

Mahant Dhangir and Another

Vs

Madan Mohan and Others

Civil Appeal No. 1018 of 1987

(B. C. Ray, Jagannatha Shetty JJ)

28.10.1987

JUDGMENT

JAGANNATHA SHETTY, J. –

1. In the town of Bikaner there is a Math known as 'Juna Math'. The first appellant is the present Mahant of the Math. The second appellant is the presiding deity of the Math. For convenience and brevity we will refer to them collectively as 'the Math'.
2. The primary question raised in this appeal, by special leave, relates to maintainability of the cross-objection filed by the Math before the Division Bench of the High Court of Rajasthan (Jodhpur Bench) in Civil Appeal No. 20 of 1975. The Division Bench has dismissed the cross-objection as not maintainable.
3. The background facts are these : One Lalgiri Maharaj was a previous Mahant of the Math. He had several vices. He mismanaged the Math and recklessly disposed of its properties. On August 19, 1963 Lalgiri gave on lease the land measuring 2211 sq. yards in favour of Madan Mohan. The lease was for 99 years with monthly rent of Rs. 30. Again on March 22, 1968 Lalgiri sold 446 sq. yards of land to Madan Mohan. It was out of the land which was already leased to Madan Mohan. The sale was for Rs. 4000. Madan Mohan constructed some shops on a portion of the land purchased. He first rented the shops to Jankidas and Mohan Lal and later sold the same to them for Rs. 15,000. Madan Mohan is the first respondent, Jankidas and Mohanlal are respondents 2 and 3 before us. There was yet another transaction between the same parties. On April 8, 1969 Madan Mohan sold a piece of land measuring 124 sq. yards to respondents 2 and 3 for Rs. 1500. This piece of land forms part of the land which Madan Mohan purchased from Lalgiri.
4. In the meantime, there was change of guard in the Math. Lalgiri was said to have abdicated Mahantship in favour of the first appellant. The Math thereafter filed Suit No. 28 of 1971 challenging the alienations made by Lalgiri. The suit was for declaration that the alienations were without authority and not binding on the Math. It was also for possession of the property from respondents 1 to 3. The trial court decreed the suit in part. The trial court gave only a declaration that the lease deed dated August 19, 1963 was null and void. But the relief for possession of the land demised was rejected. The suit for recovery of possession of the land sold by Lalgiri was also dismissed.
5. Against the judgment and decree of the trial court, there were two appeals, before the High Court, one by the Math and another by Madan Mohan. Both the appeals came for disposal before the learned Single Judge. By a common judgment dated July 14, 1975 learned judge allowed the appeal

of the Math in part. He gave a simple declaration that the sale was void. He, however, did not give a decree for possession of the land sold. The learned judge also allowed the appeal of Madan Mohan. There he gave him complete relief. He held that the suit as to the lease was barred by time. The result was that the Math could not get back even an inch of land.

6. Against the judgment of learned Single Judge there was no appeal from the Math or Madan Mohan. There was only one appeal by respondents 2 and 3 being the Appeal No. 20 of 1975. Madan Mohan was impleaded as the third respondent in that appeal. The Math was impleaded as the first respondent. The Math preferred cross-objection. Madan Mohan did not do anything. He was perhaps completely satisfied with the judgment of the learned Single Judge. The Division Bench by judgment dated January 3, 1985 dismissed the appeal on the merits. The Division Bench also dismissed the cross-objection but on the ground of maintainability. The correctness of the dismissal of the cross-objection has been called into question in this appeal.

7. The High Court gave two reasons for rejecting the cross-objection. The first reason relates to the absence of appeal from Madan Mohan or by the Math against the judgment of learned Single Judge. The High Court observed :

Thus the lease is good. If Madan Mohan had filed an appeal, then the cross-objection would be competent. The cross-objection filed by the plaintiffs are not competent, wherein it has been prayed that the lease deed may be declared invalid and ineffective against the rights of the plaintiffs.

The second reason given by the High Court relates to Order 41 Rule 33 CPC for giving relief to the Math. The High Court said :

That having regard to the facts of the case Order 41 Rule 33 CPC cannot be called into aid. That provision should be applied with care and caution. The court should not lose sight of the other provisions in the Code of Civil Procedure. It should not also forget the law of limitation and the Court Fees Act.

8. Before us, Mr. B. D. Sharma, learned counsel for the appellant pursued both the reason given by the High Court. Counsel asserted that the cross-objection was maintainable not only against the appellants but also against Madan Mohan. The counsel also urged that in any event, the cross-objection ought to have been considered if not under Order 41 Rule 22 but (sic then) under Order 41 Rule 33 of the CPC. Mr. Rohtagi, learned counsel for the respondents, advanced an interesting submission. He urged that the land sold was a part of the land already leased to Madan Mohan. Even if the sale goes as invalid, the lease of the entire land revives and remains. So long as the lease remains binding between the parties, Madan Mohan would be entitled to retain possession of the entire land demised. The counsel urged that it would be, therefore, futile for the Math to seek possession of the property from the appellants in the cross-objection.

9. The assumption of Mr. Rohtagi though logical if not legal should be subject to the decision in the cross-objection. We must, therefore, examine the validity of the cross-objection and the contentions raised therein. It will be seen that the cross-objection filed by the Math was to the entire judgment of learned Single Judge. Therein, the Math raised two principal grounds. The first related to the denial of decree for possession of property which was the subject matter of sale. It was contended that the Math would be entitled to possession of that property when the sale was declared as null and void. The second ground was in regard to validity of the lease and the dismissal of the suit in respect

thereof. It was contended that the suit in regard to the lease was not barred by limitation.

10. Different considerations, however, apply to the different points raised in the cross-objection. We will first consider the right of the Math to file cross-objection against the appellants. The learned Single Judge has invalidated the sale of property to Madan Mohan while denying a decree for possession. The appellants before the Division Bench wanted to get rid of the finding as to invalidity of the sale. The Math in turn, wanted to recover possession of that property from the appellants and Madan Mohan. The Math instead of filing an appeal for that relief could as well take the cross-objection. That would be clear from the provisions of Rule 22 of Order 41 CPC. That is as plain as plain can be. The High Court was clearly in error in holding to the contrary.

11. The next question for consideration is whether the cross-objection was maintainable against Madan Mohan, the co-respondent, and if not, whether the court could call into aid Order 41 Rule 33 CPC. For appreciating the contention it will be useful to set out hereunder Rule 22 and Rule 33 of Order 41 :

22. Upon hearing, respondent may object to decree as if he had preferred separate appeal. - (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour, and may also take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the appellate court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the appellate court may see fit to allow.....

33. Power of court of appeal.-The appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees :

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12. Generally, the cross-objection could be urged against the appellant. It is only by way of exception to this general rule that one respondent may urge objection as against the other respondent. The type of such exceptional cases are also very much limited. We may just think of one or two such cases. For instance, when the appeal by some of the parties cannot effectively be disposed of without opening of the matter as between the respondents inter se. Or in a case where the objections are common as against the appellant and co-respondent. The court in such cases would entertain cross-objection against the co-respondent. The law in this regard has been laid down by this Court as far back in 1964 in Pannalal v. State of Bombay [(1964) 1 SCR 980 at 991-92 : AIR 1963 SC 1516]. After reviewing all the decisions of different High Courts, there this Court observed :

In our opinion, the view that has now been accepted by all the High Courts that Order 41, Rule 22

permits as a general rule, a respondent to prefer an objection directed only against the appellant and it is only in exceptional cases, such as where the relief sought against the appellant in such an objection is intermixed with the relief granted to the other respondents, so that the relief against the appellant cannot be granted without the question being re-opened between the objecting respondent and other respondents, that an objection under Order 41 Rule 22 can be directed against the other respondents, is correct. Whatever may have been the position under the old Section 561 the use of the word "cross-objection" in Order 41 Rule 22 expresses unmistakably the intention of the legislature that the objection has to be directed against the appellant. As Rajamannar, C.J. said in *Venkataswarlu v. Ramamma* [ILR 1950 Mad 874];

The legislature by describing the objection which could be taken by the respondent as a "cross-objection" must have deliberately adopted the view of the other High Courts. One cannot treat an objection by a respondent in which the appellant has no interest as a cross-objection. The appeal is by the appellant against a respondent, the cross-objection must be an objection by a respondent against the appellant.

We think, with respect, that these observations put the matter clearly and correctly. That the legislature also wanted to give effect to the views held by the different High Courts that in exceptional cases as mentioned above an objection can be preferred by a respondent against a co-respondent is indicated by the substitution of the word "appellant" in the third paragraph by the words "the party who may be affected by such objection".

13. This view has been there as a guide for a little over two decades. We should not add anything further at this stage. The law should be clear and certain as a guide to human behaviour. No attempt should be made to unsettle the law unless there is compelling reason. We do not find any such compelling reason and we, therefore, reiterate the above principles.

14. Basically, the first question raised in the cross-objection relates to the right of Madan Mohan to retain the property under the sale deed. The appellants are the second purchasers. The Math, therefore, could urge the objection that the appellants and Madan Mohan have no right to retain the property after the sale deed was declared null and void. But then the considerations as to the lease deed is quite different. The validity of the lease deed and the possession of the land thereof has to be determined only against Madan Mohan. It is not intermixed with the right of the appellants. It has no relevance to the question raised in the appeal. The High Court was, therefore, right in holding that the cross-objection as to the lease was not maintainable against Madan Mohan.

15. But that does not mean, that the Math should be left without remedy against the judgment of learned Single Judge. If the cross-objection filed under Rule 22 of Order 41 CPC was not maintainable against the co-respondent, the court could consider it under Rule 33 of Order 41 CPC. Rule 22 and Rule 33 are not mutually exclusive. They are closely related with each other. If objection cannot be urged under Rule 22 against co-respondent, Rule 33 could take over and come to the rescue of the objector. The appellate court could exercise the power under Rule 33 even if the appeal is only against a part of the decree of the lower court. The appellate court could exercise that power in favour of all or any of the respondents although such respondent may not have filed any appeal or objection. The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The appellate court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate court could also pass such other decree or order as the case may require. The words "as the case may require" used in Rule 33 of Order 41 have been put in

wide terms to enable the appellate court to pass any order or decree to meet the ends of justice. What then should be the constraint ? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraint that we could see, may be these : That the parties before the lower court should be there before the appellate court. The question raised must properly arise out of the judgment of the lower court. If these two requirements are there, the appellate court could consider any objection against any part of the judgment or decree of the lower court. It may be urged by the party to the appeal. It is true that the power of the appellate court under Rule 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The court should not refuse to exercise that discretion on mere technicalities.

16. In the result, we allow the appeal and reverse the judgment and decree of Division Bench of the High Court. The Division Bench shall now restore the appeal and cross-objection of the parties and dispose of the same in accordance with law and in the light of observations made.

17. The appellants shall get the cost of this appeal.

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