

(1996) 02 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 428 of 1994

Dwarka Prasad

APPELLANT

Vs

Mishri Lal

RESPONDENT

Date of Decision : 20-02-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Partnership Act, 1932 — Section 14

Citation : (1996) 1 RLW 582 : (1996) 2 WLC 428 : (1996) 1 WLN 204

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—This misc. appeal has been filed by the appellant against the order dated 23.7.1994 passed by learned Additional District Judge No. 2, Jodhpur in Civil Misc. Case No. 41/94 known as Mishrilal v. Dwarka Prasad whereby it has granted temporary injunction to the respondent under Order 39 Rule 1 and 2 read with Section 151 CPC to dispose of a portion of plot No. 7 and the present appellant has been restrained from interfering in disposing of a portion of the aforesaid plot which is marked as "D" "E" "G", "H" in the sketch map accompanying with the plaint.

2. Aggrieved against the aforesaid order passed by the learned trial court the appellant has preferred the present misc. appeal.

3. Brief facts of the case necessary to be noticed for disposal of the instant appeal are that respondent Mishrilal filed a suit for dissolution of partnership and rendition of accounts alongwith an application for temporary injunction under Order 39 Rule 1 and 2 CPC stating therein that the respondent alongwith his brother Tejraj had obtained plot No. 7 on 20.2.1948 by way of allotment for Rs. 5156 and 4 annas and they have paid the same on 10.3.1948.

4. The aforesaid plot No. 7 is situated at Heavy Industrial Area, Jodhpur

measuring 600 x 275 ft. It is also alleged that the respondent and Tejraj started a business in partnership in the name and style of M/s F.R. Metals Industry. Later on the partnership between Tejraj and respondent was dissolved on 19.10.1960 and a dissolution deed was written on 21.4.1961 on the basis of which every assets of M/s F.R. Metals Industries was given to Mishrilal respondent.

5. After dissolution of the aforesaid firm the respondent created a new partnership business on 29.10.1962 with appellant and a partnership deed was executed between them on 21.11.1962. The aforesaid partnership was again dissolved and another partnership was created on 5.11.1964 in the same name and style as M/s F.R. Metals Industries.

6. In the subsequent partnership business Mst. Lichhma Bai was introduced as a partner in addition to the appellant and the respondent. According to the partnership deed dated 5.11.1964 the share, of respondent was agreed to be 50%. The share of Smt. Lichhma Bai was agreed to 20% and the share of appellant was agreed to 30%. According to the terms and conditions of the partnership deed dated 5.11.1964 in case of death of any of the partners the share of the deceased partner was agreed to devolve upon his/her heirs and partnership to continue. There is clear stipulation in partnership deed dated 5.11.1964 that partnership would be at will and the firm may be dissolved by any partner giving notice in writing to other partners of his intention to dissolve the firm.

7. Indisputably Mst. Lichhma Bai has expired and her share in partnership has devolved upon respondent Mishri Lai.

8. It is also alleged in the plaint that on 27.5.1981 a loan of Rs. 3,80,000/- was taken by the firm from Rajasthan Financial Corporation. It is alleged in the plaint that in the year 1983 the business of the firm was closed and after some time in the year 1984-85 the production was again started but due to non co- operation of the appellant now a days the factory is completely closed. It is also averred that the loan amount is being increased day by day and the Rajasthan Financial Corporation is charging compound interest with penal interest and upto 30.4.1994 the amount has been increased upto Rs. 16,55,220/-

9. It is also brought to my notice that on the aforesaid loan the firm is being compelled to pay approximately Rs. 24,000/- per month as interest on the said amount and if the loan taken by the firm is not paid immediately, the property of the firm in dispute is in danger of being watsted by way of auction by Rajasthan Financial Corporation.

10. The facts stated in the plaint has been reiterated in the application moved under Order 39 Rule 1 and 2 CPC supported with an affidavit. In support of the averments made in the plaint number of documents were also brought on record such as the allotment order about plot in question dated 20.2.1948, receipt of payment of premium in lieu of allotment, dissolution of partnership deed dated 21.4.1961, the partnership deed entered into between the appellant and the

respondent on 21.11.1962 and partnership deed dated 5.11.1964 between the appellant and the respondent alongwith Mst. Lichhma Bai.

11. Although the present appeal is posted before me for admission today but with the consent of the learned counsel for the parties I have heard the arguments on merit and propose to decide the appeal itself on merit at admission stage.

12. It is contended by the learned counsel for the appellant Shri M.K. Trivedi that for granting temporary injunction under Order 39 Rule 1 and 2 CPC three conditions are required to be satisfied. According to Shri Trivedi if any one of the conditions precedent is missing then the respondent was not entitled to obtain temporary injunction under Order 39 Rule 1 and 2 CPC. According to him the respondent has failed to establish a prima-facie case, balance of convenience and irreparable loss in his favour, therefore, the learned trial court has illegally granted temporary injunction in the present case.

13. It is strenuously argued before me by the learned counsel for the appellant that the learned trial court has recorded a finding in para 12 of its order that a portion of plot No. 7 which is proposed to be disposed of by the respondent is held to be the plot of firm in which the appellant is also a partner as such both, the appellant and the respondent, are the joint owner of the plot in question which can not be allowed to be disposed of by the respondent alone. According to Shri Trivedi if the aforesaid finding recorded by the learned trial court is accepted then the respondent was not entitled to obtain a temporary injunction.

14. The aforesaid argument advanced on behalf of the appellant is refuted by learned counsel Shri H. C. Jain appearing on behalf of the respondent. Shri Jain has invited my attention towards the finding recorded by the learned trial court in para 11 of its order where a positive finding is recorded to the effect that from the material available on record it appears that the plot No. 7, a portion of which is proposed to be disposed of by respondent, exclusively belong to him. According to Shri Jain the aforesaid finding about prima facie case is sufficient to grant temporary injunction in the present case.

15. Learned counsel for the respondent also challenged the correctness of the finding recorded by the learned trial court in para 12 of its order on the ground that the basis for recording the said finding is that on earlier occasion when a portion of plot No. 7 was disposed of to Abex Tubes Pvt Ltd. then the appellant has given power of attorney to Jeevraj Kanungo.

16. In support of his aforesaid contention the learned counsel Shri Jian placed reliance on a decision rendered by a Division Bench of Karnataka High Court in the case of the The Vijaya College Trust Vs. The Kumta Co-operative Arecanut Sales Society Limited and another, wherein it is ruled that since son had joined his father in sale deed executed by his father it does not mean that the properties held by the father are ancestral. Many times son is joined by way of abundant caution.

17. Learned counsel for the respondent brought to my notice that earlier son had joined in signing the sale deed in favour of Abex Tubes Pvt. Ltd. as the purchaser was insisting that it should also be signed by the son in abundant caution.

18. I have given my thoughtful consideration to the rival contentions raised at the bar. I am of the opinion that once it is established from the material on record that the plot in question was acquired by Tejraj and Mishrilal on 20.2.1948 and both of them had paid the premium then this property will not be treated to be the property of the firm. It is true that in the allotment order in stead of Tejraj and Mishrilal M/s Tejraj and Mishrilal is written upon which the learned counsel for the appellant is giving emphasis.

19. I am not impressed with the arguments of the learned counsel for the appellant because the name of the firm which was constituted with Tejraj and Mishrilal was not named as M/s Tejraj and Mishrilal but it was functioning in the name and style of M/s F.R. Metals, therefore, from one word "M/s" used in allotment deed I am not impressed that this property was acquired u/s 14 of the Indian Partnership Act by the firm M/s F.R. Metals. It is prima facie sufficient to hold that this property was acquired by two brothers independently.

20. Assuming for the argument sake that this property was acquired by the firm M/s F.R. Metals constituted by Tejraj and Mishrilal even then the present firm which has been constituted after dissolution of the aforesaid firm will not be deemed to be the property *of the present firm.

21. My aforesaid view is further fortified from the dissolution deed dated 21.4.1961 by virtue of which entire assets of M/s F.R. Metals had been given to Mishrilal, therefore, Mishrilal alone became the absolute owner of the plot in question, Contention contrary to it raised by the learned counsel for the appellant to the effect that the appellant will become a co-owner of the property is not acceptable inasmuch as the present partnership came into existence on 5.11.1964, therefore, whatever property was acquired earlier by the respondent will not become ipsofacto property of the present firm merely because it is used for the business of the present firm.

22. It is specifically held that the property belonging to a person in absence of an agreement to the contrary does not on the person entering into a partnership with others become the property of the partnership merely because it is used for the business of the partnership.

23. In my humble opinion it would become a property of the partnership only if there is an agreement expressed or implied that the property under the agreement of partnership to be treated as a property of the partnership. According to the provisions of Section 14 of the Indian Partnership Act for a property to become the property of firm it must have been brought into the stock of the firm by the partners originally when the firm was formed or subsequently acquired by purchase or otherwise in course of the business of the firm.

24. In the present case there is no evidence to show that the plot in question was brought into the stock when the firm was originally formed either on 29.10.1962 or 5.11.1964. In fact 5.11.1964 is to be taken to be the relevant date for taking into account as to whether the plot in question was brought into the stock of the present firm.

25. From the aforesaid discussion I am of the opinion that the finding recorded by the learned trial court about prima facie title in favour of the respondent in para 11 was sufficient to grant temporary injunction, therefore, in the present case first condition precedent is satisfied and the finding recorded by the learned trial court in para.12 is to be over looked having no bearing on the merit of the case in view of the detailed discussion made in the preceding paragraphs.

26. As regards the balance of convenience and irreparable loss is concerned, I am at one with the finding recorded by the learned trial court. The only grievance of the learned counsel for the appellant is that since the loss alleged in the plaint can be compensated in terms of money, therefore, it cannot said to be irreparable loss. According to learned counsel for the appellant irreparable loss means a loss which cannot be compensated in terms of money.

27. I am not impressed with the aforesaid argument. Here in the present case the entire property of the firm is at stake and approximately Rs. 24,000/- per month interest is accruing on the firm while its production is closed and if immediate payment is not made the entire assets and the property of the firm may be put on auction and there is danger of its properties to be wasted on thrown away price which is to be arrested by this Court by maintaining the order passed by the learned trial court which is eminently just and proper.

28. Learned counsel for the respondent Shri Jain gave an undertaking before me on behalf of respondent who is present In court after consulting him that in case the plot in question is found at the time of trial to be the property of firm then the same may be computed in his share.

29. Nothing has been brought to my notice which may lead to believe that the learned trial court in granting impugned temporary injunction has acted arbitrarily, perversely, capriciously or in disregard of some sound legal principles.

30. It is settled principle of law that granting or refusing temporary injunction is a discretionary character. This Court ordinarily sitting in appeal will not interfere with the exercise of the discretion of the trial court and will not substitute its own discretion in place of discretion exercised by the learned trial court.

31. As a result of the aforementioned discussion the instant appeal lacks merit and it is hereby dismissed with costs assessed to Rs. 2,000 and the order granting temporary injunction by the learned trial court on 23.7.1994 is hereby affirmed.

32. It goes without saying that any factual observations made in this judgment will not come in the way of the parties at the time of trial.