
(1982) 04 DEL CK 0039

In the Delhi High Court

Case No : Civil R. Appeal No. 810 of 1980

Sanatan Dharam Sabha

APPELLANT

Vs

Johrimal

RESPONDENT

Date of Decision : 15-04-1982

Acts Referred:

Citation : (1982) RLR 512

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : Vijay Kishan, P.D.Gupta and G.N Aggarwal, for the Appellant;

Judgement

Sultan Singh, J.

(1) The question for decision in this revision is : Whether the suit for permanent injunction is maintainable. Briefly the facts are that Johri Mal Sharma, plaintiff, filed a suit for permanent injunction restraining the defendants from terminating his services and dispossessing him from the suit premises, alleging that he was appointed as Head Priest on 1.2.78 on a monthly salary of Rs.200- besides lodging and boarding by Mahavirji Trust, defendant No. 5-respondent No. 2, that he was performing his job to its satisfaction, that defendant No. 5 was the appointing authority, and Sanatan Dharam Sabha, Greater Kailash I, (defendant No. 1) its President, Secretary and Member defendants 2, 3 and 4 respectively with a view to appoint some one else as Head Priest were bent upon to level, false, baseless and defamatory allegations and dispense his services, that defendant No. 1 was formed for constructing and completing the temple, that defendants 1 to 4 have no authority to terminate his services nor have they any power to dispossess him from the accommodation provided to him as residence. Defendants No. 1 to 4 pleaded that the plaintiff had not been performing Puja or performing any other work since 23.10.79, that he was not on duty, that the contract of service could not be specifically enforced in law and Therefore the suit for injunction was not maintainable, that no legal obligation in favor of the plaintiff against the defendants had been contravened, that even if there was

breach of contract his only right was to claim damages. On merits it was denied that plaintiff was appointed as Head Priest. It was submitted that he was appointed as a Pujari in 1978 on monthly salary of Rs. 200- with food and he was allowed to use one of the Kotharies in the mandir, to sleep at night, if necessary, that his wife and children were residing in House No. VI/3030 Gali Miran Wali Kalan, Ballimaran, Delhi. It was pleaded that there was no relationship of employer and employee, that his services were rightly terminated and the management had every right to dispossess him from the kothari. The jurisdiction of the civil court to try the suit for injunction between a private employer and an employee was also challenged. In replication the plaintiff admitted that he had not been performing puja since 23.10.79. All other allegations were denied by the plaintiff. The trial court framed a preliminary issue : Whether the suit was not maintainable in the present form ? By the impugned judgment dt. 7.8.80 the trial court held that the suit was maintainable.

(2) Learned counsel for the petitioners- defendants submits that a contract of personal service is not specifically enforceable and Therefore no permanent injunction can be issued restraining the defendants from terminating services. S. 41(e) of the Specific Relief Act, 1963 provides that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced. S. 14 of the Specific Relief Act mentions contracts which cannot be specifically enforced. S. 14(1)(b) of the Act reads (...)

(3) A contract of personal service is dependent upon the personal qualification of a person and the court cannot enforce specific performance of its material terms, and Therefore it has been provided in S. 14(1)(b) that such a contract cannot be specifically enforced. In S.B. Dutt Vs. University of Delhi, it has been held that a contract of personal service cannot be specifically enforced. In that case an award was made enforcing contract of personal service. The award was set aside on the ground that such a contract was not enforceable in view of S. 21(b) of the Specific Relief Act, 1877 and Therefore the award was set aside as it disclosed an error on the face of the award. S. 14(1)(b) of the Specific Relief Act, 1963 is corresponding to S. 21(b) of the Specific Relief Act, 1877. In Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, it has been observed that a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions- (i) where a public servant is sought to be removed from service in contra vention of Art. 311 of the Constitution of India ; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law ; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute. The present case of the plaintiff is not covered by any of the exceptions enumerated in the said judgment. Thus it must be held that the plaintiff cannot enforce his contract of employment. He has claimed an injunction restraining the

defendants from terminating his services. In other words, he seeks a declaration that he continues and has a right to continue in service. The contract of service is not specifically enforceable and such a declaration cannot be granted. S. 41(e) of the Specific Relief Act prohibits the grant of an injunction to prevent the breach of such contracts. It must Therefore be held that the plaintiff's suit for permanent injunction restraining the defendants from terminating his services is not maintainable u/s 9 of the CPC . An injunction is specifically prohibited u/s 41(e) read with S 14(1) of the Specific Relief Act, 1963. The trial court has referred to S. 30(1) of the Delhi Shops and Est. Act, 1954 and has observed that no employer shall dispense with the services of an employee who has put in three month's continuous service without giving one month's notice or wages in lieu of notice. The trial court concluded that there was relationship of employer and employee between the plaintiff and the defendants and it was the duty of the employer to abide by law before termination of his services. The trial court has not considered that the defendant was not an establishment within the meaning of the Delhi Shops Act. The Act is not applicable to the defendant, namely, Sanatan Dharam Sabha or Mahavirji Trust. The trial court was Therefore not correct in holding that the plaintiff's suit for permanent injunction restraining the defendants from terminating his services was maintainable.

(4) The next objection is Whether the suit claiming injunction restraining the defendants from dispossessing the plaintiff from the accommodation is maintainable ? Learned counsel for the petitioners submits that there was no allegation by the plaintiff that the defendants have threatened to use force to dispossess him. The plaintiff claims to be in service on the ground that he was appointed as Head Priest on 1.2.78 on a salary of Rs. 230.00 p. m besides lodging and bearding facilities. The defendants pleaded that the plaintiff's services had already been terminated and that the management had every right to dispossess him from the kothari. As far as termination of service is concerned. I have already held that the plaintiff is not entitled to an injunction u/s 41(e) of the Specific belief Act. As regards dispossession, I am of the view that initially the plaintiff was employed and admittedly he is in possession of a kothari. The only question is what is the right of the plaintiff to remain in possession. The defendants claimed that they had a right to dispossess from the kothari while plaintiff claims that occupation of the premises was a term of his employment. The validity of such a term is in dispute. Learned counsel for the defendants submits that there is no allegation that plaintiff had a legal right to remain in possession and there was invasion of that right and Therefore the suit as such was not maintainable. The plaintiff has alleged that he was in possession by virtue of his employment terms. The possession is admitted. There is sufficient pleading. This dispute can be settled only by allowing the parties to prove their respective contentions. What is the right of the plaintiff is a question of fact and I would not like to make any observation at this stage. I, Therefore, hold that the suit for injunction restraining the defendants from dispossessing the plaintiff is maintainable in law. Petition partly allowed.