

(1999) 08 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Revision Petition No. 345 of 1994

Motilal and Another

APPELLANT

Vs

L.Rs. of Late Poonampuri and Another

RESPONDENT

Date of Decision : 16-08-1999

Acts Referred:

Advocates Act, 1961 — Section 35

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 4(2)

Citation : AIR 2000 Raj 65 : (2000) 1 CivCC 614

Hon'ble Judges : Mohd. Yamin, J

Bench : Single Bench

Advocate : Himanshu Maheshwari, for the Appellant; L.R. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Mohd. Yamin, J.—This is a revision against the order of learned Additional District Judge No. 2, Jodhpur dated 11-1-1994 by which he issued injunction in Civil Misc. Appeal No. 320/93 by setting aside the order of learned Munsif dated 4-12-1993.

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

3. The case has a checkered history. One Mohanlal alias Mohanpuri, who was father of Poonampuri-respondent, was tenant of Motilal and Smt. Chhota. The shop in question was let out to him on 28-10-1955 on a monthly rent of Rs. 55/-. Till his death Mohan Lal continued to be a tenant of this shop and carried on his business of halwai. Mohanlal was also carrying on business with his father in the shop. Motilal and Smt. Chhota filed a suit against Mohanlal and Bhanwarlal for eviction sometime in 1967. Both of them filed a joint written statement on 14-12-1967. Issues were framed on 3-6-1969. Counsel named Shri Inder Chand Maloo as their counsel but he pleaded no Instructions on behalf of Mohanlal on 22-7-1967. Hence suit proceeded ex parte against Mohanlal. Mohanlal, during the pendency of this suit, died on 13-7-1979. The suit was decreed on

28-7-1988 against Mohanlal and Bhanwarlal. Bhanwarlal filed an appeal which was dismissed. Then a second appeal was preferred before the Rajasthan High Court which was dismissed. Matter went upto the Supreme Court and the decree was confirmed.

4. Poonampuri filed a suit for cancellation of decree alleging that ex parte decree obtained against his father was a nullity as the counsel who pleaded no instruction never gave any notice to Mohanlal before pleading no Instruction and as the legal representatives of Mohanlal were not brought on record, the decree could not be passed. This decree was nullity and consequently he could not be evicted from the suit property. It was prayed that the decree-holders be restrained from taking possession of the suit property. Application for temporary injunction was filed before the trial Court. It was pleaded on behalf of the defendants that the plaintiff was not in possession of the suit property. Instead he was carrying on his business at Bhagat ki Kothi. It was further pleaded that the legal representatives of deceased Mohanlal were not required to be taken on record and, therefore, the decree was not void. Plaintiff and Banwarilal had hands in glove. It was further pleaded that the decreeholders fought the case for 26 years upto the Supreme Court and were not able to eat the fruit. The decree cannot be held to be invalid. The trial Court refused to grant injunction but when the matter went before the appellate Court, it reversed the order and granted injunction.

5. Learned counsel for the petitioners relying on a large number of judgments submitted that the decree-holders after having been successful up to the Supreme Court are being devoid of the benefit of the decree. Many a time a sentimental approach on the part of the petitioners was seen during the arguments. However, the counsel cited Legal Representative of Ghasi Ram v. Laxminarain (1993) 2 R LW 494, in which trial Court had granted injunction restraining decree-holder for execution, where no prima facie case existed. There was no fraud or mala fide in respect of obtaining the decree against judgment-debtors and no irreparable injury was caused. Therefore, it was held that temporary injunction cannot be granted. Reliance was also placed on Division Bench Judgment, Smt. Mohini Devi v. Rajasthan State Financial Corporation, Jaipur, 1977 WLN 556, in which it was observed that the Court should not issue injunction and restrain decree-holder when no irreparable loss is caused. In support of the argument that the execution of the decree could not be enjoined, reliance was placed on Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others,

6. On the other hand, learned counsel for the respondents submitted that no jurisdictional error has been committed by the learned appellate Judge. He cited D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, Housing and Construction Co. (P) Ltd. v. Sarup Singh wherein it has been observed that while exercising the jurisdiction u/s 115, CPC it is not competent to the High Court to correct errors of fact, however, gross or even

errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Reliance was also placed on The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, Balanagar, Hyderabad v. Ajit Prasad Tarway, Manager (Purchase and Stores), Hindustan Aeronautics Ltd., Balanagar, Hyderabad, in which it was observed that the High Court should not interfere even if the order is right or wrong or in accordance with law or not unless it has exercised its Jurisdiction illegally or with material irregularity.

7. On merits, it was submitted that when Shri Maloo pleaded no instructions, even then his authority was not terminated as per provisions of Order 3, Rule 4(2), CPC and he continued to be the counsel on behalf of the person against whom decree was passed and as such it was not necessary to give any notice before pleading no instructions and it was not necessary to bring legal representatives of deceased-defendant on record. He submitted that the appellate Court did not commit any error by granting injunction in this case.

8. I have considered the rival contentions anxiously. The contention of the learned counsel that the decree is a nullity on various grounds cannot be accepted at this stage as it is a triable question before the trial Court where it is being tried. Prima facie it appears that Shri Maloo who had pleaded no instructions continued to be the counsel as his power was not terminated as per provisions of Order 3, Rule 4(2), CPC. In Bijli Cotton Mills (Pvt.) Ltd. Vs. Chhaganmal Bastimal and Others, relied by the learned counsel for the respondents, it has been held that the appointment of a pleader under Rule 4(2) of Order 3, CPC shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client. Thus, once an Advocate is engaged as a pleader by a client, the authority of the Advocate to represent his client continues to remain in force until it is determined with the leave of the Court in writing signed by the client or the pleader. When Shri Maloo had pleaded no instructions, even then he continued to be the counsel. So the argument of the learned counsel for the petitioners that Shri Maloo should have given a notice before pleading no Instructions, does not hold water. Learned Additional District Judge has very ably discussed the facts and law in paras Nos. 6, 7 and 8 of his judgment. I do not feel inclined to interfere in such an order passed after due consideration by the learned appellate Judge.

9. The argument of the learned counsel for the petitioners was that the appellate Court should have been slow in interfering in the discretionary order of the trial Court, has no bearing in this case when the learned appellate Judge has interfered after seeing the merits and demerits of the order of learned trial Judge. I am not inclined to interfere in the order passed by the learned appellate Judge but I would very much like to direct the learned trial Court to decide the suit as expeditiously as possible preferably within a period of six months from

the date of receipt of a copy of this order as the suit relates to the year 1993.

10. Consequently, the revision petition is hereby dismissed. The trial Court shall follow directions given above. No order as to costs.