

(2012) 05 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Writ Petition No. 18510 of 2011 and Civil Miscellaneous Stay Application No. 16965 of 2011

State of Rajasthan and Others

APPELLANT

Vs

Mithalal and Others

RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 100

Citation : (2013) 3 RLW 1974 : (2012) 3 WLN 54

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Advocate : Zakir Hussain, Additional Government, for the Appellant; A.K. Sharma with Mr. Rachit Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—By way of the instant writ petition, the petitioners have beseeched to quash and set-aside the orders dt. 27.04.2011 as also 05.11.2007 passed by the Additional District Judge (Fast Track) No. 1, Karauli and Civil Judge (Jr. Division), Karauli respectively. Shorn of unnecessary details, the facts of the case, in nub, are that the respondent-plaintiff filed a civil suit for permanent injunction against the defendants-petitioners together with an application of temporary injunction under Order 39 Rule 1 and 2 CPC in the Court of Civil Judge (Jr. Division), Karauli. During the pendency of suit, the trial Court found a prima-facie case, balance of convenience and irreparable loss in favor of the respondent-plaintiff and granted injunction in favour of the respondent-plaintiff directing the petitioners defendants not to dispossess the plaintiff without observing due process of law. It was also directed that if the respondent-plaintiff did not comply with the conditions of lease deed, the petitioners-defendants were at liberty to act in accordance with law. Aggrieved with this order, the petitioners-defendants preferred an appeal and the learned Additional District Judge (Fast Track) No. 1, Karauli dismissed the appeal and affirmed the order dt. 05.11.2007 passed by

the trial Court. Thus, there has been a concurrent finding of two Courts below.

2. Heard learned counsel for the parties and carefully perused the relevant material on record including the impugned orders.

3. Learned Government Counsel appearing for the State took me through the order dt. 14.03.2005 and canvassed that the respondent-plaintiff did not comply with the conditions of lease deed, hence the same was cancelled accordingly. The learned trial Court as also the appellate Court did not consider these aspects and arbitrarily granted injunction in favour of the respondent-plaintiff. Hence, both the orders deserve to be set-aside.

4. E Converso, the learned counsel appearing for the respondent-plaintiff defended the impugned order and stated the same to be just and proper and contended that both these orders have been passed pursuant to the order of the Division Bench of this High Court rendered in D.B. Civil Special Appeal No. 739/2003. Mr. Sharma further contended that it was categorically observed by the Division Bench of this Court in the said D.B. Civil Special Appeal that "in case, in the meanwhile, the period of lease has expired, they have to take all the care to renew the lease for the remaining period i.e. the left out period of the original lease."

5. Learned counsel further submitted that the lease granted in favour of the respondent plaintiff became effective on 21.12.1974 and the period was to expire on 20.12.1994. The order of the Division Bench came to be passed on 04.07.2003. Thereafter pursuant to this order, the petitioners defendants handed over the possession of the mines on 21.07.2003. In the light of the judgment passed by the Division Bench, the period of lease deed is to expire on 06.03.2019. Prior to that the lease granted in favour of the respondent-plaintiff cannot be cancelled. It is categorically observed in unequivocal terms that the petitioners defendants shall take all the care to renew the lease for the remaining period i.e. the left out period of the original lease, the Division Bench of this Court had made it clear that even after the expiry of the period of lease deed, the period was to be renewed for the remaining period i.e. the left out period of the original lease. Since the respondent-plaintiff worked on the mines only from 21.12.1974 to 06.05.1979, in the light of the order of the Division Bench, he was required to further work for the left out period of the original lease. Keeping in view the judgment of the Division Bench of the High Court as also the suit decreed by the trial Court and affirmed by the appellate Court, the trial Court found prima facie case to be in favour of the respondent plaintiff and granted injunction in favour of the respondent-plaintiff. The defendants petitioners albeit preferred an appeal, but that too also stood dismissed.

6. Learned Government Counsel appearing for the State has utterly failed to convince me so as to take a contrary view to that of the view already taken by the two Courts below. Hence, I do not find any ground to interfere with the order of the trial Court as also of the appellate Court.

7. The Full Bench of the Hon''ble Apex Court in the case of Kshitish Chandra Bose vs. Commissioner of Ranchi reported in AIR 1981 S C 707 (1) categorically observed that the Patna High Court clearly exceeded its jurisdiction in reversing the pure concurrent findings of fact given by the trial Court and the then appellate Court.

8. In the case of Mst. Kharbuja Kuer Vs. Jangbahadur Rai, the Hon''ble Apex Court held that the High Court had no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. In this connection, the Apex Court observed as follows:

It is settled law that the High Court has no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact.

As the two Courts, approached the evidence from a correct perspective and gave a concurrent finding of fact, the High Court had no jurisdiction to interfere with the said finding.

9. To the same effect is another decision of the Hon''ble Apex Court in the case of R. Ramachandran Ayyar Vs. Ramalingam Chettiar, where the Court observed as follows:

But the High Court cannot interfere with the conclusions of fact recorded by the lower Appellate Court, however erroneous the said conclusions may appear to be to the High Court, because as the Privy Council observed, however, gross or inexcusably the error may seem to be there is no jurisdiction under Sec. 100 to correct that error.

10. The same view was taken in two earlier decisions of the Hon''ble Apex Court in the case of D. Pattabhiramaswamy vs. Hanymayya reported in AIR 1959 SC 57 and Raruha Singh vs. Achal Singh reported in AIR 1961 SC 1097.

11. In this case, the Hon''ble Apex Court observed that the High Court had no jurisdiction after reversing the concurrent findings of fact of the Courts below and remand the case to the Additional Judicial Commissioner.

12. The conclusion, therefore, is inescapable that this Court should not invoke extraordinary jurisdiction under Art. 227 of the Constitution to upset the pure findings of fact of two Courts below. The scope of the High Court under Art. 227 of the Constitution is limited. This extraordinary jurisdiction can be invoked only when the judgment of the Court below is found to be perverse or contrary to material or it results in manifesting injustice.

13. This writ petition has been filed under Art. 227 of the Constitution of India. In the case of Shalini Shyam Shetty and Another vs. Rajendra Shankar Patil reported in (2010) 8 Supreme Court Cases 329, their Lordships of Hon''ble Apex Court have held that the power under Art. 227 of the Constitution of India is a reserved and exceptional power for judicial intervention to be exercised not merely for the grant of relief in any even of the case, but only to be directed for

the promotion of public confidence in the administration of justice. It has been held that the power is unfettered, but subject to high degree of judicial discipline and interference is to be kept at the minimum.

14. If viewed the case of the petitioners-defendants from the above angle in the light of the aforesaid judgments of Hon''ble Apex Court, it is found that the trial Court as also the appellate Court found the prima-facie case to be in favour of the respondent-plaintiff and granted injunction in its favour. The impugned orders, in the facts and circumstances of the case, are found to be just and proper and suffer from no infirmity.

15. I do not find any ground so as to interfere with the said orders and thus, the writ petition being devoid of any substance deserves to be dismissed.

16. For the reasons stated above, the writ petition fails and the same being bereft of any merit stands dismissed accordingly. Consequent upon the dismissal of writ petition, the stay application, filed herewith, does not survive and that also stands dismissed.