

(2000) 09 MP CK 0079
In the Madhya Pradesh High Court
Case No : Civil Revision No. 1089/98

Shri Digambar Jain Atishaya Kshetra Thuwanji Trust	APPELLANT
Vs	
Mintulal and Others	RESPONDENT

Date of Decision : 28-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2001) 5 MPHT 322 : (2001) 1 MPLJ 616

Hon'ble Judges : Fakhruddin, J

Bench : Single Bench

Advocate : Rashmi Agrawal, for the Appellant; D.D. Bansal, for the Respondent
Nos. 1 to 3, for the Respondent

Judgement

Fakhruddin, J.

This revision petition is directed against the order dt. 27-6-98 passed by the Additional Judge to the Court of District Judge, Mungaoli, District Guna in M.A. No. 16/97, reversing the order dated 31-1-97 passed by Civil Judge Class-II, Chanderi, in Civil Suit No. 25-A/96, whereby the application filed under Order 39 Rules 1 and 2, C.P.C. was dismissed by the Trial Court.

Briefly stated facts are that respondent Nos. 1, 2 and 3 filed suit for declaration and permanent injunction against the State and the applicant on the ground that Naib-Tehsildar, Chanderi had granted patta in favour of plaintiffs on 20-6-1978. The applicant-Trust preferred an appeal before the Sub-Divisional Officer, Mungaoli, which was registered as Case No. 10/78-79 and dismissed on 15-5-1979. Against the order of dismissal passed by the Sub-Divisional Officer, the applicant-Trust preferred a revision before the Additional Commissioner, Gwalior, which was registered as Revision No. 251/78-79 and was decided on 28-2-81. In the revisional Court (Addl. Commissioner, Gwalior) applicant-Trust as well as plaintiffs-Mintulal. Gangaram and Suresh were represented by their respective counsel. The applicant-Trust was represented by Shri VK. Sapre, Advocate and the plaintiffs-respondent Nos. 1 to 3 were represented by Shri M.K.

Jain, Advocate. The Additional Commissioner, Gwalior, after examining the matter, set aside the order passed by the Tehsildar on 20-6-1978 as well as the order passed by the SDO, Mungaoli on 15-5-1979 and held that the orders passed by the Courts below are wholly illegal, and remanded the case to Tehsildar for proper enquiry and re-allotment of the land. Against the order of the Additional Commissioner the plaintiffs-respondent Nos. 1 to 3 did not prefer any revision or petition. On the other hand, the plaintiffs-respondent Nos. 1 to 3 filed the present suit, which was registered as Civil Suit No. 25-A/96.

The plaintiffs/respondent Nos. 1, 2 and 3 filed the suit for declaration and permanent injunction on the ground that the order passed by the Additional Commissioner, dated 28-2-1981 in a Revision No. 251/78-79, be declared null and void and plaintiffs be declared Bhumi Swamis of the suit land and further that the defendants be restrained to interfere by grant of injunction. Alongwith the suit, an application under Order 39 Rules 1 and 2 read with Section 151 C.P.C. was also filed, duly supported by an affidavit.

The defendants/applicants denied the claim and filed reply. The defendant/Trust specifically stated that the order of the Additional Commissioner was legal and valid, it was bye-parte order passed after notices were served and the plaintiffs were represented through counsel Shri M.K. Jain, who argued the matter. This averment finds place in Para 4 of the reply.

The Trial Court found that there was no prima facie case nor balance of convenience in favour of the plaintiffs. It was also found that the order passed by the Tehsildar, dated 20-6-1978, upon which reliance has been placed was set aside by the Addl. Commissioner under the order dated 28-2-1981.

Against the order passed by the Trial Court, dated 31-1-97 in a Civil Suit No. 25A/96, the plaintiffs/respondent Nos. 1 to 3, preferred a Misc. Appeal No. 16/97 before the Lower Appellate Court. The Lower Appellate Court by the Impugned Order dated 27-6-1998, allowed the said appeal. Hence, this revision-petition.

Miss Rashmi Agrawal, learned counsel appearing for the applicant/ defendant submitted that the order passed by the Lower Appellate Court is not only illegal but is also contrary to the provisions of law with errors of jurisdiction.

Shri D.D. Bansal, learned counsel appearing for the respondents, on the other hand, supported the impugned order and contended that there is no illegality.

As noted above, the suit had been filed by the respondents/plaintiffs for declaration and permanent injunction, on the ground that the order of the Addl. Commissioner, dated 28-2-1981, be declared null and void and the allotment made by the Tehsildar be declared valid whereunder the plaintiffs were allotted the land in dispute. The order of the Tehsildar has been set aside by the Addl. Commissioner, vide order dated 28-2-81. A perusal of the order dated 28-2-1981, photocopy of which is filed on the record, goes to show that the Commissioner had issued notices to the respondents, which were served on them

and they were represented by counsel Shri M.K. Jain, who argued the matter. The contentions advanced on behalf of plaintiffs namely, Mintulal, Gangaram and Suresh Kumar through their counsel have been considered in the order of the Commissioner especially in Paras 4 and 5. It is after hearing both the parties that the order passed by the Tehsildar has been set aside. In spite of that the plaintiffs suppressed this fact and filed affidavits of their own, in support of the application for injunction. The contentions raised in the plaint, application under Order 39 Rules 1 and 2 C.P.C. and the affidavits are incorrect and contrary to record. The Trial Court had noted all these factors and after considering the entire material on record, passed the order. The Lower Appellate Court, on the other hand, misread the facts and thereby allowed the application as is apparently clear from perusal of Para 11 of the impugned order dated 27-6-98 that the main ground taken for reversing the order of the Trial Court, is that the order of the Commissioner was without notice and in absence of the party and taking the same into consideration, it has been held that the order is not sustainable as it causes irreparable injury to the plaintiffs. This main ground which is weighed by the Lower Appellate Court for rejection of the order of the Trial Court is contrary to the record. A mere perusal of the order passed by the Commissioner dated 28-2-81 under which in the cause-title the presence of both the counsel representing the respective parties were recorded, goes to indicate that both the parties were well represented and after considering their contentions, the order was passed.

This matter had earlier come up before this Court on 21-12-1999, on which date this Court had passed a detailed order giving an opportunity to the counsel representing the respondents/plaintiffs to submit their affidavits that they had not engaged Shri M.K. Jain, Advocate and were not represented by him. No affidavit as yet has been filed in spite of lapse of eight months.

Shri Bansal, learned counsel appearing for the respondents, on the other hand, contended that the applicant has not taken this ground in the revision, filed before this Court.

This contention is devoid of merit. Such a ground is taken in Para 2 at page 3 of this revision-petition. Shri Bansal then submitted that apart from mentioning there is no ground. This contention has further no force. There are grounds "A" and "B" which are pertinent. It appears that the counsel has made the statement very casually without going through the record of the case. He is however advised to be more careful and vigilant in making the statement.

The plaintiffs' entire case is that the order of Tehsildar is valid under which they have been allotted the land and they have become Bhumi Swamis of the land. But the said order has been set aside by the Addl. Commissioner vide order dated 28-2-1981 and thus it has no longer subsists. The plaintiffs/respondents have therefore on prima facie case. It is noted that in their plaint they have misrepresented the facts, which was noticed by the Trial Court, in its order dated 31-1-97. The Lower Appellate Court however in very mis-conception and without

caring to see the order passed by the Addl. Commissioner set aside the order of the Trial Court.

Miss Agrawal, learned counsel appearing for the applicant submitted that the order passed by the Addl. Commissioner is very clear and has been passed after going through the entire material on record. It is contended that the plaintiffs were represented through counsel, their contentions were heard and rejected after consideration and yet in the plaint they suppressed this fact, that they have been heard. They also filed affidavit in support of the application under Order 39 Rules 1 and 2 C.P.C. knowingly, suppressing material facts.

It appears to be a case where a litigant adopts dubious methods, including filing of fraudulent litigation to defeat orders of the Courts. The Apex Court in the case like a present one, reported in *Rajappa Hanamantha Ranoji Vs. Sri Mahadev Channabasappa and Others*, , has held in Para 13 as under:--

"It is distressing to note that many unscrupulous litigants in order to circumvent orders of Courts adopt dubious ways and take recourse to ingenious methods including filing of fraudulent litigation to defeat the orders of Courts. Such tendency deserves to be taken serious note of and curbed by passing appropriate orders and issuing necessary directions including imposing of exemplary costs. As noticed, despite eviction order having become final nearly a quarter century ago, the landlord still could not enjoy the benefit of the said order and get possession because of the filing of the present suit by the brother of the person who had suffered the eviction order. Under these circumstances, the costs payable by the appellant to respondent 1 are quantified at Rs. 25,000/-."

Having thus examined the matter and in view of the discussion made hereinabove, it is apparent the Lower Appellate Court has committed grave illegality in passing the order impugned in this petition, which deserves to be and is hereby set aside.

In view of what has been stated above, the order passed by the Lower Appellate Court dated 27-6-1998, passed in Misc. Appeal No. 16/97 (*Mintulal and Ors. v. The State of M.P. and one Anr.*) is set aside and the revision is allowed with costs. Keeping in view the decision of the Apex Court in the case of *Rajappa Hanamantha Ranoji (Supra)*, in the opinion of this Court, it would be just and proper to award exemplary costs, which is quantified at Rs. 3,000/- against the respondents/plaintiffs.

Before parting, it is however made clear that the observations which have been made hereinabove are only with reference to the matter for grant of injunction and the Trial Court shall decide the case on its own merits in accordance with the law.

Counsel fee Rs. 1,000/-.