
(1978) 12 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Revision Petition No's. 542 of 1974 and 278 of 1976

Gopal Singh and Others

APPELLANT

Vs

Shanker Singh

RESPONDENT

Date of Decision : 06-12-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10

Citation : (1978) WLN 477

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agrawal, J.—Both these revision petitions arise out of Civil Original Case No. 384 of 1972 which was originally filed by the respondent, Shankersingh against the petitioners in the Court of Munsif City, jodhpur, and which was subsequently transferred to the court of Additional Civil Judge, Jodhpur. Civil Revision petition No. 542 of 1974 has been filed against the order dated 13th September 1974 passed by the Munsif City, Jodhpur and Civil Revision Petition No. 278 of 1976 has been filed against the order dated 30th March, 1976 has been passed by the Additional Civil Judge, jodhpur.

2. The parties to these proceedings belong to the Raona Rajput Community, which runs a school known as Shri Umed Multi Purpose Higher Secondary School (hereinafter referred to as "the School") in Jodhpur. The Raona Rajput community also have an organisation known as the Raona Rajput Sabha (hereinafter referred to as the sabha), which a society registered under the Societies Registration Act. The activities of the Sabha are governed by a Constitution which provides for the election of Pratinidhi Sabha and a President and a Manager of the School There is a separate Constitution far the administration of the School According to the Constitution of the Sabha, the Pratinidhi Sabha elects the President of the Sabha and the Manager of the School once in three years. According to paragraph 5 of the Constitution of the School,

the term of office of the Manager of the School is ordinarily for three years but it can be extended for a period not exceeding one year if the elections are not held in due time owing to some unavoidable circumstances. In the election, that was held on 13th June, 1968, Shri Kalu Singh was elected as the President of the Sabha and Shri Gopal Singh, petitioner No. 1, was elected as the Manager of the School. The next election was held on 12th June, 1971 but as regards the said election there is a dispute between the parties. The petitioners claim that in the said elections, Shri Karan Singh was elected as the President of the Sabha as well as the Manager of the School, whereas, according to the respondent, Shri Kalu Singh was elected as the President and the respondent was elected as the Manager of the School. In view of the aforesaid dispute, the respondent filed a suit, which has given rise to these revision petitions. In the said suit, the respondent has prayed for the following reliefs:

(i) A declaration that the plaintiff respondent is the elected Manager of the School and that he only is entitled to hold that office for the whole term.

(ii) (By way of consequential relief) an injunction restraining the defendant-petitioner from interfering with the functions of the Manager of the School and also prohibiting any of the defendant-petitioners from describing himself as the Manager of the School.

(iii) An injunction restraining the defendant-petitioners from working against the Sabha or any office bearer of the Sabha by organising functions.

3. In paragraph two of the plaint of the suit aforesaid, the plaintiff respondent has also asserted that the term of office of the Manager of the School is three years.

4. The said suit has been contested by the defendant-petitioners and before the suit could be disposed of, the term of three years of the Manager of the School came to an end in June, 1974, and fresh election became due. On 27th August, 1974, an application was moved on behalf of the defendant-petitioners before the Munsif City, Jodhpur, wherein it was submitted that the period of three years for which the plaintiff respondent claims to have been elected as the Manager of the School has already expired and that the plaintiff had, therefore, no legal right to continue in office and the plaintiff's suit had, therefore, become infructuous as no effective decree could be passed in the suit. By the application aforesaid, the defendants prayed that the suit be dismissed. The said application was disposed of by the Munsif City, Jodhpur, by his order dated 17th September, 1974, whereby the said petition was dismissed on the view that the existing office bearers were entitled to continue till fresh elections were held and that it could not be said that the points arising from the pleadings were purely of academic nature. Aggrieved by the aforesaid order of the Munsif City, Jodhpur, the petitioners have filed Civil Revision Petition No. 542 of 1974.

5. During the pendency of the said revision petition in this Court, another application was filed by the defendant-petitioners in the Court of Additional Civil

Judge, Jodhpur (in which court, the suit had been transferred) on 12th November, 1975, wherein it was stated that a suit for injunction was filed by the plaintiff-respondent along with Kalusingh against the defendants & other persons & the said suit had been dismissed by the Additional Civil Judge, Jodhpur, on 9-10-1975 & that on 2-11-1975, fresh election had been held & in the said election Shri Karansingh had been elected as the President of the Sabha and Shri Jaisingh Solanki had been elected as the Manager of the School. In the said application, the defendant-petitioners submitted that in view of the said election, the questions which have been raised for determination in the suit are purely of an academic interest and that the decision of the court one way or the other would have no impact on the position of the panics and that the suit had become in fructuous in as much as no effective relief can be given to the plaintiff in the suit. The said petition was disposed of by the Additional Civil Judge, Jodhpur, by his order dated 30th March, 1976 whereby it has been held that the question as to whether the suit had become in fructuous is already under consideration of this Court in the revision petition filed against the earlier order and that no order could be passed in the matter till the matter was disposed of by this Court. Aggrieved by the aforesaid order of the Additional Civil Judge, Civil Revision Petition No. 278 of 1976 has been filed by the petitioners.

6. Shri G.S. Mehta, the learned Counsel for the petitioners, has submitted that under the Constitution of the Sabha as well as the Constitution of the School, the term for which the Manager is elected is only three years & that the term of the plaintiff Shankersingh even assuming that he was elected as the Manager of the School on 12th June, 1971, came to an end in June, 1974 and thereafter he could not continue as the Manager of the School and, therefore, no effective relief can be given in the suit filed by him and therefore the suit should have been dismissed by the Munsif City, Jodhpur. The learned Counsel for the petitioners has also submitted that fresh election for the office of the Manager of the School was held on 2nd November, 1975 and that in view of the aforesaid election, the plaintiff-respondent cannot claim any right what so ever to continue as the Manager of the School after 2nd November 1975 and, therefore, no effective relief can be granted to the plaintiff-respondent in the said suit and that the Additional Civil Judge, Jodhpur ought to have dismissed the suit as having become infructuous.

7. Shri M.L. Kalla, the learned Counsel for the respondent, has submitted that the term of the Manager of the School is governed by the Constitution of the Sabha & that according to the said constitution, the Manager is entitled to continue to function as Manager till the next elections are held. The submission of the learned Counsel is that there is a dispute between the parties as to whether elections were actually held on 2-11-75 &, therefore, the respondent is entitled to continue as the Manager & it cannot be said that the suit had become infructuous. The learned Counsel for the respondent has further submitted that an effective decree can be passed in the suit of the respondent which can be binding on the successors of the defendants under Order 22 Rule 10 of the CPC

and therefore, it cannot be said that the suit raises purely academic questions.

8. A perusal of the constitution of the Sabha (Ex. A-1) shows that the President of the Sabha & the Manager of the School are to be elected by the Pratinidhi Sabha once in three years and in the said Constitution, it is also provided that if on account of some reason, the office falls vacant during this period, the Pratinidhi Sabha will elect the new office bearer. The Constitution of the School (Ex. A 2) lays down the following term of office of the Manager or the School:

5. TERMS OF OFFICE : (A) : The term of office of the Manager & the Managing Committee shall ordinarily be for three years, but under special circumstances, the election may be held earlier.

(B) The term of office of the Manager shall be deemed to be extended if elections are not held in due time owing to some unavoidable circumstances or if necessary to continue the same Committee in the interest of the institution provided that the extension so granted shall not in any case exceed one year.

(C) The outgoing Manager shall be eligible for re-election.

(D) The year for all purpose shall be the financial year from April to March.

9. From the aforesaid provisions contained in the Constitution of the Sabha as well as the Constitution of the School, it is apparent that the Manager of the School holds office for a period of three years and in certain circumstances the term may be extended for a period not exceeding one year. The plaintiff-respondent has also proceeded on the same basis in as much as he has asserted in the plaint that the term for which he was elected as Manager on 12th June, 1971 was three years. Therefore, it has to be held that the term for which the plaintiff respondent was elected as the Manager of the School on 12th June, 1971, came to an end on 12th June, 1974. In any event, the term of the plaintiff-respondent could not extend beyond 12th June, 1975. Even if the contention urged by the learned Counsel for the respondent that the plaintiff-respondent was entitled to continue as Manager till the fresh elections are held is accepted, we find that on 2nd November, 1975, election was held for the post of Manager and the plaintiff-respondent has not been elected as the Manager of the School in the said election. The learned Counsel for the respondent has sought to challenge the legality of the election held on 2-11-1975. In my view, the legality of the election held on 2nd November, 1975 cannot be gone into in the suit of the respondent in as much as the said challenge gives rise to an independent cause of action which cannot be joined with the original cause of action, viz. the legality of the election held on 12th June, 1971, on the basis of which the suit has been filed by the respondent. More over, the learned Counsel for the respondents has himself stated that the legality of the election held on 2-11-1975 is in issue in the appeal arising out of the suit of Kalu Singh and Ors. v. Karansingh and Ors. pending before the Additional District Judge No. 2, Jodhpur. Without expressing any opinion about the legality of the said election in the present case we have to proceed on the basis that, as a matter of fact, election has been held on

2-11-1975, & as a result thereof, the term for which the plaintiff-respondent claims to have been elected as the Manager of the School on 12-6-1971 has come to an end. If the term for which the plaintiff respondent claims to have been elected as the Manager of the School has already come to an end, no effective relief can be given to him & the questions arising for determination in the suit had become purely of academic nature.

10. In *Sun Life Assurance Co. of Canada v. Jervis* 1944 App Cas 111, Viscount Simon, speaking for their lordships of the Privy Council has observed:

I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. If the House undertook to do so, it would not be deciding an existing issue between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellants hope to get decided in their favour without in any way affecting the position between the parties.

11. The aforesaid observations have been quoted with approval by the Supreme Court in *Loknath Padhan Vs. Birendra Kumar Sahu*, wherein it has been laid down;

It would be clearly futile and meaningless for the court to decide an academic question, the answer to which would not affect the position of one party or the other. The court would not engage in a fruitless exercise. It would refuse to decide a question, unless it has a bearing on some right or liability in controversy between the parties. If the decision of a question would be wholly ineffectual so far as the parties are concerned, it would be not only unnecessary & pointless but also inexpedient to decide it & the court would properly decline to do so.

12. In the aforesaid case, the Supreme Court was dealing with an appeal involving a challenge to the validity of the election of the respondent to the Orissa Legislative Assembly. During the pendency of the appeal in the Supreme Court, the Orissa Legislative Assembly was dissolved & a question arose as to whether the appeal challenging the elections of the respondent could be heard. The Supreme Court held that in view of the dissolution of the Orissa Legislative Assembly it had become wholly academic to consider whether, on the date when the nomination was filed, the respondent was disqualified for being nominated as a candidate for being elected as a member of the Orissa Legislative Assembly.

13. The principle laid down in the aforesaid decision is fully applicable to the facts of the present case in as much as after the expiry of the term for which the plaintiff respondent claims to have been elected as the Manager of School on 12th June, 1971, no effective decree can be given in the suit of the respondent and no purpose would be served by proceeding further with the said suit. In passing the impugned orders, rejecting the applications filed by the petitioners, the Munsif City, Jodhpur and the Additional Civil Judge, Jodhpur, have thus failed to exercise jurisdiction vested in them.

13. The result is that these revision petitions are allowed and the order dated 13th September, 1974 passed by the Munsif City, Jodhpur as well as the order dated 13th March, 1976, passed by the Additional Civil Judge, Jodhpur, are set aside. The application dated 12th November, 1975, filed by the petitioner is allowed and Suit No. 384/1972 filed by the respondent against the petitioners is dismissed as having become infructuous. Taking into consideration, the facts and circumstances of the case, the parties are directed to bear their own costs in these revision petitions.