

(2013) 04 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 829 of 2003

Hazi Ali Hayder and Others

APPELLANT

Vs

Ladhu Ram and Another

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2

Citation : (2013) 3 WLN 3

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : V.K. Bhadu, for the Appellant; J.K. Chanda and Mr. Kamal Deep Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Vijay Bishnoi, J.—This appeal has been preferred against the order dated 6.10.2003 whereby the learned Additional District Judge, Sangaria, District Hanumangarh (hereinafter referred to as "the trial court") had sentenced the appellants for two months civil imprisonment and also ordered for attachment of the tractor purchased by the appellant No. 1 while procuring loan from the Bank. The brief facts of the case are that the respondent No. 1 has preferred a suit for specific performance of contract against the appellants in the trial Court. Along with the said suit, application for temporary injunction was also preferred and the trial Court after hearing the learned counsel for the parties granted temporary injunction on 5.10.2002 restraining the appellants from transferring the suit property to any other person.

2. The respondent No. 1 has thereafter filed an application under Order 39 Rule 2 C.P.C. on 2.1.2003 before the trial Court while claiming that despite the restrained order passed by the trial Court on 5.10.2002, the appellants have mortgaged the suit property with the State Bank of India for obtaining loan for purchasing the tractor.

3. Learned trial Court issued notices to the appellants on the application under Order 39 Rule 2 C.P.C. and in response to the notices, a joint reply was preferred on behalf of the appellants wherein it was claimed that the loan was obtained for purchasing the tractor as the same was required for better irrigation. It was also contended that the appellants are illiterate persons and they were not aware that for the purpose of obtaining loan from the bank, the agriculture land was required to be mortgaged with the bank. In the reply itself apology had been tendered by the appellants.

4. After hearing learned counsel for the parties, the learned trial Court vide order dated 6.10.2003 allowed the application preferred by the respondent No. 1 under Order 39 Rule 2 C.P.C. and has sentenced each of the appellants for two months" simple imprisonment and also ordered for attachment of the tractor.

5. Being aggrieved by the order dated 6.10.3003, the present appeal has been preferred by the appellants.

6. Learned counsel for appellants submitted that appellant No. 1 has already undergone 40 days civil imprisonment and has tendered unconditional apology, therefore, he prayed that the sentence awarded to appellant No. 1 for two months civil imprisonment may kindly be reduced upto the period already undergone.

7. In respect of the appellants No. 2 and 3, the learned counsel has submitted that the learned Court below had grossly erred in sentencing the appellants No. 2 and 3 while holding that there was a breach of injunction on the part of these appellants because they have released their share of property in favour of the appellant No. 1 despite there being a restrained order from the Court. It is contended by counsel for the appellants that the appellants No. 2 and 3 had released their share of property in favour of appellant No. 1 by way of release deed executed way back in the year 1998 whereas the Court has passed the injunction in the year 2002 and, therefore, in such circumstances, it cannot be said that the appellants No. 2 and 3 have breached the condition of the injunction. It is further stated by the learned counsel that the mutation in favour of the appellant No. 1 for the suit property was sanctioned by the revenue authority and the Sarpanch of the Gram Panchayat and as such the appellants No. 2 and 3 cannot be held responsible for the action of the revenue authority and the Sarpanch of Gram Panchayat.

8. In view of the above submissions, learned counsel for the appellants has prayed for setting aside the order dated 6.10.2003 in relation to the appellants No. 2 and 3.

9. It is also argued by the learned counsel for the appellants that the suit preferred by the respondent No. 1 for specific performance of contract was also rejected by the trial Court and no appeal has been preferred against the said decision. In view of this fact, learned counsel for the appellant has prayed for setting aside the order dated 6.10.2003 in relation to the appellants No. 2 and 3.

10. Learned counsel for the respondents has not opposed the request made on behalf of the respondent No. 1 for reducing the sentence of civil imprisonment awarded by the lower Court to the period already undergone by the appellant No. 1. However, learned counsel for the respondents have contended that the mutation was sanctioned in favour of the appellant No. 1 on the basis of release deed executed by the appellants No. 2 and 3 and, therefore, the Court below has not committed any illegality in sentencing the appellants No. 2 and 3 and has prayed for dismissal of the appeal preferred on behalf of appellants No. 2 and 3.

11. This Court has considered the rival submissions and also perused the record.

12. So far as sentence awarded to appellant No. 1 is concerned, he has already undergone more than 40 days civil imprisonment in pursuance of the order passed by the lower Court dated 6.10.2003. It is also to be noted that the suit preferred by the respondent No. 1 for specific performance has also been dismissed.

13. In all these circumstances, the order dated 6.10.2003 sentencing the appellant No. 1 for two months civil imprisonment is modified to the extent that the sentence awarded to the respondent No. 1 is reduced to the period already undergone by him.

14. From the perusal of record of the case, it is clear that the appellants No. 2 and 3 have executed a release deed in favour of the appellant No. 1 on 17.9.1998, however the learned trial Court has passed the temporary injunction restraining the appellants No. 2 and 3 from alienating the property on 5.10.2002. Though the mutation was sanctioned in favour of the appellant No. 1 on the basis of release deed dated 17.9.1998 but then also it cannot be said that the appellants No. 2 and 3 have violated the injunction order passed by the trial Court on 5.10.2002 by executing release deed in favour of the appellant No. 1 on 17.9.1998 i.e. prior to passing of order dated 5.10.2002. The mutation in favour of appellant No. 1 was sanctioned by the revenue authorities and the Sarpanch of Gram Panchayat and appellants No. 2 and 3 had no role in it.

15. In view of above circumstances, the order passed by the learned lower Court dated 6.10.2003 sentencing the appellants No. 2 and 3 for two months civil imprisonment is not sustainable and is hereby quashed and set aside. With these observations, the appeal preferred by the appellants is disposed of.