

(2001) 03 BOM CK 0081

In the Bombay High Court

Case No : Civil Revision Application No. 536 of 2000

Uttamrao Monaji Bhele

APPELLANT

Vs

Suresh Prahladrao Shukla and Another

RESPONDENT

Date of Decision : 31-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9, 9A
Press and Registration of Books Act, 1867 — Section 5, 5(2), 8, 8B, 8C

Citation : (2001) 3 MhLj 903

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

Advocate : Anjan De and P.V. Kaslikar, for the Appellant; R.K. Deshpande, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Heard Shri De, learned counsel for the petitioner and Shri Deshpande, learned counsel for respondent No. 1.

2. Rule made returnable forthwith by consent of the parties.

3. The Civil Revision Application is directed against the order dated 4-5-2000 passed by the Joint Civil Judge, Senior Division, Amravati in S.C.S. No. 46 of 2000 whereby the application moved by the present applicant-original defendant No. 2 u/s 9A of the CPC came to be rejected and the Trial Court has held that it has jurisdiction to entertain and try the suit.

4. Before I consider the contentions on merits, certain facts, which have given rise to the controversy in question, are necessary to be considered.

The applicant-original defendant No. 2 and present non-applicant No. 2 - original defendant No. 1 are real brothers. Non-applicant No. 2 defendant No. 1 was printing and publishing the daily newspaper "Indrapuri Samachar" till 1-2-1999 continuously from 1988 or prior to even 1988. The applicant had given before the Sub-Divisional Magistrate, Amravali, a declaration that he was the owner,

editor, printer and publisher of daily newspaper "Indrapuri Samachar". In pursuance of the said declaration, he was publishing the newspaper daily "Indrapuri Samachar" and in each issue of the said newspaper, he was shown as owner, editor, printer and publisher as required by Section 5 of the Press and Registration of Books Act, 1867. The present non-applicant No. 2 was running the said newspaper "Indrapuri Samachar" under the financial constraints and he was in losses. Hence, he decided to sell and dispose of the said newspaper "Indrapuri Samachar" on 1-2-1999

Non-applicant No. 2 - original defendant No. 1 entered into an agreement with the plaintiff - present non-applicant No. 1 and sold the newspaper "Indrapuri Samachar" for a total consideration of Rs. three lakhs. The present non-applicant No. 2 defendant No. 1 received from the plaintiff, a sum of Rs. three lakhs and transferred all the rights, title, interest, articles, movables and fixtures including "goodwill" of the newspaper daily "Indrapuri Samachar".

The present non-applicant No. 2 - original defendant No. 1 gave declaration before the Sub-Divisional Magistrate u/s 8 of the Press and Registration of Books Act, 1867 that he ceases to be the owner, editor, printer and publisher of the newspaper dally "Indrapuri Samachar". Similarly, the present non-applicant No. 1 original plaintiff also gave declaration before the Sub-Divisional Magistrate u/s 5 of the Press and Registration of Books Act, 1867 that he is the owner, editor, printer and publisher of the daily newspaper "Indrapuri Samachar" and the said declaration was accepted by the Sub-Divisional Magistrate, Amravati. Thus, the plaintiff became the owner, editor, printer and publisher of the daily newspaper "Indrapuri Samachar". Then the plaintiff started printing, editing and publishing the daily newspaper "Indrapuri Samachar" and published on each issue of the said newspaper himself as the owner, editor, printer and publisher.

The plaintiff purchased the above referred newspaper "Indrapuri Samachar" from the present Non-applicant No. 2 - original defendant No. 1. The observations in the impugned order further reveals that he was told by defendant No. 2 i.e. present applicant that he had no objection for sale of the said newspaper and same being purchased by plaintiff from defendant No. 1. In para 5 of the impugned order, it is observed by the Court below that the applicant and non-applicant No. 2 - original defendant Nos. 1 and 2 respectively conspired as they being the real brothers and on 9-2-2000, the applicant gave false declaration before the Sub-Divisional Magistrate, Amravati stating that he is the owner, printer, publisher and editor of newspaper daily "Indrapuri Samachar" and started publishing the newspaper daily "Indrapuri Samachar". As a result of the same, in Amravati town and locality around Amravati town two newspapers styled as "Indrapuri Samachar" have been published. The applicant and non-applicant No. 2 in collusion with each other started collecting the advertisements stating that the plaintiff is working under them and newspaper belongs to them. The applicant and non-applicant No. 2 started collecting the charges and advertisements published in the newspaper of the plaintiff. Because of these

activities carried out by the applicant and non-applicant No. 2, the subscribers and the customers have been mislead. The image and status of the plaintiff in the eyes of the customers and subscribers have lowered down. Their activities being illegal and causing him irreparable loss and damages, the applicant and non-applicant No. 2 are required to be restrained by granting decree of perpetual prohibitory injunction. Hence, the plaintiff- applicant No. 1 rushed to the Civil Court, instituted the present suit and prayed for decree for declaration of title and perpetual prohibitory injunction against the applicant and non-applicant No. 2. The plaintiff also moved an application under order 39. rules 1 and 2 of the CPC and prayed that applicant-defendant No. 2 and non-applicant No. 2 - defendant No. 2 be restrained from publishing the newspaper daily "Indrapuri Samachar" as well as from collecting the advertisement etc. from the customers.

The applicant filed written statement at Ex. 22, while non-applicant filed written statement at Exs. 20 and 23 and contested the suit. The applicant and non-applicant No. 2 admits that they are the real brothers but denied that the newspaper daily "Indrapuri Samachar" owned by the plaintiff as well as the plaintiff himself is the editor, publisher and printer. The present non-applicant No. 2 admitted that non-applicant No. 2 was publishing and printing the newspaper daily "Indrapuri Samachar", and the newspaper was running into financial crises. The non-applicant No. 2 has denied the fact of sale to the plaintiff. The case of non-applicant No. 2 appears to be that at the relevant time, he was going through the financial crises, therefore, the plaintiff was allowed to run the newspaper daily "Indrapuri Samachar" for one year only by filing the affidavit before the S.D.M., Amravati, as required u/s 5 of the Press and Registration of Books Act. 1867, on receiving from the plaintiff sum of Rs. three lakhs. Therefore, the plaintiff is not entitled to run and publish newspaper daily "Indrapuri Samachar" from February 2000.

The applicant and non-applicant No. 2 before the Court below contended that R.N.1. New Delhi has granted to the applicant registration and the same is not cancelled till now. Therefore, the original defendant No. 2 has every right to publish the newspaper daily "Indrapuri Samachar". On 9-2-2000, he gave declaration to the Sub-Divisional Magistrate, Amravati to the effect that he is owner, editor and publisher of newspaper daily "Indrapuri Samachar". His declaration was accepted by the Sub-Divisional Magistrate, Amravati on 10-2-2000, hence, the applicant is entitled to publish and circulate in Amravati town and around Amravati, the newspaper i.e. "Indrapuri Samachar". It is contended by the applicant and non-applicant No. 2 before the Court below that the order of Sub-Divisional Magistrate has been challenged by the plaintiff. The Press and Registration of Books Act. 1867, is complete Code giving the procedure and providing remedies for breach thereof in respect of the issues arising in respect of the Act, 1867. The applicant and non-applicant No. 2 in short contended before the Court below that ordinary Civil Court has no jurisdiction to entertain and try the suit when the issue in Press and Registration of Books Act, 1867, is involved and is required to be adjudicated by the authorities specified

under the Act i.e. the Sub-Divisional Magistrate, Amravati, Director of Information and Publicity. Government of Maharashtra, Mumbai.

5. The applicant moved an application u/s 9A of the Code of Civil Procedure, 1908. wherein it was prayed that the Court may frame the issue of jurisdiction and decide it as a "preliminary issue". The Trial Court allowed the application and framed the preliminary issue on the point of jurisdiction. After considering the preliminary Issue, on the basis of the material placed on record by the respective parties to the suit, the Trial Court dismissed the application by passing the impugned order dated 4.5.2000 and held that, it does have a jurisdiction to entertain and try the suit. Being aggrieved by the same, the present Civil Revision Application is filed,

6. Before I further consider the issue regarding the jurisdiction, there are certain subsequent developments need to be considered in this regard. The appeal preferred by non-applicant No. 1 against the order of Sub-Divisional Magistrate dated 21-3-2000 before the Press and Registration Appeal Board, New Delhi, came to be decided vide order dated 9-6-2000 by the Board. While disposing of the appeal, certain relevant observations made by the Board needs to be incorporated in the order. Those are thus:

"This is an obvious collusion between the two brothers respondent Nos. 2 and 3 to deprive and defraud the Appellant. In view of the admission of Respondent No. 2 (and no denial by him) that he had transferred all rights to the Appellant, it is not necessary to rely on the sale-deed as such which can be made admissible after registration and paying the required penalty. As far as the Board is concerned; we are satisfied that the Appellant in the circumstances of the case should continue to publish the newspaper and no one else would do it till the Civil Court finally decides the dispute."

7. That non-applicant No. 1 in fact has succeeded before the Appellate Board and to some extent, the Board has also considered the aspect of civil suit instituted by non-applicant No. 1 for the purpose of declaration of title on the basis of the sale deed and as referred to hereinabove. finally observed that non-applicant No. 1 should continue to publish the newspaper and no one else till the Civil Court finally decides the dispute.

8. In the backdrop of the above referred facts and circumstances, this Court needs to consider the validity and propriety of the impugned order passed by the Trial Court, rejecting the application u/s 9A of the Code of Civil Procedure.

9. The aspect needs to be considered in view of the settled principles laid down by the Apex Court in this regard. In a case of a special statute, if there is no specific bar to the jurisdiction of the Civil Court, it is necessary to examine whether such jurisdiction is impliedly barred and if the special statute provides for measures to deal with the rights/grievances effectively and gives finality to such orders. Similarly, it is also needs to be considered as to whether the party instituting a suit is claiming the enforcement of common law rights/civil rights or

the rights flowing from the special statutes.

10. Shri De, learned counsel appearing for that applicant contended that the Press and Registration of Books Act, 1867 being the complete Code prescribing the procedure as well as provides remedies for violation or breach of the provisions of the Act, is a special legislation which impliedly takes away the jurisdiction of the Civil Court and Civil Court does not have jurisdiction to entertain and try suits arising out of" issues relating to the Press and Registration of Books Act. 1867. Shri De, further submitted that Section 5 of the Act deals with the declaration to be given before the Sub-Divisional Magistrate and once such declaration is accepted by the Sub-Divisional Magistrate and somebody is aggrieved by such declaration, remedy is only by way of application u/s 5 of the Act which deals with cancellation of declaration. It is further contended that if anybody is aggrieved by the decision, then there is further remedy to appeal provided u/s 8C of the Act. which is a final declaration/decision and is binding on the parties, Shri De, therefore, contended that under the scheme of the provisions of the Act, the Trial Court ought to have held that the Act is a Code by itself and therefore, jurisdiction of the Civil Court is impliedly barred and therefore, the application u/s 9A of the Code of Civil Procedure, 1908, ought to have been allowed and the suit filed by non-applicant No. 1. should have been dismissed on the ground of jurisdiction. In order to substantiate the contention, the reliance is placed on the judgment of the Apex Court in the case of State of A.P. v. Manjeti Laxmi Kantha Rao; judgment of this Court in the case of Bank of Baroda v. Triveniprasad Jamnuprasad Mishra; in the case of Sattjawadi v. Aruna Ganpatrao, and in the case of M. S. Sanstha v. Education Officer, Z.P.

11. Shri Deshpande, learned counsel, appearing for respondent No. 1 contended that non-applicant No. 1 purchased the paper in question and parted with amount of Rs. three lakhs. It is further contended that the applicant and non-applicant No. 2 in collusion trying to deny the civil rights of ownership to non-applicant No. 1 and, therefore, non-applicant No. 1 was left with no other option but to approach the Civil Court for enforcement of these civil rights which are neither flowing from the main statute nor associated with the provisions of the Act. The learned counsel, therefore, supported the impugned order.

12. Considered the contentions raised by the learned counsel for the respective parties and perused the impugned order passed. It is no doubt true that the Press and Registration of Books Act, 1867, incorporates the procedure for the purposes of registration and regulation of newspaper etc. Similarly, it provides the penalties and punishment for violation of provisions incorporated in the Act as well as rules framed thereunder. The Act further provides the form to prefer appeal against the order passed by the Sub-Divisional Magistrate. The jurisdiction of the Civil Court specifically barred by the provisions of the Act. The procedure for registration and regulation of newspaper, penalties and punishment for violation and the remedy of appeal and form to prefer appeal against the order passed by the Sub-Divisional Magistrate, may be a complete Code within

the scheme of the Act. However, it cannot be confused to construe that under the provisions of the Act, non-applicant No. 1 can seek enforcement of civil rights accrued to him on the basis of sale-deed which has further culminated in creating certain rights under the Press and Registration of Books Act, 1867 in his favour, The rights of ownership of newspaper basically claimed by non-applicant No. 1 on the basis of right of ownership accrued to him in view of sale -deed in question. Non-applicant No. 1 on the basis of such rights could give declaration u/s 5 of the Act. While adjudicating upon the issue of jurisdiction, all these factors are relevant and vital needs to be considered.

13. Certain undisputed circumstances needs to be considered at this juncture before dealing with the issue in question. In the instant case, non-applicant No. 1 has purchased the newspaper in question from non-applicant No. 2 for the consideration of Rs. three lakhs. Non-applicant No. 2 gave a declaration before the Sub-Divisional Magistrate, Amravati u/s 8 of the Press and Registration of Books Act. 1867 that he ceases to be the owner, editor, printer, publisher of the newspaper daily "Indrapuri Samachar". Non-applicant No. ,1 - plaintiff gave a declaration u/s 5 of the Act that he is the owner, editor, printer and publisher of the newspaper "Indrapuri Samachar", which was accepted by the Sub-Divisional Magistrate. Non-applicant No. 1, therefore, started printing, editing, publishing the newspaper daily "Indrapuri Samachar" and also started publishing on each issue of the said newspaper himself as owner, editor, printer and publisher of the newspaper. Non-applicant No. 1 got the declaration from the Sub-Divisional Magistrate, Amravati only on the basis of the title which he has received on the basis of the sale-deed entered into by non-applicant No. 1 and non-applicant No. 2. The rights of ownership of the newspaper in favour of non-applicant No. 1 flows from the sale-deed in question entered Into by non-applicant No. 1 and non-applicant No. 2. Merely because at a later point of time by colluding with each other, applicant and non-applicant No. 2 could also got declaration under subsection 2(c) of Section 5 of the Act, does not take away the jurisdiction of the Civil Court to seek the declaration in respect of the title on the basis of the sale-deed executed by non-applicant No. 2 in favour of non-applicant No. 1 in respect of the newspaper in question. No-applicant No. 1, in my opinion, is enforcing civil rights on the basis of the sale-deed and seeking declaration of title accrued to him as well as seeking relief of perpetual injunction against the applicant and non-applicant No. 2. Under the scheme of the Act, it is undoubtedly clear that there is no forum provided or provision incorporated which can provide remedy for enforcement of civil rights accrued to any party.

14. It is no doubt true that Civil Court undoubtedly has a jurisdiction to try all the civil disputes, however, special statutes are enacted by the Legislature in order to provide quick, effective, cheap remedy to the class of people covered under the said statute. The intention of the Legislature is undoubtedly clear in creating such special statutes for providing remedy for infringement thereof within the frame of the statute, to avoid long drawn legal process in the regular Civil Courts and, therefore, if the provision/rule framed under the statute is

infringed or breached, the person aggrieved can pursue the remedy provided within the frame work of the special statute. However, when the question of enforcement of civil right which is independent and distinct, though may occur under the provisions of the special statute, such right undoubtedly can be enforced in the Civil Court and the jurisdiction of the Civil Court in such a situation cannot said to be either expressly or by necessary implication barred.

15. There is no quarrel with the proposition laid down by the decisions cited by the learned counsel for the applicant, however, ratio needs to be applied depending on the facts of the each case and the Courts are required to find out within the parameters of the special statutes, the subject matter in each case, and on the basis of the provisions of such statutes as well as the nature of right enforced by (he party in the Civil Court also needs to be independently required to be considered by the Courts while dealing with the aspect of jurisdiction. After considering these aspects and for the reasons stated hereinabove, no case is made out for interference.

16. In the result, Civil Revision Application is dismissed. Rule is discharged. There shall be no order as to costs.