
(2007) 01 RAJ CK 0074
In the Rajasthan High Court

Dinesh Chandra Swami and Others

APPELLANT

Vs

Mahesh Chandra Swami and Others

RESPONDENT

Date of Decision : 19-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2007) 2 RLW 1002

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—What comes on surface in this boiling pot of litigation now is the impugned order dated 18.9.2006 passed by learned ADJ No. 2, Jaipur allowing the application under Order 7 Rule 11 CPC and rejecting the Civil Suit filed by Mandir Shri Madho Behari Ji and one Mr. Dinesh Chandra Swami, claiming partition of suit property, rendition of accounts and perpetual injunction against the defendant from alienating such property, appointment of Receiver etc.

2. In the chequered history of litigation in this matter not only some civil suits were filed, but this Court had also occasion to deal with the litigation between the parties in writ jurisdiction.

3. First S.B. Civil Writ Petition No. 1008/1982 (Prakash Chandra Swami v. State of Rajasthan) came to be allowed by the learned Single Judge of this Court in the following terms:

The result is that this petition is allowed in terms that all proceedings taken up before the respondent No. 2 and 3 under the Act or elsewhere including the registration of the said temple as public trust, the impugned order dated 26.10.1981 (Annexure 17), the concerned entry in the Gazette notification dated 25.6.1981 (Annexure 16) in so far as it held the said temple as "public trust" or the State Supurdagi temple or "the Thikana Temple" are set aside. The Darobast temple of Shri Madho Bihariji is declared as private trust with partial dedication.

It is further declared that after the death of late Shri Tota Ramji, the said Darobast temple and the shops devolved in succession upon all his heirs and successors. In accordance with rules of inheritance as contemplated under the Hindu Law. It is also declared accordingly that the properties of the said Darobast Temple in the hands of the said heirs and successors shall be subject to the charge of discharging and fulfilling the functions of Bhog, Sewa Pooja, upkeep and maintenance of the temple etc. The shops, however, shall remain wholly private. The parties to bear their own costs.

4. The said writ petition was filed challenging the order (Annexure 17) to the writ petition dated 26.10.1981 passed by the Commissioner of Devasthan Department, whereby the Commissioner of Devasthan Department directed a fresh enquiry at the hands of the Asstt. Commissioner, Devasthan Department as to whether the conditions of grant of said temple known as "Shri Madho Behari Ji Ka Mandir" were satisfied or not and whether the Seva Pooja were being performed in accordance with the conditions of grant or not. By the said order dated 26.10.1981, the original order dated 21.12.1970 directing the registration of the trust as a Public Trust was also quashed. Thus with the writ petition filed against the said order dated 26.10.1981 having been allowed by the learned Single Judge, the said order dated 26.10.1981 itself came to be quashed.

5. The matter was taken to the Division Bench by way of appeal against the said judgment of learned Single Judge by respondent therein namely Mahesh Chand Swami and the Division Bench allowed the appeal vide its judgment dated 21.12.2005. It would be of interest to reproduce the relevant paras of the judgment here:

In so far as judicial precedents cited by the learned Counsel representing legal heirs arrayed as respondents are concerned, the same are not at all applicable to the facts of the case in hand. We have in sufficient details given facts of each of the judicial precedents cited before us and the observations made by the Hon''ble Supreme Court on such facts in relation to the questions that might have been debated. We need not thus take into our hands exercise of distinguishing the judicial precedents one by one. Suffice it however to say that the observations made by the Hon''ble Supreme Court which alone, sans facts, have been relied upon, came into being in peculiar facts and circumstances of those cases. There is not a single judicial precedent that might have been cited before us where the relief in question might pertained to pure and simple individual property dispute between the parties. Further, none of the judicial precedent-scited before us pertains to initial controversy between a citizen and the government and which might have been converted into a dispute between individuals only. We may reiterate that the writ petition was filed by Prakash Chandra Swami challenging order dated 26.10.1981 (Annexure 17) and the only dispute was as to whether Mandir Madho Behariji, Station Road, Jaipur was a government Supurdgi Temple or Thikana Temple. Legal heirs impleaded as petitioners or respondents are happy and satisfied with the decision of the learned Single Judge who quashed

the impugned order (Annex. 17). Concededly, dispute with the government had come to an end. Government has not filed appeal against the order of the learned Single Judge. There is only a part of the judgment which relates to the decision on inter se rights of the legal heirs arrayed as petitioners-respondents that the dispute survives. This kind of dispute, we are sanguine, could not possibly be agitated by way of writ petition.

Learned Counsel representing legal heirs arrayed as respondents, as a last resort, contended that once the pleadings are complete and there is no dispute with regard to the authenticity of the documents which have been relied upon by both the parties, Court should determine the controversy relating to inter se rights of the legal heirs of Prakash Chandra Swami. We do not want to comment upon the correctness of pleadings and authenticity of documents even though it is urged by the other side that in a regular suit there was scope to lead proper evidence and more documents. Suffice it to say that a small deviation from established procedure might be permissible but wholesale violation of the same would result into laying down wrong law. A dispute which could be determined only by procedure established by law governing civil suit should not be permitted to be determined by way of writ petition and that too where original cause of action had nothing to do with the said dispute. Further, the dispute between legal heirs of Prakash Chandra Swami is essentially of civil nature and in our considered view, such a dispute has necessarily to be decided by civil courts that have jurisdiction to try all suits of civil nature.

Before we may part with this order, we would like to mention that learned Counsel representing legal heirs of Prakash Chandra Swami arrayed as respondents, was at pains to explain to us that the findings recorded by the learned Single Judge with regard to the right of managing the property in dispute by all the legal heirs is correct and therefore, needs to be sustained. It was urged before us that the findings recorded by the learned Single Judge have no exception whatsoever and therefore, another bout of litigation would be a waste of time. Mr. Alok Sharma, learned Counsel representing legal heirs arrayed as petitioners, joined issue with the counsel for the other side. Once, we are relegating parties for determination of their inter se rights with regard to the succession or management of the property in dispute to civil court or any other court competent to try the issue, we need not comment anything further as that might prejudice either of the parties before the concerned court.

Contention of the learned Counsel representing legal heirs arrayed as respondents that the appellants had no locus standi to file the present appeal as order (Annexure 17) which was challenged in the writ petition has been set aside and therefore, there was no occasion for them to have filed the present appeal, needs to be summarily rejected. In fact, appellants are aggrieved of the part of judgment that deals with inter se rights of the legal heirs of Prakash Chandra Swami in succeeding to or managing the properties in dispute and it is only that part of the order which has been agitated in the present appeal.

In view of the discussion made above, the appeal is allowed. All observations, findings or directions as might pertain to the inter se rights of legal heirs arrayed as petitioners and respondents would stand set aside with liberty to the parties to settle this issue before an appropriate forum that might also include civil courts. In peculiar facts and circumstances of the case, costs are made easy.

6. The net result was that while quashing of the impugned order dated 26.10.1981 (Annexure 17) passed by the Commissioner, Devasthan became final and parties were common on this point and no challenge was laid to that part of the judgment of learned Single Judge, for the inter-se disputes and for decision on inter-se rights of the legal heirs arrayed as petitioners as well as respondents, the Division Bench concluded that the same could not be pronounced upon or adjudicated upon in the writ jurisdiction and therefore, the parties were relegated to the appropriate forum, that may also include Civil Courts. It appears that parties are at logger-heads" on their inter-se rights over the property, which was granted by the erstwhile State to the ancestor of the warring groups, namely late Shri Tota Ram Ji.

7. Learned counsels argued their respective clients' rights at length and took this Court through the judgments of learned Single Judge as well as Division Bench repeatedly besides various other case laws, but it appears to this Court that instead of going on deeper and making any observations on the respective rights and rival claims of the parties, this Court is concerned in the present appeal only with respect to validity of the impugned order passed by the learned trial court allowing the application under Order 7 Rule 11 CPC and rejecting the suit at the threshold holding it as not maintainable or barred by law, which is the ambit and para meters of Order 7 Rule 11 CPC.

8. On this, Mr. Alok Sharma, learned Counsel appearing for the respondents urged before this Court that in view of bar of Section 73 contained in Rajasthan Public Trusts Act, 1959, the suit was rightly held barred by law by the trial Court. Section 73 of the said Act reads as under:

3. Bar of Jurisdiction-Save as expressly provided in this Act no civil court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act or in respect of which the decision or order of such officer or authority has been made final and conclusive.

9. He also submitted that all the four questions framed by the learned trial Court, as stated in the impugned order were rightly decided in favour of the defendants and the learned trial court had committed no error in allowing the application under Order 7 Rule 11 and therefore, the present appeal deserves to be dismissed.

10. As against this, learned Counsel for the plaintiffsappellants Mr. K.K. Mehrishi, Senior Advocate strenuously urged that the impugned order indicates an absolute disregard by the learned trial court for the findings and observations

made by the learned Single Judge of this Court as well as Division Bench while dealing with the matter and the very fact that the Division Bench of this Court relegated the matter of inter-se disputes to be decided by Civil Court or other appropriate forum, clearly indicated that the parties could file civil suit claiming their rights and the trial Court had grossly erred in throwing away the suit by the impugned order by allowing the application under Order 7 Rule 11 CPC. He culled out the law relating to Order 7 Rule 11 in a recent judgment of Hon''ble Supreme Court in the case of Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, in the following terms:

The real object of Order 7 Rule 11 is to keep out of courts irresponsible law suits. Therefore, Order 10 CPC is a tool in the hands of the courts; and by resorting to it and by a searching examination of the party, in case the court is prima facie persuaded of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 can be exercised.

The basic question to be decided while dealing with an application filed under Order 7 Rule 11 (a) CPC is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get around Order 7 Rule 11. The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 (a) taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. It is true that by ingenious drafting a cause of action in the nature of red herrings cannot be brought into the judicial arena.

11. Having heard the learned Counsels for final disposal of this appeal at the initial stage itself at length and having perused the relevant material, this Court is of the opinion that the learned trial Court has erred in allowing the application under Order 7 Rule 11 and rejecting the suit at the threshold.

12. Since the issue relating to the trust being Public Trust or Private Trust came to be decided by the learned Single Judge vide judgment dated 17.11.1993 and those findings were not apparently disturbed by the Division Bench because of lack of any contest on this issue by either side, that issue became final and is no longer res-integra. The obvious reason why the Division Bench allowed the appeal to the extent of decision of learned Single Judge on the inter se disputes, was that such disputes could not squarely fall within the domain of writ jurisdiction and therefore, the Division Bench considered it proper to relegate the parties to avail their remedies before the Civil Court or other appropriate forum. The emphasis and contention of learned Counsel for the respondents Mr. Alok Sharma before this Court that appropriate forum was the authorities under the Rajasthan Public Trusts Act excluding the jurisdiction of the Civil Courts, in the opinion of this Court, is misconceived and deserves to be rejected. Once the

issue that the trust in question namely "Mandir Shri Madho Behari Ji" is not a public trust had become final at two levels of this Court holding it to be a private trust, the question of applying the provisions of Rajasthan Public Trust Act, 1959 could not arise. Outside the ambit and scope of the said Act of 1959, naturally such inter-se disputes could only be decided by civil suit filed u/s 9 of CPC.

13. The other objection as to earlier suits already filed and pending before the trial court and thus the objection of Order 2 Rule 2 coming in the way of the plaintiffs is also cleared by the fact that the earlier suits were filed only for permanent injunction, whereas the present suit was filed by the plaintiffs seeking the relief of partition, rendition of accounts and perpetual injunction. Thus the fields of two civil suits, though which may be over-lapping to some extent, were different and therefore, the present suit could not be thrown out on the anvil of Order 2 Rule 2. It would be apposite to refer here the observations of Division Bench of this Court in the case of Birla Cement Works and Another Vs. State of Rajasthan and Others,

Rule 2 of Order 2 envisages that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action as on the date of filing suit or instituting proceedings. The principle underlying the provisions of Order 2 Rule 2 is that the plaintiff is not allowed to split relief arising out of the same cause of action by filing separate suit. No one should be vexed twice by splitting the claims and splitting the remedies. However, it is not envisaged that a suit should include also the reliefs in the first instance in respect of cause of action which arises subsequent to the filing of the suit giving foundation for new proceedings. If subsequent cause of action gives rise to new reliefs or for additional reliefs, which he can claim, the filing of subsequent proceedings in respect of subsequent cause of action claiming similar reliefs, alongwith additional reliefs or on additional grounds is not barred. We are, therefore, of the opinion that the preliminary objection raised on the principle of Order 2 Rule 2 was misconceived in respect of the challenge to the demand notices issued subsequent to the decision of the earlier writ petition.

14. The other objections raised in Order 7 Rule 11 application before the trial Court, which have been upheld by the trial Court namely limitation and the issue relating to Notification dated 5.12.1997 are also not sustainable and deserve to be over-ruled. Neither question of limitation could be applied in the claim of partition of the property nor it could be said that the cause of action in the present case also arose singularly and indivisibly only on 27.12.1986, i.e. the date of death of Prakash Chandra Swami. Therefore, the computing the limitation of 12 years from the said date was simply misconceived for the trial Court. It is equally true for the last issue to hold that Section 73 of the Public Trust Act applied and the suit was barred by law.

15. What tells upon the tenor of the impugned order is also the manner, in which the learned trial Court has casually referred the binding judgment of Division Bench of this Court. It appears that the learned trial Court wholly skipped and by-

passed the letter and spirit of the binding judgment for the reasons best known to him while referring the same only for the purpose of deciding the issue of limitation, which too has been wrongly decided. The above quoted portion of the judgment of Division Bench amply makes it clear that the Division Bench relegated the parties to the remedy of civil suit, which was required to be decided on merits by the trial court.

16. In view of this, the present appeals deserve to succeed and the same are hereby allowed. The impugned order of the learned trial court dated 18.9.2006 is quashed and set-aside and both the civil suits No. 874/2006 and No. 875/2006 are restored to the file of learned trial Court, which may be decided on merits in accordance with law without the objections as to limitation, Order 2 Rule 2 bar and bar of jurisdiction. Thus all the four objections upheld by the learned trial Court are over-ruled and the learned trial Court is directed to decide the suits on merits in accordance with law expeditiously.

17. There is no order as to costs.