

(1998) 11 RAJ CK 0037
In the Rajasthan High Court
Case No : Civil Revision No. 468/97

L. Rs of Shankar Lal

APPELLANT

Vs

UIT Jodhpur and Others

RESPONDENT

Date of Decision : 28-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 4

Citation : (1999) 4 CivCC 140 : (1999) 1 RLW 484

Hon'ble Judges : Mohd. Yamin, J

Bench : Single Bench

Advocate : M.S. Rajpurohit, for the Appellant; Shankarlal, for the Respondent

Final Decision : Dismissed

Judgement

Mohd. Yamin, J.—By impugned order dated 29.1.1997 learned Additional Civil Judge (JD) No. 1. Jodhpur dismissed the application under Order 9 Rule 4 CPC observing that the provisions of Order 32 Rule 15 CPC do not apply after the suit was dismissed as well as on merits.

2. I have heard the learned counsel for both the parties at length.

3. Plaintiff Shankarlal had filed a civil suit against the UIT. Jodhpur. Inderchand and State of Rajasthan through Collector. Jodhpur for possession and declaration as well as permanent injunction alleging that he was in possession of a piece of land measuring 45" x 125" situated in Jawahar Colony for last 65 Years from the time of his father. The UIT carved out a plan in the year 1969 and prepared site plan in which it was shown that 5" portion of the land of plot No. 6 was in possession of the plaintiff. It was further averred that on 15.1.74 defendant Indrchand, his father and brother took possession of a part of plot No. 5 According to the site plan of UIT the size of plot No. 5 was 24"x45". The remaining portion of the plot No. 5 measuring 14" x10" was still in possession of the plaintiff. The matter was also reported to the police. A suit u/s 6 of the Specific Relief Act was filed by the plaintiff but the UIT took objection of notice in

the suit and, therefore, the plaintiff withdrew that suit after obtaining permission from the Court to file a regular suit. Later on the State Government issued instructions to the UIT that the cases in which persons had old possession may be regularised. Then on 2.12.72 defendant UIT issued a notice to the plaintiff to deposit Rs. 360/- in order to regularise his possession on the land measuring 125" x45". The plaintiff deposited this amount. It was further averred that the plot No. 1 was allotted in the name of Madanlal who is the son of plaintiff and allotted plot No. 2 in the name of plaintiff. Plot No. 3 was allotted in the name of Hariram and the plaintiff but so far as plot No. 5 was concerned, the same was allotted to defendant No. 2 i.e. Inderchand. Plaintiff sought relief of declaration and possession and injunction as stated earlier. The suit was dismissed on 2.5.94 because the plaintiff or his counsel were not present. An application for restoration of the suit was filed on 21.1.95 stating that the absence was not intentional and the suit be restored. An application u/s 5 of the Limitation Act was also filed alongwith this application. On 18.7.95. counsel for the plaintiff pleaded no instruction sand plaintiff himself did not want to prosecute the application. Hence this application was dismissed.

4. Then an application was filed by one Bhikhi Devi wife of Shankarlal on 9.1.97 to recall the order dated 18.7.95 averring that Shankarlal was mentally infirm and was not able to look after his interest. He was suffering from unsoundness of mind and his next friend. Smt. Bhikhi Devi, had moved an application on 30.10.86 in the Court of City Magistrate to get him examined and on his order Shankarlal was examined on 31.10.86 and he was admitted in hospital for treatment of his mental ailment. It was further averred that since Shankarlal suffered mental illness he was not competent to instruct his lawyer. It was prayed that the Court may appoint her as his next friend and also recall the order dated 18.7.95. This application was objected to by Inderchand and it was pleaded that Shankarlal was never a mental patient and that a false story was cooked up and that Shankarlal was himself present on 18.7.95 in the Court who himself stated that he did not want to prosecute the application and his counsel pleaded no instructions and that Hariram who is a son of the plaintiff and a Junior Engineer with UIT had pleaded in a reply in the UIT that his father was going to be operated for hernia on 31.12.96. It was no where mentioned that Shankarlal suffered from any mental illness. It was further pleaded that a false pretext of mental illness has been taken in the application. It was further averred that the record of the Court of City Magistrate does not show that Shankarlal suffered from mental illness and as to when did he have lucid intervals and when did he suffer such ailment that would make him incompetent. It was averred that the application may be dismissed. The learned trial Judge as stated earlier dismissed this petition and hence this revision.

5. Learned counsel for the petitioners submitted that the trial Court should not have dismissed the application instead an order for inquiry should have been passed. He also submitted that Shankarlal was not competent to look after his interest as it is clear from the order sheet dated 18.7.95 when his counsel

pleaded no instructions in his presence and Shankarlal himself stated before the Court that he did not want to prosecute with the application. To this, learned counsel for the respondents replied that when the counsel was himself present, he never raised such a point before the learned trial Judge on 18.7.95 that Shankarlal was suffering from mental illness. He submitted that a cock and bull story has been cooked up and that the order of the learned trial Judge does not call for any interference u/s 115 CPC as there was no error of jurisdiction in dismissing the application on 18.7.95.

6. Order 32 Rule 15 CPC provides that Rules 1 to 4 (except Rule 2 A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued. Admittedly, no suit was pending on the date when the order dated 18.7.95 was passed. When Bhikhi Devi filed application to recall the order, even on that date suit was not pending. It is also not the case of the petitioners that Shankarlal was already adjudged a person of unsound mind before the application was filed because there is no such adjudication by any competent Court in this behalf. The question remains whether the Court should have ordered an enquiry? It may be stated that Shankarlal later on expired and his legal representatives have come on record who are pursuing this case. Learned counsel for the petitioners has submitted that now the case may be sent back for inquiry. He relied on AIR 1951 Travancore-Cochin page 165. K. Ommamman Vudian & Anr. Vs K. Kunjukoshi Vudian and others; in which it was observed that where in execution of a decree the fact that the judgment debtor is of unsound mind is brought to the notice of the Court, it is the duty of the Court to investigate into it and appoint a guardian if the person is found to be under disability as alleged, before proceeding with the execution. If the Court proceeds with the execution without appointing a guardian the proceedings are without jurisdiction and consequently the execution sale is also invalid and liable to be set-aside. In the case in hand this citation would not apply on facts. However, the trial Court observed that when the plaintiff himself appeared and withdrew the restoration application under Order 9 Rule 4 CPC, then it was not required to hold and inquire on the issue. When it is clear from the order sheet dated 18.7.95 that the plaintiff was himself present and he withdrew his application, his counsel was also present and did not say that the plaintiff suffered from any mental illness instead he pleaded no instructions and as such the application under Order 9 Rule 4 CPC was dismissed. There was no ground to make enquiry under Order 32 CPC. To me there appears to be no reason to interfere in the order of the learned trial Judge u/s 115 CPC because there appears to be no jurisdictional error committed by the Court. When no such error is committed this Court will not interfere in the order of the trial Court as held in AIR 1966 SC page 153. Pandurang Dhondi Chougule and others Vs Maruti Hari Jadhav and others, and Phool Chand VS RSRTC & Ors., 1995 DNJ(Raj) page 21.

7. Consequently, there is no force in this revision petition and the same is hereby dismissed.