

(1996) 11 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Revision Petition No. 1469 of 1995

Kailash Chand

APPELLANT

Vs

Bajrang Lal and Others

RESPONDENT

Date of Decision : 01-11-1996

Acts Referred:

Specific Relief Act, 1963 — Section 38, 41

Citation : AIR 1997 Raj 205 : (1997) 3 CivCC 670 : (1997) 1 RLW 550 : (1997) 1 WLC 38 : (1996) 2 WLN 623

Hon'ble Judges : M.G. Mukherji, C.J

Bench : Single Bench

Advocate : Kamlakar Sharma, for the Appellant; K.K. Mehrish, for the Respondent

Final Decision : Dismissed

Judgement

M.G. Mukherji, C.J.—Plaintiff is petitioner before me impugning an order dated 19-9-95 passed by the learned Addl. Distt. Judge, Bundi in Civil Misc. Appeal No. 72/94 whereby the lower appellate court rejected the appeal of the petitioner and upheld the order dated 22-11 -94 as passed by the learned Civil Judge (Sr. Division), Nainwa in Case No. 1/94.

2. Plaintiff filed a civil suit against his parents alleging inter alia that there existed certain ancestral properties comprising of agricultural land as well as ancestral house situated in Village Alod details of which were given in para 4 of the plaint. He claimed that he had half share along with his younger brother Kishan Lal and that in all these properties, he was a co-owner. His further contention inter alia was that he and his father were also co-owners of gold, silver and jewellery belonging to the family which had been purchased from the income of the immovable properties of the family and are lying in Locker No. 67 of the State Bank of Bikaner and Jaipur, Old Dhan Mandi Branch, Bundi, which was being operated jointly by the defendants and the locker stands in their own name. It was also submitted that the jewellery belonging to the plaintiff

petitioner's wife was also lying in the aforesaid locker and that the plaintiff was the co-owner of these articles also. Further averment was to the effect that the plaintiff had been residing with his parents since 1955 when he was adopted by them and since then, he has been in continuous possession along with his adoptive father and had been using the same. His adoptive parents on account of their old age have become unduly influenced by certain relatives who pressurized them so as to divest the plaintiff from the properties in question. It was also submitted that on account of the old age of his adoptive parents, the plaintiff had been looking after the properties and for the last ten years, he had been maintaining separate accounts himself. There was an attempt to dispossess him from the property and deprive him of the use and occupation of the same and that the adoptive parents are bent upon transferring the same. It was also submitted that the adoptive father defendant No. 1 had also sold a part of the agricultural land on 29-9-92 without informing the plaintiff and the said property had been sold out to one Bhanwar Lal. Plaintiffs submission inter-alia is to the effect that his adoptive father was not authorised to dispose of the property in such a manner as was done by him and therefore, there should be a permanent injunction against both his adoptive parents. The application for temporary injunction which was filed by the plaintiff petitioner was contested by his adoptive father and mother who admitted that the plaintiff was their adopted son but they denied that he had any share in the properties. It was submitted that the petitioner had no share in the properties and that the property had been recorded in the name of the defendant No. 1 Bajrang Lal alone. In relation to the house also, it was denied that the petitioner had any share therein. It was also submitted that no jewellery belonging to the plaintiffs wife was with them and the locker also did not contain any such jewellery. The jewellery which was given to defendant No. 2 was her own "Stri Dhan" which had been kept in a locker for their own safety. It was submitted that the defendant No. 1 was the "Karta of the Hindu Un-divided Family who had been carrying out all expenses for the upkeep of the family. Plaintiff had been living with his natural father for the last ten years and was not looking after the adoptive parents and he was not entitled to any relief.

3. On behalf of the plaintiff, an affidavit of the plaintiff as well as a photostat copy of the Adoption Deed and the revenue records were submitted while on behalf of the defendant Nos. 1 and 2 their affidavits and the affidavit of one Nand Lal were submitted.

4. Learned Civil Judge (Sr. Division) held inter alia that it was established that the defendant No. 1 was the Karta of the joint family and therefore, he had a right to alienate the properties and also to remain in possession thereof. It was also held by the learned Civil Judge that the final decision was to be exercised by the Karta as to how he would be managing the properties. He further held that the Karta of the joint family could not be restrained from disposing of the property and no fetter by way of an injunction could be imposed and the only remedy that was available to the plaintiff would be in case of sale effected by the

Karta, on which contingency plaintiff could claim a right on the property by way of filing a civil suit to get the sale deed annulled. It was held that from the pleadings, it was not borne out as to whom the property was being sold and hence, there was no occasion to restrain the defendant Nos. 1 and 2 from transferring the property. Plaintiff thereafter, filed an appeal before the learned Addl. Distt. Judge which has ultimately been dismissed by an order dated 19-9-95.

5. It has been contended by Shri Kamalakar Sharma, learned Advocate appearing for the petitioner that the orders as passed by the courts below are illegal, contrary to facts and not sustainable in law inasmuch as both the courts proceeded on the hypothesis that even though it was established that the plaintiff was the adopted son of the defendant Nos. 1 and 2 and that the defendant No. 1 was the Karta of the family in view of the property being ancestral property, the plaintiff would have share in the said property and that the said share could have been restrained by an order of injunction from being sold out or disposed of to third parties inasmuch as there was a prima facie case for an order of ad interim injunction. That case was very much overlooked by either of the courts below and at least a share in the property that belonged to the plaintiff ought to have been safeguarded and that the defendant No. 1, even though he was the Karta of the joint family, could have been restrained from disposing of the property which included the share of the plaintiff petitioner.

6. It was further contended that the plaintiff had clearly established that even on 29-9-92 the defendant No. 1 had sold some agricultural land in favour of one Bhanwar Lal and that it was thus established that there was every apprehension that the defendants No. 1 and 2 might also sell other properties belonging to the joint family. A clear case for obtaining the relief of temporary injunction against the defendants was therefore made out and it was also necessary to protect the interest of the plaintiff who had share in the ancestral property.

7. It was further averred that both the courts below have erred in holding that the Karta of the family could not be restrained from transferring any land belonging to the joint Hindu family just because he was the Karta who had to decide as to how and in what manner the properties would be managed and that the only remedy available to a person, who was a co-sharer in the joint family properties was to file a civil suit for cancellation or annulment of the sale deed in case such a sale was effected. It was submitted by the learned Advocate for the plaintiff that the courts below proceeded on a misconceived idea of law in this respect and since the plaintiff had a prima facie case, the courts below ought not to have relegated him to the position of filing a suit after the sale was actually made effective and the courts below ought to have restrained the defendants from transferring the properties to third parties.

8. It was further contended that the defendants had executed an Adoption Deed and also admitted the plaintiff as their son and he was as such entitled to a share in the property. In that context, there was no occasion for the courts below to

have refused to grant temporary injunction, more so, when it was clearly proved from the records that for the last ten years, the plaintiff had been managing these properties and had been maintaining separate accounts therefor. The Courts below have failed to consider that the defendant Nos. 1 and 2 had intentions which were not just and proper and even though the plaintiff was their adopted son, an FIR was lodged against him alleging the offences u/s 447 and 379, I.P.C. It was therefore clearly proved that not only a prima facie case was there but the balance of convenience as also the question of irreparable loss and injury justifying an order of temporary injunction was very much there. It would not be possible on the part of the plaintiff to claim back the property and on the contrary, there would be multiplicity of proceedings, if the actual sale of property was allowed to be made and the plaintiff would have to file a fresh suit for cancellation of the sale deed. It was further contended that by granting an order of injunction in favour of the petitioner, the defendants would not suffer any loss but even assuming that they were not contemplating to sell out the properties, a restraint order would not cause any harm to them but on the contrary, the defendants on selling out the properties could cause irreparable loss and injury to the plaintiff.

9. In *Sushil Kumar and Anr Vs. Ram Prakash and Ors*, it was held that a suit for permanent injunction by a coparcener against the father, a Karta for restraining him from alienating the house property belonging to the joint Hindu family for legal necessity would not be maintainable because the coparcener had not the remedy of challenging to the sale and getting it set aside in a suit subsequent to the completion of the sale. It was further held that in case of waste or ouster an injunction may be granted against the Manager of the joint Hindu family at the instance of the coparcener but nonetheless a blanket injunction restraining permanently from alienating the property of the joint Hindu family even in the case of legal necessity, cannot be granted. It was then held that even though a co-parcener by birth takes an interest in the ancestral property but he is not entitled to separate possession of the coparcenary estate, his rights are not independent of the control of the Karta. It would be for the Karta to consider the actual pressure on the joint family estate. It would be for him to foresee the danger to be averted, and it would be for him to examine as to how best the joint family estate could be beneficially put into use to subserve the interests of the family. A coparcener cannot interfere in the acts of the management. Apart from that, a father as Karta, in addition to the aforesaid powers of alienation, has also the special power to sell or mortgage ancestral property to discharge his antecedent debt which is not tainted with immorality. If there is no such need or benefit, the purchaser takes risk and the right and interest of coparcener will remain unimpaired in the alienated property. No doubt the law confers a right on the coparcener to challenge the alienation made by the Karta, but that right is not inclusive of the right to obstruct alienation. Nor the right to obstruct alienation could be considered as incidental to the right to challenge the alienation. These are two distinct rights. One is the right to claim a share in the

joint family estate free from unnecessary and unwanted encumbrance. The other is a right to interfere with the act of management of the joint family affairs. The coparcener cannot claim the latter right and indeed, he is not entitled for it. Therefore, he cannot move the court to grant relief by injunction restraining the Karta from alienating the coparcenary property. The provisions of Section 38 of the Specific Relief Act have to be read along with Section 41 thereof. Section 41 provides that an injunction cannot be granted in the cases falling under Clauses (a) to (j), but Clause (h) thereunder provides that an injunction cannot be granted when a party could obtain an efficacious relief by any other usual mode of proceeding, except in case of breach of trust. The coparcener has adequate remedy to impeach the alienation made by the Karta. He cannot therefore, move the Court for an injunction restraining the Karta from alienating the coparcenary property.

10. I do not think that the orders of the courts below call for any interference in revision. The revisional application stands dismissed. There will be no order as to costs.