
(2019) 04 MP CK 0064
In the Madhya Pradesh High Court
Case No : Writ Petition No. 9078 Of 2016

Suresh N. Vijay

APPELLANT

Vs

R.C. Agrawal & Ors

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 24

Citation : (2019) 04 MP CK 0064

Hon'ble Judges : Nandita Dubey, J

Bench : Single Bench

Advocate : A.P. Shroti, Sankalp Kochar

Final Decision : Dismissed

Judgement

The petitioner has assailed the validity of the order dated 12.04.2016, passed by District Judge, Bhopal in Misc. Civil Case No. 691/2015, whereby the petitioner's application under Section 24 of the C.P.C. has been rejected.

The petitioner claiming to be assignee on the basis of the registered deed of assignment dated 24.02.2010, executed by the assignors, (i) Kishori Devi Agrawal, wife of late Dwarka Prasad Agrawal, (ii) Smt. Hemlata Agrawal, daughter of late Dwarka Prasad Agrawal, (iii) Mahesh Prasad Agrawal, son of late Keshar Dev Agrawal and (iv) Sanjay Agrawal, son of Mahesh Prasad Agrawal, instituted a regular Civil Suit No. 194-A/2013 before the District Judge, Bhopal inter alia seeking a declaration that firm M/s Dwarka Prasad Agrawal and brothers was the owner of Newspaper titled as "Dainik Bhaskar". He filed an application under Section 24 of the C.P.C., which was registered as MJC No.691/2015 against M/s Writers and Publishers Limited and Ramsh Chandra Agrawal, for transfer of two Civil Suits RCS No.74-A/1987 and RCS No.75-A/1987 pending before the Court of First Additional Judge to the Court of District Judge, Bhopal, stating that the said regular civil suits with the similar subject matter are pending before the First Additional District Judge, Bhopal as per the judgment of the Supreme Court in the case of Dwarka Prasad Agrawal and another through LRs. Vs. B.D. Agrawal

and others dated 07.07.2003, hence in order to avoid two contradictory decrees on the same issue, both those pending civil suits be transferred, consolidated and heard together.

The learned District Judge, after considering the record has dismissed the application holding that pending suits before any Court can be transferred on application of any of the parties, after giving notice and hearing such parties, but as the two civil suits, RCS No.74-A/1987 and RCS No.75-A/1987 are not pending in the Court of First Additional District Judge but have been dismissed as withdrawn by order dated 27.10.1993 on the application of plaintiff therein, the same cannot be transferred.

Shri A.P. Shrotri, learned counsel appearing for the petitioner has reiterated the same arguments as made before the learned District Judge. Taking this Court through paragraphs 10, 35, 37 and 40 of the judgment rendered in the case of Dwarka Prasad Agrawal and another through LR's. Vs. B.D. Agrawal and others (2003) 6 SCC 230 (decided on 07.07.2003), has argued that the learned District Judge has erred in interpreting the order passed by the Supreme Court and erroneously held that the two suits, RCS No.74-A/1987 and RCS No.75-A/1987 are not pending. Much stress is laid on para 40 of the judgment, whereby the Supreme Court has allowed the writ petition and appeals filed by Shri Dwarka Prasad Agrawal and quashed the order of compromise dated 29.06.1992 and order dated 13.11.1992 passed by the High Court and all the action taken by the statutory authorities and civil Court, and relegated the parties to the same position in which they were immediately prior to the passing of the order dated 29.06.1992 and directed the Civil Courts to act accordingly.

Shri Sankalp Kochhar, learned counsel for the respondents on the other hand, has supported the impugned order. It is argued that in civil proceedings, plaintiff is the dominus litis and it is the privilege of plaintiff alone to withdraw the plaint/suit at any stage of the proceedings. Plaintiff being the dominus litis could not be compelled or forced to or dragged into pursuing a case against his wishes.

A perusal of decision of D.P. Agrawal (supra), reveals that the Supreme Court on 07.07.2003 has decided the Civil Appeals No. 4782/1996, 4783/1996 and W.P. (Civil) No.427/1992 by the aforesaid decision. The issue before the Supreme Court was, whether settlement of a private dispute between the parties to a writ proceedings is permissible in law ? and considering the facts and circumstances of the aforesaid civil appeals and writ petition, the aforesaid decision was passed.

Even if for arguments sake, it is considered that the RCS Nos. 74-A/1987 and 75-A/1987 stood automatically revived in July 2003, as a consequence of the order passed by the Supreme Court, it could not have proceeded any further until an application is made by any of the parties to the suit, and the same is taken on number.

Section 24 of the CPC provides for general power of transfer and withdrawal, which is reproduced as under :-

24. General power of transfer and withdrawal :-

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage.

(a) Transfer any suit,, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) Withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) Try or dispose of the same, or

(ii) Transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) Retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under subsection (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it was transferred or withdrawn.

(3) For the purpose of this section-(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court; (b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

"On the application of any of the parties" means, parties to that suit or proceeding.

In the present case, as is evident from the record, Dwarka Prasad Agrawal, filed the writ Petition No.527/1993 before the Supreme Court, questioning the order dated 03.09.1992 passed by the Registrar of Newspapers for India (RNI) pursuant to order dated 26.06.1992, passed in M.P. No.802/1992, which was also the subject matter before the Supreme Court. Dwarka Prasad Agrawal died during the pendency of the aforesaid proceedings before the Supreme Court, but admittedly after the order dated 27.10.1993, passed in RCS Nos.74-A/1987 and 75-A/1987. During his life time, he never challenged the said order of withdrawal nor filed any application for its restoration.

It is also apparent from the record that Mahesh Prasad Agrawal, who is an assignor to the assignment deed dated 24.02.2010 was arrayed as respondent No.3 in RCS No.75-A/1987 filed by Ramesh Chandra Agrawal. He also did not file any application for restoration of the said suit earlier nor filed any application before the Court after the order passed by the Supreme Court in the case of D.P. Agrawal (*supra*).

It is thus clear that the date when the application under Section 24 of the C.P.C. was moved by the present petitioner for transfer of the aforesaid two civil suits, RCS Nos.74-A/1987 and 75-A/1987, the same were not pending before any Court. Moreover, the petitioner was not a party to the said suits. Clause 2.1 of the Assignment deed dated 24.02.2010, only empowers the petitioner to "henceforth be entitled to continue to prosecute and defend all pending legal proceedings and to institute fresh proceedings" and not to restore/revive the proceedings, which has already come to an end.

Having regard to the facts and circumstances emerging from the record of the case, I am unable to accept the contention put forth by the learned counsel.

In my view, no illegality or irregularity is committed by the trial Court in dismissing the application of the petitioner. No case is made out by the petitioner for interference.

Hence, the instant petition is liable to be and is hereby dismissed. No order as to costs.