
(2000) 06 CAL CK 0017
In the Calcutta High Court
Case No : Civil Order No. 1753 of 1999

Phundan Singh

APPELLANT

Vs

Sree Jain Swetamber Terapanthi Vidyalaya

RESPONDENT

Date of Decision : 28-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 7, 115

Citation : (2000) 2 ILR (Cal) 139

Hon'ble Judges : Ranjan Kumar Mazumder, J

Bench : Single Bench

Advocate : B.K. Banerjee, M. Kundu and N.K. Das, for the Appellant; Manju Manot, A. Manot and B.K. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Kumar Mazumder, J.—The instant Civil Revisional application u/s 115 of the CPC is at the instance of Defendant-Petitioners No. 1 and 2 viz. Shri Phundan Singh and Shri Kundan Mal Chauraria and this is directed against order No. 94 dated June 15, 1999, passed by learned Judge-incharge, 3rd Bench, City Civil Court, Calcutta in Title Suit No. 1779 of 1997.

2. The case of the Defendant-Petitioners Nos. 1 and 2 was in brief that Plaintiff-opposite party No. 1 society being Sree Jain Swetamber Terapanthi Vidyalaya instituted a suit being Title Suit No. 1779 of 1997 in the City Civil Court, Calcutta for certain declarations and injunction against the Defendant-Petitioners Nos. 1 and 2 and some others. To be specific, in the said Suit, the O.P. No. 1 in its capacity as a Plaintiff prayed for a declaration that Defendant No. 1-Petitioner ceased to be the Assistant Teacher and Headmaster of Sree Jain Swetamber Terapanthi Vidyalaya (Boys' High School) and that Defendant No. 2-Petitioner and some others ceased to be members of the Plaintiff society. In the said suit, the Plaintiff-society also prayed for permanent injunction restraining Defendant Nos. 1 and 2-Petitioners and others from entering the school-premises and also from interfering with the functioning of the Plaintiff society and its four schools

etc. In the said suit Plaintiff-O.P. No. 1-society filed an application under Order 39 Rules 1 and 2 of the CPC and obtained an interim order of Injunction on January 29, 1998. Thereupon the present Petitioners Nos. 1 and 2 filed an appeal before the Hon"ble High Court, Calcutta. In the said appeal the Division Bench of the High Court stayed the operation of the interim order vide order dated September 18, 1998, and appointed two Joint Administrators for managing the affairs of the school of the Plaintiff-society. Being aggrieved by the said order of the Hon"ble Division Bench passed in F.M.A.T. No. 438 of 1998, the O.P. No. 1 Plaintiff-society preferred SLP before the Hon"ble Supreme Court of India. Thereupon the Hon"ble Supreme Court was pleased to set aside the order of the Hon"ble Division Bench of Calcutta High Court regarding appointment of Joint Administrators and remanded the matter for fresh hearing by Hon"ble High Court vide order of the Hon"ble Apex Court dated February 9, 1999. Thereafter on February 24, 1999, the Plaintiff-society filed an application under Order 39 Rule 7 read with Section 151 of the CPC in T.S. No. 1779 and prayed for making an inventory of available records of the Plaintiff-society and its schools etc. Defendant Nos. 1 and 2-Petitioners vehemently opposed the said prayer of the Plaintiff-society. But unfortunately the learned City Court allowed the prayer of the Plaintiff-society for making an inventory of available records of the society and its schools etc. Hence the petition for Civil revision challenging the impugned order dated June 15, 1999.

3. I have had the opportunity of hearing learned Counsels for both the parties at length in the matter.

4. The only question requiring consideration in this case was whether the impugned order dated June 15, 1999, allowing the prayer of the Plaintiff-O.P. society for making an inventory of the records, papers and other properties of the society should be quashed or not being without jurisdiction and illegal as alleged by the Defendant-Petitioner Nos. 1 and 2.

5. At the time of hearing the instant matter, learned Counsel for the Defendant-Petitioner Nos. 1 and 2 Shri Bidyut Banerjee vehemently submitted that petition for inventory commission filed by the Plaintiff-O.P. No. 1 society was mala fide and the said petition was made with the ulterior motive of collecting evidence for the purpose of the Plaintiff's suit. In that connection it was submitted by Shri Banerjee that it was never the duty or. business of the Court to assist either of the parties to the suit for collecting or fishing out evidence for strengthening its position vis-a-vis the suit. But unfortunately the Plaintiff. society put in such an application with ulterior motive before the learned Court below, and it was illegally allowed by the learned Court below for assisting the Plaintiff-O.P. 1 in the suit. Hence, Shri Banerjee urged upon this Court to set aside the impugned order dated June 15, 1999 passed in T.S. No. 1779 of 1997.

6. Shri Banerjee's further submission was that under the provisions of Order 39 Rule 7 CPC the Court could certainly pass an order for making an inventory of property, which is the "subject matter" of the suit and not otherwise. In the

instant case, he submitted that the learned Court below passed the impugned order dated June 15, 1999, directing the Advocate Commissioner to make an inventory of the records, important papers, Registers and other properties of the society but these documents were not "subject matter" of the suit.

7. Shri Banerjee's further submission was that it was the duty of the Court to protect the rights of both the parties and hence if the order as to inventory commission was allowed to stand, the other side will make a mala fide use of the same in course of the instant suit or proceeding and hence his client will be highly prejudiced and suffer irreparable loss by such course of action. He, therefore, urged upon this Court for quashing the impugned order of inventory commission dated June 15, 1999, in the greater interest of justice.

8. Learned Counsel for the Plaintiff-O.P. Society Smt. Manju Manot submitted, on the other hand, that it was never the intention of her client to fish out the evidence through inventory commission and to utilize the same in support of her client's case at the time of trial. According to Smt. Monot, inventory in respect of all relevant records, important papers, Registers, Minute Book and other properties etc. of the Plaintiff-society schools were essential as they related to the whole affairs of the schools, which were the "subject matters" of the suit or as to which any question might arise in course of the suit. In other words, it was her further contention that since the "subject matter" of the suit related to whole affairs of the Plaintiff-society and its schools including appointment and termination of teachers, staff etc., the inventory of the school records and other properties had close nexus with all the pertinent questions relating to the affairs of the schools run by the Plaintiff-O.P. society. It was, therefore, submitted by Smt. Manot that the impugned order granting inventory commission was perfectly lawful and did not cause any injustice or prejudice to any party.

9. I have gone through all the materials relating to this case as on record. It is true, as submitted by Mr. Banerjee, that the Court shall not assist any litigating party to fish out evidence for the purpose of their use during the course of trial or proceeding so as to cause irreparable loss, injury or prejudice to the opponent litigating party. But in the instant case it appears from the plaint that the Plaintiff-O.P. society had inter alia sought for declaration that Defendant No. 1-Petitioner ceased to be the Assistant Teacher and Headmaster of the Boys' School of the Plaintiff-O.P. No. 1-society and that Defendant. Petitioners Nos. 2 to 4 ceased to be the member of the Plaintiff-society and that Defendant No. 5-Petitioner ceased to be the executive member of the Plaintiff society. In the suit, the Plaintiff-O.P. No. 1 society has also prayed for other reliefs including permanent injunction restraining Defendant-Petitioner Nos. 1 to 5 from interfering with the functioning of the schools of the Plaintiff-society and from entering the premises of the schools of the Plaintiff-society etc. It also appears from materials available on record that the Plaintiff-O.P. society has alleged that the Defendant-Petitioner Nos. 1 to 5 and their men and agents removed many of the documents, records, Registers, Minute Books etc. of the Plaintiff-O.P. society and its schools

particularly after the removal of the Joint Administrators from February 19, 1999. It has again been contended by the Plaintiff-O.P. society that some of the documents, records and other properties of the Plaintiff-O.P. society have been recovered and taken in their custody, but nonetheless the Plaintiff-O.P. society apprehended further removal of documents, records etc. by the Defendants, their men, agents and other rank-outsiders. In a suit like this, the learned Court below thought it proper to allow the prayer of the Plaintiff-O.P. society for inventory commission so as to keep all records intact for proper adjudication of the controversy touching removal of Defendant No. 1 Petitioner from the Boys' school as its Assistant Teacher and Headmaster and other issues regarding expulsion of Defendant Nos. 2 to 5 from the committees of the schools run by the Plaintiff-society. In my view, such issues and controversies can be effectively sorted out and adjudicated upon examination of the relevant records, important papers, Minute Books etc. of the Plaintiff-O.P. No. 1 society. I am, therefore, of the opinion that such a step will be beneficial to both the parties and shall not cause any loss or prejudice to any party. In a situation like this it will be too much to say that whole intention of the Plaintiff. O.P. No. 1 society was mala fide being for fishing out evidence for assisting the Plaintiff society in course of the suit.

10. In my view, the documents, records, Minute Books, Registers etc. of the Plaintiff-O.P. No. 1-society had noxious with the crucial questions touching the declarations and permanent injunction prayed for by the Plaintiff-society in the main suit. Hence I am unable to accept the view expressed by Shri Banerjee in that regard.

11. It has been laid down by Hon'ble Supreme Court in the case The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, that the High Court will not interfere u/s 115 Code of Civil Procedure, when the Court below had jurisdiction to make the order that it made and did not act illegally or with material irregularity. In the instant case, I find that the learned City Civil Court, Calcutta where the suit was filed by the Plaintiff-O.P. No. 1-society had certainly the jurisdiction to pass the order that it made on June 15, 1999. Again I find that there is nothing on record to show that the learned City Civil Court, Calcutta, acted illegally or with material irregularity. Again I am of the view, that the impugned order dated June 15, 1999, granting inventory commission neither caused irreparable loss or injury to the Defendant-Petitioner Nos. 1 and 2 nor occasioned a failure of justice. I am, therefore, of the clear view that the instant Civil Revisional application for setting aside the order dated June 15, 1999, passed by the learned City Civil Court, Calcutta is liable to be dismissed and hence the same is hereby dismissed.

12. There will be no order as to costs.

13. Xerox certified copy of this order be made available to the parties, if applied for, within a week from the date of application subject to usual formalities.

14. Revisional application dismissed.