
(2016) 08 PAT CK 0049

In the Patna High Court

Case No : Civil Miscellaneous Jurisdiction Nos. 781 and 782 of 2016

S.M. Ali Imam

APPELLANT

Vs

S.M. Naiyar Imam

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1

Citation : (2016) 3 BBCJ 480 : (2016) 4 PLJR 287

Hon'ble Judges : Mr. Mungeshwar Sahoo, J.

Bench : Single Bench

Advocate : Mr. Sanjay Kumar, Advocate, for the Appellants; None, for the Respondents

Final Decision : Allowed

Judgement

Mr. Mungeshwar Sahoo, J. (Oral)—Heard learned counsel Mr. R.K.P. Singh for the petitioners and learned Senior Counsel Mr. R.S. Pradhan on behalf of plaintiffs-respondent nos. 1 and 2 in both the civil miscellaneous applications.

2. Civil Miscellaneous No. 781 of 2016 is directed against a part of the impugned order dated 07.06.2016 passed by learned Subordinate Judge - III, Darbhanga in Title Suit No. 189 of 2014/326 of 2015 whereby the application filed by the plaintiffs-respondents under Order 39, Rule 1 and 2 of the Code of Civil Procedure was allowed, which was confirmed by the lower appellate court by order dated 30.07.2016 passed in Miscellaneous Appeal No. 12 of 2016. The petitioners have also challenged the order passed by the lower appellate court in injunction matter. It appears that by the same impugned order the application for appointment of Receiver filed by the plaintiffs-respondent nos. 1 and 2 has been allowed by the trial court and the same was confirmed by the lower appellate court. The orders have been challenged by the petitioners in Civil Miscellaneous No. 782 of 2016.

3. Since the orders of the trial court as well as the lower appellate court are

common, I heard both the applications and both the civil miscellaneous applications are being disposed of by this common order.

4. From perusal of the record, it appears that plaintiffs-respondent nos. 1 and 2 filed the suit claiming for relief that the notification dated 30.06.2012 whereby plaintiff no. 1 was removed from the Secretary of the R.M.J. Society (Rauf Muslim Jamia) is illegal, inoperative and not binding on the plaintiff, therefore, the same may be set aside. The plaintiffs also prayed that the Committee formed by the plaintiffs by order dated 09.12.2013 be declared valid according to bylaws of the R.M.J. Society. In the suit the plaintiffs prayed for injunction for restraining the defendant 1st set (the present petitioners) from acting on behalf of R.M.J. Society and its academic institutions on the basis of the illegal notification dated 30.06.2012 and in the meantime the notification issued by the defendants-petitioners be also stayed.

5. For the purpose of deciding the controversy between the parties regarding injunction and appointment of Receiver the short facts may be stated that Rauf Muslim Jamia Society is a society in which the plaintiff-respondent claimed to be the founder Secretary. The defendants-petitioners claimed that petitioner no. 1 is the Secretary duly appointed by the Committee and petitioner no. 2 is the President. Petitioner no. 1 was removed by notification dated 30.06.2012 from the membership of the Society. Plaintiff no. 1 thereafter filed writ application before the High Court being C.W.J.C. No. 16119 of 2012 praying for permission to operate the bank account of the Society in the Central Bank of India. The writ application was dismissed on 04.10.2012 recording a finding that defendant no. 2 is operating the bank account on behalf of the Society. Thereafter against the said order L.P.A. was filed which was also dismissed on 07.11.2012 wherein L.P.A. Court held that till the matter between the parties is decided by a competent court of civil jurisdiction, the bank account shall be operated by the petitioner no. 2. Subsequently it appears that the plaintiff again filed application before the Bihar Nurses Registration Council for accepting the fees and form of the students through the plaintiff which was not accepted by the Council and against that order writ was filed before the High Court by the plaintiff. The said writ application was dismissed on 14.02.2014 and the learned Single Judge remanded the matter to I.G. (Registration). Against the said order of remand, two L.P.As. were filed before the High Court. One L.P.A. was filed by the petitioners and the other L.P.A. was filed by the plaintiffs-respondents. Both L.P.As. were decided by common order of the L.P.A. Court on 04.08.2014 which has been annexed as Annexure-3.

6. From perusal of this Annexure-3 it appears that L.P.A. Court clearly held that the Assistant Inspector General Registration, Patna has decided that until the time it is declared by a court of competent jurisdiction as to which is the genuine Governing Body of the said Society, the Governing Body, which had Dr. S.M. Ali Imam (petitioner no. 1) as its Secretary, shall be treated as valid. At paragraph 35 it has been further held that consequently, until the time a civil court of

competent jurisdiction decides otherwise or passes any interim order otherwise, it is S.M. Zafar Imam (petitioner no. 2), who shall be allowed to represent the said Society. Ultimately order of the learned Single Judge was set aside and L.P.A. filed by the plaintiffs was dismissed whereas L.P.A. filed by the petitioners was allowed. Against this L.P.A. order the plaintiffs-respondents filed S.L.P. No. 25008 of 2014 and another S.L.P. No. 25009 of 2014. Both S.L.Ps. filed before the Supreme Court were dismissed on 26.09.2014 observing that however, if in case the petitioner moves the civil court, his entitlement will be decided without being influenced by any observation or findings recorded by the High Court in the impugned orders.

7. The suit has been filed by the plaintiffs after dismissal of the S.L.P. by the Supreme Court claiming the relief which I have discussed above.

8. During the pendency of the suit injunction application was filed by the plaintiff-respondents, which is Annexure-6 wherein the plaintiffs-respondents prayed for injunction restraining the defendant 1st set (the present petitioners) as well as defendant 3rd set also from acting on behalf of the R.M.J. Society and its academic institutions on the basis of illegal notification dated 30.06.2012. Further another application was filed under Order 40, Rule 1 of the Code of Civil Procedure praying for appointment of Receiver, which is Annexure-8. Show-causes were filed by the petitioners to both the applications.

9. The trial court after hearing both the parties by order dated 07.06.2016 allowed both the applications for injunction and appointment of Receiver, which is Annexure-1. On appeal the lower appellate court has dismissed both the miscellaneous appeals by common order.

10. Learned counsel Mr. R.K.P. Singh for the petitioners raised very short ground on both points i.e. injunction matter as well as the appointment of Receiver matter. According to the learned counsel, admittedly in the plaint no relief has been claimed by the plaintiffs for permission to operate the bank account of the Society. In the injunction application also no such relief was claimed nor any prayer was made for restraining the petitioners from operating the bank account but the trial court although held that the main relief could not be granted to the plaintiff-respondent allowed the plaintiff to operate the bank account jointly. In other words, according to the learned counsel, the trial court has passed mandatory injunction. The relief was never claimed by the plaintiff either in the plaint or in the injunction but the court below making a third case granted the said relief. The order passed by the trial court is contrary to the order passed by the appellate court in L.P.A wherein it has clearly been held that till the decision of the civil court in suit, petitioner no. 2 shall act on behalf of the Society. The learned counsel further submitted that if now the plaintiff is allowed to operate the bank account then it will cause irreparable injury to the petitioners and shall also cause loss to the Society itself. The learned counsel further submitted that the trial court did not consider the hardship of the parties i.e. the convenience of the parties. The trial court has also not recorded a finding regarding the prima

facie case for the grant of injunction. Admittedly the plaintiff is not a member of the Society and he has been removed by the resolution/notification of the Society dated 30.06.2012 and since then he is trying to intervene in the management of the Society by filing different applications upto the Supreme Court as discussed above but he failed. However, without recording the finding regarding prima facie case, the balance of convenience and irreparable loss the court below has now indirectly granted the relief to the plaintiff, which could have only been granted after the suit is decreed.

11. So far the Receiver matter is concerned, according to the learned counsel appointment of Receiver is the harshest remedy and the plaintiff as a matter of right cannot get appointment of Receiver only by mere statement that it is in the interest of justice, Receiver be appointed. According to the order of the High court, which was confirmed by the Supreme Court, petitioner no. 2 is acting on behalf of the Society i.e. he is representing the Society and is in possession of the Society affairs. By appointment of Receiver, petitioner no. 2 has been removed from the office of the Society and for that purpose Receiver should not have been appointed by the trial court. Further Receiver, who has been appointed, is outsider of the Society and is not an expert in the matter. In other words, he has got no knowledge about running of the Society. The learned counsel further submitted that without considering these illegalities and the order passed by the trial court in the manner not permitted by law, the lower appellate court dismissed both the miscellaneous appeals recording one line finding that the court below has rightly appointed Receiver and rightly injunction order has been passed.

12. On the other hand, learned Senior Counsel Mr. R.S. Pradhan for the plaintiffs-respondents submitted that in fact the petitioners are defalcating the fund of the Society. Rs. 6 crores have been withdrawn by them. The properties purchased by the petitioners are being utilised by their family members. The Car purchased by them is used by the sons of the petitioners, which is against the interest of the Society. Various documents were produced before the trial court and the lower appellate court. Both the courts below on the basis of the documents held that in the interest of justice injunction is to be granted and, therefore, both the courts below have rightly passed the order. The learned Senior Counsel further submitted that if petitioner no. 2 was allowed to operate the bank account and now the courts below have allowed the plaintiff-respondent to operate the bank account jointly then there is no question of irreparable loss to the petitioners arises and in the interest of justice always injunction can be granted and Receiver can be appointed. The learned Senior counsel further submitted that order of this Court passed in L.P.A and the order of the Supreme Court was only interim order till the matter is decided by the civil court of competent jurisdiction and according to the direction of L.P.A. Court as well as the Supreme Court the trial court decided the matter by the impugned order and found that in the facts and circumstances of the case, in the interest of justice, the plaintiff be allowed to operate the bank account jointly with petitioner no. 2 and Receiver be

appointed. In such circumstances, orders impugned need no interference in supervisory jurisdiction.

13. Perused the orders passed by the trial court as well as by the lower appellate court. Both the courts below have disposed of the injunction application and the Receiver application jointly. From perusal of the trial court order, it appears that the trial court nowhere recorded any finding as to whether the plaintiff has got any prima facie case. The trial court has also not recorded as to whether balance of convenience is in favour of plaintiff and whether he shall suffer serious loss or irreparable injury. From perusal of the impugned order, it appears that the court below has only held that Hon"ble High Court in permitting defendant no. 2 only to operate the bank account, I am of the considered view that in order to avoid any allegation and counter allegation by the parties regarding defalcation of money and also to secure and safeguard the interest of the students and the Society as a whole and in consonance with the bye-laws of the Society, the injunction petition is partly allowed in the interest of justice. Accordingly, it is hereby directed that the operation of the bank account of R.M.J at Central Bank of India, Benipur Branch shall be jointly operated by defendant no. 2 (petitioner no. 1) and plaintiff no. 1 (respondent no. 1) herein.

14. It may be mentioned here that so far this relief which has been granted by way of injunction is concerned, it is not the relief claimed in the suit nor this relief is claimed in the injunction application. The relief is only to restrain the defendants, who are the petitioners. Therefore, the question to be decided in the injunction matter before the court was whether such injunction could have been granted or not but by this order the court below has made out a third case and granted mandatory injunction permitting to plaintiff no. 1 to operate the bank account jointly.

15. Order 39, Rule 1 of the Code of Civil Procedure :-

1. Cases in which temporary injunction may be granted. - Where in any Suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.

16. In the present case, no property is involved. The dispute is with regard to the office of Rauf Muslim Jamia Society. Whether Rauf Muslim Jamia Society shall be represented by the plaintiff or by the defendants-petitioners ? It is also admitted fact that by notification/order dated 30.06.2012 plaintiff no. 1 has been removed from the office of the society. This order has been challenged by filing suit and declaration against that order is sought for to the effect that the order be declared as illegal and against the bye-laws of the Society. Now, therefore, according to L.P.A. Court's direction and the direction of the Supreme court until otherwise is decided by the civil court of competent jurisdiction no injunction can be granted, as the right of the plaintiff is yet to be decided by the civil court. If after the suit is decreed and a declaration is made to the effect that the order/notification dated 30.06.2012 is illegal then only the right will accrue.

17. Admittedly the plaintiff is out of the office of the Society since after 30.06.2012. Now by way of injunction he cannot be granted to represent the Society till the decision of the suit and he may be permitted to operate the bank account on behalf of the Society. Since he is out of the office, there is no question of prima facie case arises. He is out of the office since last about four years, therefore, there is no question of any irreparable loss to the plaintiff arises and likewise there is no question of balance of convenience in favour of the plaintiff arises. In my opinion, therefore, the learned trial court has wrongly passed the impugned order while disposing of the injunction application filed by the plaintiff and the lower appellate court without considering the above principles of law has confirmed the order recording one line finding that the plaintiff has got prima facie case. From perusal of the impugned order, I find that there is no independent application of judicial mind of lower appellate court. The miscellaneous appeals have been disposed of like civil revision application. Only questions of law have been considered and there is no consideration about the documentary evidences produced by the parties. The lower appellate court has not at all considered the effect of the L.P.A. order and the order of the Supreme Court nor the lower appellate court has considered the documentary evidences and the effect thereof.

18. So far the appointment of Receiver is concerned, it may be mentioned here that in view of the judgement of the L.P.A. Court, which has been confirmed by the Supreme Court, petitioner no. 2 is the office bearer of the Society and was acting and representing the Society. By appointment of Receiver, petitioner no. 2 has been removed from the said office.

19. Madras High Court in the case of T. Krishnaswamy Chetty v. C. Thangavelu Chetty and Ors., A.I.R. 1955 Madras 430 has given the guideline i.e. the principles when the receiver maybe appointed. This decision of Madras High Court has been subsequently followed by various High Courts and even the Supreme Court and this decision has been approved. This Court in the case of Vijai Kumar v. Smt. Kiran Devi & Ors., 2007 (3) PLJR 417 considering various decisions relied upon the decision of the Madras High Court referred to above and

held that the said five principles which are laid down by Madras High Court are generally known as "Punch Sadachar" which are as follows :-

- (i) Appointment of a receiver pending a suit is a matter resting in the discretion of the court ;
- (ii) No receiver should be appointed except upon proof that plaintiff has a very excellent chance of succeeding in the suit ;
- (iii) Plaintiff must show some emergency or danger or loss demanding immediate action ;
- (iv) Receiver should not be appointed where it has the effect of depriving a defendant of his "de facto" possession ; and
- (v) the court should look into the conduct of the party who makes application.

20. The High Court considered all these "Punch Sadachar" separately in the decision. In the present case, as stated above, when the plaintiff has got no prima facie case, there is no question of excellent chance of succeeding arises. Further appointment of Receiver amounts to removal of petitioner no. 2 from the office of Rauf Muslim Jamia Society. The court below also did not consider the conduct of the plaintiff, who is out of the office since last four years and is filing various applications for the purpose of intervening in the management of the Society. When he lost the matter, the present suit has been filed wherein on the simple prayer for injunction and appointment of Receiver the courts below have allowed the injunction and appointed the Receiver without considering the said principles of law.

21. It is settled principles of law that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step into exercise of its supervisory jurisdiction.

22. In the present case, as discussed above, though the courts below have the jurisdiction to decide the injunction application or the Receiver application in either way but decisions should have been passed by the courts below in judicial manner within the four corners of the settled principles of law laid down by this court or by the Supreme Court. As discussed above both the courts below have passed the orders on injunction application and the appointment of Receiver application in the manner not permitted by law and thereby grave injustice has been done to the petitioner and by the order impugned, the petitioner has been removed from the office of Rauf Muslim Jamia Society. On the contrary, there is no question of any hardship to the plaintiff arises nor he has got any prima facie case nor any excellent chance of success in the suit.

23. In my opinion, therefore, if at all impugned orders passed by the trial court as well as by the lower appellate court are allowed to stand, it will occasion grave injustice. Therefore, both the orders passed by the trial court as well as by the lower appellate court are hereby set aside. The injunction application and the Receiver application filed by the plaintiffs-respondents are hereby rejected. The court below is directed to decide the suit on merit according to law.

24. Thus, both the civil miscellaneous applications stand allowed.

25. This order will not prejudice any party on merit of the suit.