
(2019) 01 SC CK 0088

In the Supreme Court Of India

Case No : Civil Appeal No. 880 Of 2019

Murti Bhawani Mata Mandir Rep. Through Pujari Ganeshi Lal (D) Through Lr Kailash APPELLANT

Vs

Ramesh & Ors RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

Code of Civil Procedure, 1908 — Section 144

Citation : AIR 2019 SC 679 : (2019) 2 SCR 529 : (2019) 3 SCC 707 : (2019) 2 Scale 555 : (2019) 1 RCR(Civil) 935 : (2019) 2 SCJ 317 : (2019) 2 MLJ 214 : (2019) 2 ALD 214 : (2019) AICCJ 749 : (2019) 136 ALR 237 : (2019) 1 JLR 380 : (2019) 4 MPLJ 479 : (2019) 1 OLR 96

Hon'ble Judges : Dr. Dhananjaya Y. Chandrachud, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Alok Bhachawat, K.V. Bharathi Upadhyay, Pratibha Jain, Harshvardhan Jha, Yugandhara Pawar Jha, Mayuri Shukla, Abhishek Chaudhary

Final Decision : Allowed

Judgement

Dr. Dhananjaya Y. Chandrachud, J

Leave granted.

This appeal arises from a judgment of a learned Single Judge of the High Court of Madhya Pradesh at its Bench at Indore. A suit (Suit No. 60/A/77) was instituted in the Court of the Civil Judge, Class II, Sardarpur, Dist. Dhar (M.P.) by one Ganeshi Lal claiming as the next friend of the diety situated at Bhawani Mata Mandir, Gram Dasai, Tehsil Sardarpur. The suit was for a permanent injunction against Geetabai (since deceased) and respondent Nos. 1 and 2 restraining them from interfering with the possession of the plaintiff over the agricultural land in dispute.

The issues which were framed in the suit for the conclusion were as follows:

"Sl. No.

ISSUES

CONCLUSION

Whether on land bearing Survey No. 1630, 1631 & 1632 belonging to the ownership Murti Bhawani Mata Mandir situated in village Dasai possession of plaintiff is continuously coming through Dulichand son of Shrichand?

2(a)

Whether plaintiff is Pujari of Bhawani Mata Mandir ?

Judgments not necessary

2(b)

If plaintiff is Pujari, then in what capacity ?

No

3.

defendants made an attempt to take possession illegally on suit land and destroyed the crop.

4.

Whether on Onkarlal was the husband of defendant No. 1 i.e. Pujari of Murti Bhawani Mata Mandir?

Judgment not necessary

5.

Whether after Onkarlal suit land remained in possession of defendant no. 1 in the capacity of Pujari ?

Judgment not necessary

6.

Relief and cost ?

Suit dismissed with cost"

The suit was dismissed by the Trial court on 11 April 1981 on the ground that the plaintiff had failed to prove possession over the land in dispute. Both the first appeal as well as the second appeal were dismissed on 23 March 1982 by the District Judge and on 5 May 1984 by the High Court.

After the disposal of the second appeal, Geetabai filed an application under Section 144 of the Code of Civil Procedure, 1908 ("CPC") for the restoration of possession of the disputed land and for awarding mesne profits, before the Judge, Civil Court, Class I, Sardarpur M.J.C. No. 21 of 1986.

The application was dismissed on 24 August 1998 by the executing court. The appeal filed before the Additional District Judge by the first respondent was allowed and the case was remanded back to the executing court. The appellant filed a second appeal before the High Court which was dismissed in limine by the impugned order dated 3 December 2004 on the ground that no substantial question of law arose.

Assailing the judgment of the High Court, the appellant submits that the provisions of Section 144 of the CPC were not attracted. The Additional District Judge was, it was urged, not justified in remanding the proceedings back to the executing court. Learned counsel appearing on behalf of the appellant submits that the plaintiff was not placed in possession by the court under any decree or order which was ultimately reversed on the dismissal of the suit for permanent injunction. In the circumstances, Section 144 was not attracted. Learned counsel submitted that in order to attract the application of Section 144, three conditions must be satisfied:

- (i) Restitution sought must be in respect of a decree or order which has been varied or reversed;
- (ii) The party applying must be entitled to the benefit of restitution;
- (iii) The relief which is claimed must be consequential to the reversal or variation of the decree or order.

In the instant case, it has been urged that none of these conditions were satisfied. Moreover, even if it were to be assumed that the plaintiff had taken possession of the disputed land during the pendency of the suit, it was urged that an application under Section 144 would not lie. Moreover, it was urged that the Trial court did not decide the question as to whether the respondent was in possession of the disputed land as is evident from the fact that on issue No. 5 no finding was returned.

On the other hand, learned counsel appearing on behalf of the respondent supported the judgment of the first appellate court and the High Court by submitting that it was the case of the first respondent that the appellant had taken possession of the suit land after the order of injunction was passed at the interlocutory stage. Hence, it was urged that once the suit for injunction was dismissed, it was open to the defendant to apply for restitution under Section 144, CPC.

In evaluating the rival submissions, it would be necessary to advert to the provision of section 144 of the CPC:

"144. Application for restitution - (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far

as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order....."

Section 144 applies to a situation where a decree or an order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. In that situation, the Court which has passed the decree may cause restitution to be made, on an application of any party entitled, so as to place the parties in the position which they would have occupied but for the decree or order or such part thereof as has been varied, reversed, set aside or modified. The court is empowered to pass orders which are consequential in nature to the decree or order being varied or reversed.

In the present case, the interim order of the Trial court did not require the defendant to hand over the possession to the plaintiff. There was no decree or order of the Trial court by virtue of which the appellant was given possession of the property, nor did any decree or order mandate that the respondent hand over possession to the appellant.

In these circumstances, the provisions of Section 144, CPC were not attracted there being no variation or reversal of a decree or order as contemplated by Section 144.

The remedy of the first respondent, if any, did not lie in an application for restitution before the executing court under Section 144, CPC. The executing court was justified in declining to entertain the application under Section 144, CPC.

The order of the first appellate court which has been affirmed by the High Court was unsustainable.

Accordingly, we allow the appeal and set aside the judgment of the High Court dated 3 December 2004. The application filed by the respondent before the executing court shall stand dismissed. No costs.

Pending application(s), if any, shall stand disposed of.