
(2008) 09 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1354 of 2008

Prabhu Ram

APPELLANT

Vs

District Collector, Nagaur and Others

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4

Citation : (2008) 09 RAJ CK 0026

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : G.R. Punia, for the Appellant; Sajjan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard Learned Counsel for the parties. The appellant is aggrieved against the order dated 28.06.2008 by which the trial court allowed the respondent's application (who became party in the suit subsequently) filed under Order 39 Rule 4 CPC.

2. Brief facts of the case are that the appellant-plaintiff Prabhu Ram filed the suit for declaration and injunction against the State and the Mining Engineer, Makarana. In the said suit, the notices were issued to the defendants State and the Mining Engineer. The appearance was put in on behalf of those defendants and interim order to maintain status quo was passed by the trial court. On 17th Sept., 2004 the counsel for the defendants i.e., State and the Mining Department submitted before the trial court that the respondents are ready to maintain the status quo. On this concession from the defendants, the trial court passed four lines order on the basis of concession of the counsel of the State and the Mining Department and passed the order to maintain status quo.

3. The applicants-respondents Nos.3 to 11 submitted an application under Order 1 Rule 10 CPC on 21.04.2004 i.e., before the said order dated 17th Sept., 2004 was passed by the trial court for being impleaded as party. The injunction

application in the manner referred above was allowed without deciding the respondent's application under Order 1 Rule 10 CPC. The applicants were impleaded as party by order of the trial court in main suit by order dated 19th May, 2008. The interim order dated 17th Sept., 2004 remained as it is and ultimately, the newly added parties submitted the present application under Order 39 Rule 4 read with Section 151 CPC and prayed that the order dated 17th Sept., 2004 may be set aside. In addition to pleading that they were not party in the main suit as well as in misc. proceedings and the trial court granted injunction. Newly added parties pleaded that they filed another suit No.74/04 against the State and also submitted temporary injunction application and the said injunction application was allowed by the court vide order dated 4th May, 2007 restraining the present plaintiff-appellant from obstructing way to the mine of the newly added party in the suit. The said order was challenged by preferring the appeal by the present appellant-plaintiff wherein interim order was passed by the appellate court on 4th May, 2007 and according to Learned Counsel for the appellant, now the appeal has been allowed. The newly added defendants pleaded in the application under Order 39 Rule 4 CPC that the plaintiff is bent upon to obstruct the way in the garb of interim order dated 17.09.2004 which is not against the respondent and, therefore, they have to move this application under Order 39 Rule 4 CPC.

4. The application was opposed by the plaintiff-appellant, but the trial court after observing that the trial court should not have confirmed the interim order without deciding the application filed by the applicants-(newly added defendants) for being impleaded as party and set aside the interim order by impugned order.

5. According to Learned Counsel for the appellant the interim order was passed as back as on 17th Sept.,2004 and for three good years the respondents did not choose to challenge the order and because of this reason only, the respondents' application filed under Order 39 Rule 4 CPC should have been dismissed. According to Learned Counsel for the appellant, the interim order was passed was in the knowledge of the defendants-respondents and there is no new circumstances shown by the defendants after passing of the order dated 17th Sept., 2004 so as to have any necessity for setting aside of the order dated 17th Sept., 2004. Learned Counsel for the appellant relied upon the judgment of this Court delivered in *Laxmi Devi v. Dula Ram* reported in 1991(1) WLC (Raj.) 656 wherein this Court held that temporary injunction if passed without giving notice to other party than the order can be discharged, varied, modified or set aside on changed circumstances. The said order can be challenged also on the ground of abuse of process of court. According to Learned Counsel for the appellant, the interim order was passed after hearing the other party and further it cannot cause any injury to the respondents nor it is abuse of process of the court, apart from the fact that the respondents failed to show that there is any reason for vacating the interim order. Learned Counsel for the appellant also relied upon the judgment of the Karnataka High Court delivered in the case of *Kantappa S/o. Mohanappa Suttar v. Krishnabai W/o. Devarao Suttar & Ors.* reported in 1996 (1)

CCC 301 (Kar) : AIR 1995 Kar 213 wherein the Karnataka High Court noticed that the defendant did not take any steps for vacating temporary injunction for more than three months and that ground alone was found sufficient for rejection of the application of the defendant filed under Order 39 Rule 4 CPC. Learned Counsel for the appellant also relied upon the judgment of the Hon"ble Apex Court delivered in the case of Wander Ltd. and Another Vs. Antox India P. Ltd., . In the said judgment, the Hon"ble Apex Court held that the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.

6. I considered the submissions of Learned Counsel for the parties and perused the facts of the case.

7. Admittedly, the trial court neither impleaded the applicants defendants as party in the suit or even in the misc. application and their application for becoming party was pending and the trial court confirmed the interim order on 17th Sept., 2004. Subsequently, the applicants were impleaded as defendants in the suit and, therefore, so far as applicants being necessary or proper party is concerned, that issue no more survives. The newly added respondents pleaded that a counter suit was filed wherein interim injunction was granted and it was subjected to appeal. Therefore, in fact, the dispute appears to be between the two parties i.e., plaintiff and newly added parties and State and Mining Department being a custodian of the property in question were necessary party. It may be true that the grievance of the plaintiff may be against the State and its department but some times in more occasions the grievance against the State and department may in fact have arisen because of the involvement of third party. In this case, since the new parties were added by the order of the court, therefore, it is presumed that the lis is between the plaintiff and the defendants which is the position clear from the totality of the facts of the case also. Be it as it may be, when there was application of a party in the main suit as well as in misc. Proceedings for being impleaded as party, the court should have applied its mind before confirming the stay order or granting stay order as whether the presence of the third party is necessary or not. The trial court should not have decided the injunction application merely on the concession of one party defendant when other party is yet showing his right to be impleaded as party in the injunction proceedings. Apart from above strictly speaking the injunction order is not against the applicants, the defendants who were impleaded as party after the order dated 17.09.2004 was passed and the stay order will be against the State and Mining Department. The defendants claimed that because of injunction order the rights of the newly added defendants likely to be adversely affected and that resulted into multiplicity of proceedings as well as dispute on spot also, which in fact, happened in this case by multiplying the proceedings. There are limitations for vacating and setting aside the order passed by the court

of law including the interim orders. Once the rights have been determined by the court of law after giving opportunity of hearing to the parties that should continue till final decision of the suit so as to make the position settled, but that limitation applies under the strict legal framework. If there is abuse of process of court, the appropriate order can be passed by the court. this Court also in the case of Laxmi Devi (supra) relied upon by Learned Counsel for the appellant held in so many words that the impugned order can be set aside if it may result into abuse of process of court and further if the order will not do the justice then also, the order may be modified. By ignoring the order dated 17th Sept., 2004, if the defendants who become party in the suit voluntarily will deal with the property as per their wishes then also that will not be in the interest of both the parties. Therefore, in such situation, the defendants could have moved application for injunction and may have sought interim order, which may have been a relief contrary to the relief granted by order dated 17th Sept., 2004. The dispute may be settled for all purposes even at interim stage for maintaining the suit property.

8. In view of the above reasons it would be unnecessary to continue the order dated 17th Sept., 2004 when firstly it does not bind the defendants newly added party and secondly defendants' rights are not effected by the order dated 17th Sept., 2004 then it will be just and proper for the court to pass appropriate order after hearing all the parties between whom there is dispute.

9. The judgments relied upon by Learned Counsel for the appellant have no application to the facts of the case because of the reason that in those cases, decisions were given between the parties and the order has not been sought by party for vacating the order on the ground that his application for being impleaded as party was pending yet the court has decided the injunction application without deciding the applicants' right for becoming party in the injunction application which would have entitled him to oppose the grant of injunction in favour of the plaintiff.

10. In view of the above reason, I do not find any merit in the appeal and the same is hereby dismissed. However, the trial court may now decide the plaintiffs injunction application afresh after giving opportunity to the respondent-defendants private parties uninfluenced by any observations made by this Court.