decision : 22-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 39
Rule 1, Order 39 Rule 2, Order 43 Rule 1
Constitution of India, 1950 — Article 226

Citation : AIR 1995 All 7

Hon'ble Judges : G.S.N. Tripathi, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Judgement

This Judgment has been overruled by : Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged Committee of Management, Sri R.J.I. College, Agra and others, (1996) 2 AD 184 : AIR 1996 SC 1209 : (1996) 3 JT 21 : (1996) 2 SCALE 195 : (1996) 3 SCC 11 : (1996) 2 SCR 623 : (1996) 1 UJ 673

1. In this writ petition a prayer has been made for an order or direction in the nature of certiorari quashing the plaint and all proceedings in original suit No. 230 of 94, Sri Sweatambar S. Thanakwasi Jain Samiti and others v. Regional Dy. Director of Education; Agra Region, Agra. Further a writ, order or direction has been prayed for quashing the orders dated 4-4-94 and 5-4-94 passed by the IIIrd Addl. Civil Judge, Agra, respondent No. 1 (Annexures 20 and 23 to the writ petition). There is an additional prayer to restrain respondent No. 1, i.e. Addl. Civil Judge, Agra from taking any further proceedings in original suit No. 230 of 94 aforesaid.

2. The committee of management of Sri Ratan Muni Jain Inter College, Loha Mandi, Agra, through its Manager Sri Moti Lal Jain (Petitioner No. 1) and Sri Moti Lal Jain (Petitioner No. 2) have filed this petition for the reliefs aforesaid.

Respondent No. 5 is Sweatambar Sthanakwasi Jain Samiti, Loha Mandi, Agra and Sri Kamal Kumar Jain has been arrayed as respondent No. 6. He claims to be Manager of the Institution namely, Sri Ratan Muni Jain Inter College, Loha Mandi, Agra.

3. The said Institution is owned and managed by respondent No. 5 through the committee of management for over a decade under a scheme of administration approved by respondents 2 and 3. The last election of the committee of management was held on 21-6-1991, in which the committee or management when Sri Vinai Kumar Patni was elected as a President and Sri Moti Lal Jain, petitioner No. 2 was elected as Manager. This election was approved by the District Inspector of Schools (D.I.O.S. in short), on 22-6-91. On that date, he attested the signature of Sri Moti Lal Jain as Manager and ever since Sri Moti Lal Jain is heading of committee of management and is managing the affairs of the school.

4. Sri Kamal Kumar Jain, respondent No. 6 set up another rival committee of management with himself as the Manager. By exercise of political pressure upon respondents. 2 and 3, Sri Kamal Kumar Jain obtained an order in his favour. But that was upset on 27-4-92. Feeling aggrieved by that order, Sri Kamal Kumar Jain filed a civil misc. writ petition No. 23703 of 92. That writ petition was dismissed by Hon"ble Mr. Justice R. A. Sharma sitting singly on 22-9-92 (Annexure 8 to the petition) Sri Kamal Jain filed a special appeal before the Division Bench of this Court being special appeal No. 485 of 92. That appeal was dismissed by the Division Bench on 6-4-94 (Annexure 9 to the petition (Sri Kamal Kumar Jain had prayed for an interim order to restrain Sri Moti Lal Jain as Manager of the Committee of management. This prayer along with all other prayers was rejected by the court and the committee of management headed by Sri Moti Lal Jain was held to be the validly constituted committee of management to run the Institution. On the basis of misrepresentation or otherwise, Sri Kamal Kumar Jain obtained an order from the District Magistrate Agra to the Dy. Director of Education, Agra to reconsider the case of Sri Kumar Jain. Being influenced by the order of the District Magistrate, The D.I.O.S. Agra proceeded to attest the signature of Sri Kamal Kumar Jain on 23-3-94 as Manager of Sri Ratan Muni Jain Inter College (Annexure 13) to the petition). That was approved by the Dy. Director of Education, Agra on the same date behind the back of the petitioner, which was in sheer violation of principles of natural justice. That was again the violation of the orders of the High Court referred to above. So these authorities had no jurisdiction to pass this order. On the same date i.e. 23-3-94 the petitioners brought all the facts to the notice of the respondents 2 and 3 and the record was put straight. The D.I.O.S. suspended the operation of his order on the same day (Annexure 15 to the petition) and the Dy. Director of Education, Agra did the same on the very dte (Annexure 16 to the petition).

5. The petitioners were apprehending that Sri Kamal Kumar Jain might file some suit in the civil court. Therefore, in anticipation of any ex parte order being

passed, Sri Moti Lal Jain, petitioner No. 2 filed his caveat in the civil court u/s 148A, C.P.C. (Annexure 17 to the petition).

6. On 31-3-94, Sri Kamal Kumar Jain filed a suit No. 230 of 94 before the Civil Judge, Agra (Annexure 18 to the petition). The petitioners were not impleaded at time of interim hearing. The caveats of the petitioner were rejected mainly on the ground that the suit was not filed of interim hearing. The caveats of the petitioners were rejected mainly on the ground that the suit was not filed against them and they were not arrayed as defendants. An application for interim injunction under Order 39, Rules 1 and 2, C.P.C. was moved on that very date and the IIIrd Addl. Civil Judge, Agra, respondent No. 1 to whom the case was transferred, granted the injunction directing that the order of Dy. Director of Education and the D.I.O.S. dated 23-3-94 would remain in operative and they were further restrained for interfering in the functioning of Sri Kamal Kumar Jain as Manager wide order dated 4-4-94 (Annexure 20 to the petition). The petitioners applied on that very date to be impleaded. Objections were filed by Sri Kamal Kumar Jain and others and the application for impleadment was rejected by the IIIrd Addl. Civil Judge, Agra on 5-4-94.

7. According to the petitioners, the suit has been filed by concealing relevant facts and without making any reference to the writ petition filed by the respondent No. 6 and others and decided against them. The application for amendment was also rejected on wrong premise and illegal assumptions. That amounts to gross misuse of the court's process. The entire suit and the proceedings deserve to be quashed.

8. Sri Kamal Kumar Jain in his counter affidavit has alleged that against the order granting interim injunction, an appeal is maintainable against the order dated 4-4-94 under Order 43, Rule 1(u), C.P.C. before the District Judge Agra. The order rejecting the application for impleadment can also be challenged by means of a revision before the District Judge as the valuation of the suit No. 230 of 94 is only Rs. 50,000/- and a right of appeal and revision is thus, available to the petitioners. Hence in view of the alternative remedy, the writ petition is not maintainable.

9. u/s 9, C.P.C. the Civil Court has very wide powers to entertain suits of all nature except those in which the jurisdiction has been specifically or generally barred by any Act or law. The suit of the nature filed (Suit No. 230 of 94) supra is very well cognizable by the civil court and this Court should not interfere in exercise of extraordinary jurisdiction under Article 226 of the Constitution.

10. On the date on which the suit was filed, the Division Bench had not delivered the judgment in writ petition. So the cause of action was very much there on 3-3-94 the date on which the plaint was registered.

11. The crux of the matter according to Sri Kamal Kumar Jain is that the petitioners by their manoeuvring and manipulation wanted to displace the parent body, namely Shwetambar Asthanak Vasi Jain Samiti which is a registered

society and which founded Sri Ratan Muni Jain Inter College. The first attempt of the petitioner was to dislodge the parent body by setting up a fictitious society, namely R. M. Educational Society. That society has been cancelled by the Dy. Director of Firms.

12. Sri Ratan Muni Jain Inter College is now being managed by Shwetambar Asthanak Vasi Jain Samiti through its manager (Kamal Kumar Jain), who was elected by the society to look after the Institution. The petitioners are not entitled to any relief.

13. At the time of admission itself Sri Kesari Nath Tripathi, a Senior Advocate and Sri Ashok Bhushan were heard on behalf of respondents 5 and 6 at considerable stretch and this petition is being decided finally at the admission stage itself.

14. No doubt, in exercise of powers vested under Article 226 of the Constitution, this Court has wide powers to pass any suitable orders including the order to quash the proceedings in the suit aforesaid. This point has been stressed by the single Bench decision of this Court in Smt. Mahadevi v. Civil Judge, Farrukhabad, 1987 (1) ARC 406 (1987 ALJ 870) and in Ram Shanker alias Ramail v. Special Addl. District Judge (1985 (2) ARC 393) and a catena of several other rulings. On the other hand, rulings are also available to the effect that the court should restrain itself, as far as possible, from passing orders under Article 226 of the Constitution where alternative remedy is available. In that connection, the judgment of the Division Bench of this Court in writ petition No. 7375 of 1994 delivered on 4-2-1994 has been cited. In that petition also, the prayer was to quash the injunction order granted by Munsif in Civil Suit No. 80 of 1984 and also a prayer was there for quashing the plaint itself. The Division Bench disposed of the writ petition by holding that the petitioners had statutory remedy available against the injunction order and they could file an appeal under Order 43, Rule 1, C.P.C. They had also a remedy under Order 7, Rule 11, C.P.C. to pray before the learned lower court to reject the plaint itself. In that petition also, the jurisdiction of the civil court was challenged in view of provisions of Section 111 of the Co-operative Society Act. Despite that the Division Bench concluded that it was not proper to exercise extraordinary jurisdiction available under Art 226 of the Constitution and the petitioners were directed to avail the statutory remedy available under the Code of Civil Procedure. It was also directed that if a proper application was made under Order 7, Rule 11, C.P.C. before the Civil Court, that should be decided at the earliest, preferably within a week. So also the injunction application was also ordered to be decided within a fortnight after affording reasonable opportunity to the parties concerned.

15. A host of other rulings including the ruling of the Hon'ble Supreme Court were cited by Sri Kesari Nath Tripathi on behalf of respondents.

16. After considering the arguments advanced by the rival parties, I find that this is not a fit case in which this Court should interfere under Art. 226 of the Constitution except as noted hereunder.

17. In this case virtually the dispute is as to whether the committee of management headed by Kamal Kumar Jain in the proper committee of management or the one headed by Sri Moti Lal Jain, Petitioner No. 2. This point can be decided only after hearing Sri Moti Lal Jain. But unfortunately he was kept away from the suit. He was not impleaded. Nor the petitioner No. 1 was made a party. A still more unfortunate aspect was that although Sri Moti Lal Jain had entered the caveat and wanted to be heard, his application was dismissed. He tried to be pleaded as a party to the suit. Even this prayer was rejected. Then ultimately, he had no other place but to move to this Court. Of course, he could have availed the jurisdiction of the District Judge, who has an authority to hear appeal as well as revision. But somehow or the other, he has been advised to approach this Court.

18. I may simply and cursorily refer to the judgment delivered by Hon"ble R. A. Sharma, J. in Civil Misc. Writ Petn. No. 23703 of 92 (Annexure 8 to the petition) delivered on 22-8-1992. In that petition filed by Sri Kamal Kumar Jain, Sri Moti Lal Jain was cited as respondent No. 3. At page 85 the Hon"ble Judge has observed as follows:--

"According to respondent No. 3 (Moti Lal Jain), the election of committee of management was held on 21-6-1991 and he was elected as Manager, whose signature was attested by D.I.O.S. However, according to the petitioner (Kamal Kumar Jain) the election of the Committee of management was held on 2-7-1991 and not on 21-6-1991..... It is apparent that on 1-7-1991 the election of the managing committee of the society and not the election of the committee of the Management of the college, was held on 1-7-1991..... So far as the jurisdiction of the Dy. Director is concerned, it is confined to the adjudication of the managerial dispute of the committee of management of the Intermediate College. It has no concern with the society which might be running the institution. The order of the Dy. Director of Education does not suffer from any manifest error of law. The petition accordingly dismissed."

19. The judgment of the special appeal No. 465 of 1992 (Annexure 9 to the writ petition) arising out of the judgment of Hon"ble R.A. Sharma, J. supra is Annexure 9. At page 88, Hon"ble Judges have observed as follows:--

"The main submission of the learned counsel for the appellants is that two rival committees were laying claim to manage the Institution and as such the dispute came within the purview of Section 16A(7) of the Act which could only be decided by the Regional Deputy Director of Education."

20. At page 91 in the judgment, the following observations are vary relevant:--

"..... It is, therefore, obvious that the election which was held on 1-7-1991 as claimed by the petitioner-appellants, was that of the Society Sri Shwetamber Asthanak Vasi Jain Sangh and not of the committee of management of the Institution..... We have, therefore, not the least doubt that in the election held on 1-7-1991 it was the committee of management of the Society which had been

elected and not that of the institution. In these circumstances, there was no rival committee of management in existence which could lay claim to manage the affairs of the Institution..... We entirely agree with the reasons given by the learned single Judge and are of the opinion that the writ petition had rightly been dismissed."

Thus this second appeal was dismissed.

21. In that special appeal, a prayer for interim injunction was made (i.e. Annexure 10 to the petition). At page 93, it was prayed as follows:--

"It is, therefore, most respectfully prayed that this Hon"ble Court may graciously be pleased to restrain the respondent No. 3 from functioning as manager of the committee of management and further restrain him from doing any financial operation or this court may pass such other order or direction which may deem fit and proper in the circumstances of the present case for which the applicant shall ever pray."

22. It is manifestly clear that once the said appeal was dismissed, the prayer for interim injunction was also rejected accordingly. However, one thing is equally clear that Sri Moti Lal Jain was working as a Manager of the Committee of Management on behalf of parent body i.e. Swetambar Sthanakwasi Jain Simiti, Agra and he has been doing so till today. But a water shed came on 23-4-1994 when the District Magistrate, Agra directed the respondent No. 2 to look into the matter of Sri Kamal Kumar Jain. Being influenced by this direction of the District Magistrate, the respondent No. 2 issued an order on that very fateful day (23-4-1994) to the D.I.O.S. The D.I.O.S. was equally vigilant and obedient and without any loss of time and without application of mind and further without affording any opportunity to Sri Moti Lal Jain, attested the signature of Sri Kamal Kumar Jain. But as the luck would have had Sri Moti Lal Jain got a scent of this activity going on and on that very date, he moved the Dy. Director of Education, Agra, who passed an order staying the effect of attestation of signature of Sri Kamal Kumar Jain by D.I.O.S. (Annexure 13 to the petition) vide order of the same date (Annexure 14 to the petition). The D.I.O.S. closely followed the same and he also stayed the . operation of his order on that very date (Annexure 15 to the petition). Not only this Sri Moti Lal Jain filed his caveat in the court of Civil Judge on that very date apprehending some action by the civil court at the behest of Sri Kamal Kumar Jain. Sri Kamal Kumar Jain filed the suit on 31-3-1994. The prayer for hearing through the caveat was rejected and the application under Order 1, Rule 10, C.P.C. was also rejected and so an injunction order was passed in favour of the respondents.

23. A look at the plaint (Annexure 18) will show that in paragraph 3 it was alleged that the management of the school is being carried on under the Scheme of Administration prepared by the plaintiff No. 1 and duly approved by the defendant No. 1. Plaintiff No. 2 (Kamal Kumar Jain) is the Secretary of the plaintiff No. 1 and the Manager of the aforesaid Intermediate College under the

Scheme of the Administration. Thus the main basis of the suit was that Sri Kamal Kumar Jain was the Manager of the Institution and not Sri Moti Lal Jain (although not expressly stated). It is also clear that if the order dated 23-3-1994 was made inconsequential, the most affected person will be Sri Moti Lal Jain, because the authority to manage the Institution shall be immediately snatched away from him. But unfortunately despite this available circumstance, Sri Moti Lal Jain's application for being impleaded was rejected and an injunction was granted against the defendants not to interfere in the working of Sri Kamal Kumar Jain (plaintiff No. 2).

24. Against the application for being impleaded as a party (Annexure 21 to the petition), an objection (Annexure 22 to the petition) was filed by Sri Kamal Kumar Jain. In paragraph 5 of the objection, it is very relevant to note the following:--

"That the allegation of the applicant that he is the manager of Ratan Muni Jain Inter College, Agra, are absolutely false and baseless. He has not even disclosed as to how and under what scheme and under what authority, he alleges himself to be the manager.

That also shows that the authority of Sri Moti Lal Jain as the manager of the Institution was very much challenged by Sri Kamal Kumar Jain. Of course, I agree with learned Addl. Civil Judge, who rejected the application of Sri Moti Lal Jain when he has observed that Sri Moti Lal Jain had not expressly described his rights in his application for being impleaded. Another point which weighed with the learned Addl. Civil Judge is that the plaintiff is in a position of dominus litis and he cannot be compelled to add a party against his wishes. He further observed that the suit was not going to affect the rights of the 3rd party. But there is apparent inconsistency in the approach of the learned Addl. Civil Judge. Because at page 3, he has himself observed that the applicant (Moti Lal Jain) has stated that he is the present Manager of Sri Ratan Muni Jain Inter College. He though had not given any affidavit to that effect but the deficiency was made good by Sri Kamal Kumar Jain himself who denied the right of Sri Moti Lal Jain to act as a Manager. So the relevant controversy was there and it had to be decided by the learned Civil Judge as to whether Sri Kamal Kumar Jain was the Manager of the Society or Sri Moti Lal Jain. Being very much conscious of this position and without deciding this question of Managership, the court could not pass any effective decree. The learned Addl. Civil Judge overlooked this glaring feature of the case and he virtually shut his eyes with the germane point for determination as to who was, in fact, Manager of the Institution. Again it was clear that if Sri Kamal Kumar Jain was allowed to work as Manager, the term of Sri Moti Lal Jain will come to an automatic and unceremonious end and that too without hearing him, although he was very much available and knocking the doors of the court with a prayer for an opportunity to be heard. Such a gross injustice as has been done by the learned Addl. Civil Judge, could not have been imagined. He mechanically rejected the application of Moti Lal Jain, who prayed for being

impleaded as a party. The theory of dominus litus should not be over-stretched because it is the duty of the court to ensure that if for deciding the real matter in dispute, a person is necessary party, the court can order such person to be impleaded. Merely because the plaintiff does not choose to implead a person, is not sufficient for rejection of an application for being impleaded. The provisions of Order 1, Rule 10(2), C.P.C. are very wide and the powers of the court are equally extensive. Even without an application to be impleaded as a party, the court may at any stage of the proceedings order that the name of any party, who ought to have been joined whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. So the learned Addl. Civil Judge was totally wrong in believing that Sri Moti Lal Jain's impleadment was not necessary for proper adjudication of the case. Although at page 4 of the judgment (page 153), while dealing with the point of dominus litus that the court may consider whether the joining of a person is essential or not but still he has proceeded to delude himself that even without the impleadment of Sri Moti Lal Jain, an effective decree could be passed. It amounts to play Hamlet without the prince of Denmark.

25. This way the learned Addl. Civil Judge has clearly fallen into a grave error by rejecting the application under Order 1, Rule 10, C.P.C. moved by Sri Moti Lal Jain. Similarly he was wrong in rejecting his caveat and not permitting Sri Moti Lal Jain to raise his points the grant of interim injunction and still passing an interim injunction order which would vitally affect him.

26. All these narrations of events and discussion of legal position are there to guide the learned Addl. Civil Judge in his proper judicial functioning. So far this court is concerned, it has ample jurisdiction to set the things right under Article 226 of the Constitution.

27. Thus, the petition deserved to be allowed partly. The prayer for quashing the plaint and proceedings in original suit No. 230 of 94 supra is rejected mainly on the ground that the petitioners have an alternative remedy under Order 7, Rules 10 and 11, C.P.C.

28. The prayer for quashing the order dated 4-4-1994 (Annexure 20 to the petition) is allowed and so is the case with the order dated 5-4-1994 (Annexure 23 to the petition) rejecting the application for impleadment. Both these orders are quashed totally. The application for impleadment as defendant by Sri Moti Lal Jain is allowed. The proceedings before the learned IIIrd Addl. Civil Judge, Agra in Original Suit No. 230 of 94, Shri Swetambar Asthanakwasi Jain Samiti v. Regional Dy. Direction of Education and others stands transferred with immediate effect to the court of the District Judge, Agra, who shall transfer it to any other court of competent jurisdiction, other than Sri Chandra Bhan, IIIrd Addl. Civil Judge, Agra.

29. It is made clear that after Sri Moti Lal Jain's impleadment as defendant, he

shall be given an opportunity to file objections against the interim injunction application and also the written statement against the plaint. The application for interim injunction would be considered afresh again after hearing the parties by the learned Civil Judge, to whom the case is transferred.

30. Till the final disposal of the injunction application, Sri Moti Lal Jain shall continue to function as the Manager of the Committee of Management of Sri Ratan Muni Jain Inter College, Laha Mandi, Agra and nobody shall be allowed to disturb his functioning as such. After any order passed under Order 39, Rules 1 and 2, C.P.C. affected party will have statutory remedy to file appeal/revision as provided under the Code of Civil Procedure.

31. It is made clear that no observation made in the body of the judgment shall bind the lower courts while deciding the case finally and that shall remain confined to the decision of this writ petition.

32. Order accordingly.