

SUPREME COURT OF INDIA

Radhey Shyam

Vs.

Chhabi Nath

C.A.No.2548 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

15.04.2009

JUDGEMENT

A.K.Ganguly, J.

1. Leave granted.

2. The subject matter of challenge in this appeal is an order dated 12.10.2007 passed by a learned Single Judge of Allahabad High Court, whereby the learned Judge interfered in a writ petition with the proceedings which were pending before a Civil Court.

3. From a perusal of the record, it appears that the appellants on 16.5.2005 filed a Civil Suit being No. 462 of 2005 in the Court of learned Civil Judge (Junior Division) Jaunpur, for injunction restraining the defendants from interfering with the possession of the disputed land. In that suit, an application seeking temporary injunction (numbered 6C) was also filed. It appears that initially the trial court issued notices to the defendants but did not grant any ad interim ex parte injunction.

4. Being aggrieved thereby, the appellants filed a civil revision being C.R. No.246 of 2005 before the District Judge, Jaunpur and that was admitted by the learned District Judge and an order of maintenance of status quo was passed till the disposal of the application for temporary injunction - (Application No.6- C). It was also observed by the District Judge that after the plaintiff's suit is decided, the revision petition would become infructuous.

5. Against the said order, the defendants- respondents filed a writ petition before the High Court (Writ Petition No. 4215 of 2005) and the same was dismissed by the High Court. It appears that the said application for temporary injunction No. 6-C was renumbered as No.58-C. Thereafter, by an order dated 9.11.2005, interim application for injunction- 6-C/58-C was allowed on merits by the learned Single Judge, Jaunpur. Being aggrieved thereby, the defendants- respondents filed Misc. Civil Appeal being No. 198 of 2005 before the learned Addl. District Judge, Jaunpur.

“The said civil appeal was heard by the learned Addl.

District Judge, Jaunpur and the same was allowed and the order dated 9.11.2005 was set aside and the matter was remanded to the trial court with a direction to re- hear the said application No.6-C. It was further directed that the parties were to appear before the trial court on 25.11.2006 and the trial court was directed to dispose of the application without granting unnecessary adjournments. On 5.2.2007, the trial court was however pleased to dismiss the application No. 58-C as according to the trial court, the order dated 9.11.2005 passed by the Civil Judge, Jaunpur became infructuous by the effect of the order dated 4.11.2006 passed by the Addl. District Judge, Jaunpur in Civil Misc. Appeal No. 198 of 2005. Against the said order of the trial court i.e. 5.2.2007, the appellants preferred a revision before the Addl. District Judge, Jaunpur and it was numbered as Civil Revision No. 39 of 2007, which was allowed by an order dated 5.9.2007.

Against the said order dated 5.9.2007, the respondents filed a writ petition, in which the impugned order was passed which is challenged before this court in this appeal.”

6. In the impugned order, the Hon'ble High Court after noting the earlier stages of the proceedings held that the revision court committed an error in remanding the matter to the trial court for disposal of the application No. 58-Ga, when in fact the said application became infructuous. By saying so, the High Court allowed the writ petition and held that the impugned order of the District Judge cannot be sustained.

7. One of the grounds raised in this appeal before this court is, whether the High Court in exercise of its extraordinary writ jurisdiction can interfere with a judicial order passed by a civil court of competent jurisdiction.

8. From the aforesaid narration of events, it is clear that the proceedings in this case arose out of purely civil disputes relating to property and the parties have filed suits before the Civil Court, and the suits are pending. The parties to the proceedings are all private individuals. Neither the State nor a 'State' nor an authority under Article 12 is a party to this proceeding. This is clear from the cause title of this appeal.

9. Now the question is, whether private individuals are amenable to the jurisdiction of writ court in connection with the private disputes relating to property, possession and title between private individuals.

10. As early as in 1957, a *Constitution Bench of India and Another*¹ held that a writ of mandamus or an order in the nature of mandamus is not to be made against a private individual. A writ of and/or in the nature of Mandamus normally is issued asking a person to do a particular thing which is in the nature of his public duty. In Sohan Lal (supra) rival claims of property were in issue and the learned Judges held in paragraph 5 that the writ court should refrain themselves from entering the said field. Since in view of the court such an exercise calls for "entering into a field of investigation which is more appropriate for a

Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs" (see para 5, page 531). The learned Judges held that if only it can be proved that the appellant-Sohan Lal acted in collusion with Union of India in evicting the respondent-Jagan Nath, then an order of mandamus can be issued (see para 7), but it will not issue otherwise.

11. Only in the case of a writ of Habeas Corpus, it can be issued against private individual, if it is proved that the private individual is illegally holding another person in detention (see Mohd. Ikram Hussain 1625)

12. Following the aforesaid principle, this Court fails to understand how can the writ court intervene in a dispute over property rights between private individuals. Apart from the decision in the case of Sohan Lal (supra), subsequently in the case of Mohd. three-Judge Bench of this Court explaining the general principle relating to High Court's jurisdiction under Article 226 held that the jurisdiction of the High Court is extraordinary in nature and is vested in the High Court not for the purpose of declaring the private rights of the parties but it is conferred for the purpose of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of the jurisdiction (see para 5). The learned Judges reiterated the principle further by saying:- "...In a proceeding under Article 226 the High Court is not concerned merely with the determination of the private rights of the parties; the only object of such a proceeding under Article 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction."

13. The learned Judges in Hanif (supra) *referred*² and held that "it is obvious that the remedy provided under Article 226 is a remedy against the violation of the rights of a citizen by the State or statutory authority. In other words, it is a remedy in public law." This principle holds good till today.

14. Subsequently also in Hindustan Steel Limited this Court relying on the ratio in Sohan Lal (supra) held that since serious questions as to the validity of the respondent's title was raised and dispute is on the possession of land and as the respondent failed to produce any clear, conclusive and unimpeachable documentary evidence, the matter cannot be dealt with by a writ court. Referring to Sohan Lal (supra) in paragraph 16, the learned Judges held :- "...proceedings by way of a writ were not appropriate in a case where the decision of the court would amount to a decree declaring a party's title and ordering restoration of possession. This Court further held that the proper remedy in such a case is by way of a title suit in a civil court and the alternative remedy of obtaining relief by a writ of mandamus or an order in the nature of mandamus could only be had if the facts were not in dispute and the title of the property in dispute was clear."

15. Similarly, in the case of State of Rajasthan that the writ petition is not the appropriate remedy in order to give a declaration of a person's title to property, the Court made it very clear that disputed questions of title cannot be satisfactorily adjudicated in a writ petition (para 7, page 1020 of the report).

16. Same caution was sounded in a subsequent *Rajgaria*³ wherein the learned Judges held that regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons. Remedy under Article 226 of the Constitution is not available except where violation of some statutory duty on the part of a statutory authority is complained of. The Court made it very clear by making the following observations:- "The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extra-ordinary and should not be exercised casually or lightly."

17. Relying on the ratio in the case of Mohan Pandey (supra), this Court again in Prasanna Kumar Roy SCC 403 - held that in a dispute between the landlord and tenant, a tenant cannot be evicted from the premises by a writ court on the basis of an order under Section 144 Cr.P.C. This Court, therefore, deprecated the practice of writ court intervening in private disputes.

18. Rather, recently in *P.R. Murlidharan*⁴ Justice P.K. Balasubramanyan (as His Lordship then was) in a concurring but a separate opinion held that it would be an abuse of the process for the petitioner to approach the writ court seeking for a writ of mandamus directing the police authorities to protect his property without first establishing his possession in an appropriate civil court. The learned Judge made very pertinent observations by saying that:-

"...The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations."

19. *Ram Chander Rai and others*⁵ a two- Judge Bench of this Court held, possibly for the first time the "orders and proceedings of a judicial court subordinate to the High Court are amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution (para 19, page 688 of the report). The attention of the Court was not drawn to the earlier Constitution Bench judgment in Sohan Lal (supra) or the three-Judge Bench judgment in Hanif (supra). Both these judgments are still holding the field.

20. Before coming to the aforesaid conclusion, the learned judges in Surya Dev Rai (supra) noticed the contrary view expressed in a Nine-Judge Constitution Bench judgment of this Court in the case of *Naresh*⁶.

"In *Mirajkar*(supra) a nine-Judge Constitution Bench considered the history of writ of Certiorari and after considering various English and Indian decisions came to the conclusion "Certiorari does not lie to quash the judgments of inferior Courts of civil jurisdiction." (See paragraph 63 page 18 of the Report). The learned judges in saying so followed the law relating to Certiorari as prevalent in England and held that in England the judicial orders passed by civil Courts of plenary jurisdiction in relation to matters brought before them are not amenable to the jurisdiction of Certiorari."

21. The learned judges in *Surya Dev Rai* (supra), however, opined that the judges never held in *Mirajkar* (supra) that the law relating to Certiorari in England was accepted by Supreme Court. But this observation in *Surya Dev Rai* (supra) appears to have been made without properly considering the concurring and a separate opinion given by Justice Sarkar in *Mirajkar* (supra) wherein His Lordship clearly held "As certiorari is a technical word of English law and had its origin in that law, for determining its scope and contents we have necessarily to resort to English law." (See Para 82 page 23).

22. In our view the appreciation of the ratio in *Mirajkar* (supra) by learned judges, in *Surya Dev Rai* (supra), with great respect, was possibly a little erroneous and with that we cannot agree.

23. The two-Judge Bench in *Surya Dev Rai* (supra), did not, as obviously it could not, overrule the ratio in *Mirajkar* (supra), a Constitution Bench decision of a nine-Judge Bench. But the learned Judges justified their different view in *Surya Dev Rai* (supra), inter alia on the ground that law relating to Certiorari changed both in England and in India. In support of that opinion, the learned Judges held that the statement of law in Halsbury, on which the ratio in *Mirajkar* (supra) is based, has been changed and in support of that quoted the paragraphs 103 and 109 from Halsbury's Laws of England, 4th Edn. (Reissue), Vol. 1 (1). Those paragraphs are set out below:-

"103. Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court into the King's Bench for review or to remove indictments for trial in that court; mandamus was directed to inferior courts and tribunals, and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs;

* * * 109. Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the Court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law.

Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities."

24. The aforesaid paragraphs are based on general principles which are older than the time when *Mirajkar* (supra) was decided are still good. Those principles nowhere indicate that judgments of an inferior civil court of plenary jurisdiction are amenable to correction by a writ of certiorari. In any event, change of law in England cannot dilute the binding nature of the ratio in *Mirajkar* (supra) and which has not been overruled and is holding the field for decades. It is clear from the law laid down in *Mirajkar* (supra) in paragraph 63 that a

distinction has been made between judicial orders of inferior courts of civil jurisdiction and orders of inferior tribunals or court which are not civil courts and which cannot pass judicial orders. Therefore, judicial orders passed by civil courts of plenary jurisdiction stand on a different footing in view of the law pronounced in para 63 in *Mirajkar* (supra). The passage in the subsequent edition of Halsbury (4th Edition) which has been quoted in *Surya Dev Rai* (supra) does not at all show that there has been any change in law on the points in issue pointed out above.

25. Learned judges in *Surya Dev Rai* (supra) stated in paragraph 18, page 687 of the report that decision rendered in *Mirajkar* (supra) was considered by the and *another*⁷ and wherein the learned judges took a different view and in support of that, the following paragraph from *Rupa Ashok Hurra* (supra) has been quoted: "(i) that it is a well-settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by a superior court to an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the High Court; much less can the writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. The High Courts are not constituted as inferior courts in our constitutional scheme."

26. We are constrained to point out again that in *Rupa Ashok Hurra* (supra) the Constitution Bench did not take any view which is contrary to the views expressed in *Mirajkar* (supra). On the other hand, the ratio in *Mirajkar* (supra) was referred to with respect and was relied on in *Rupa Ashok Hurra* (supra). *Mirajkar* (supra) was referred to in paragraph 8 page 399 and again in paragraph 11 in page 402 and again in paragraph 59 page 418 and also in paragraph 60 page 419 of *Rupa Ashok Hurra* (supra). Nowhere even any whisper of a divergence from the ratio in *Mirajkar* (supra) was expressed. Rather passages from *Mirajkar* (supra) have been quoted with approval.

27. In fact the question which was referred to the Constitution Bench in *Rupa Ashok Hurra* (supra) is quoted in paragraph 1 of the judgment and it is clear from the perusal of the said paragraph that the question for consideration in *Rupa Ashok Hurra* (supra) was totally different.

28. Therefore, this Court unfortunately is in disagreement with the view which has been expressed in *Surya Dev Rai* (supra) in so far as correction of or any interference with judicial orders of Civil Court by a writ of certiorari is concerned.

29. Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and Courts within the bounds of their authority. Under Article 227, orders of both Civil and Criminal Courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law. The essential

distinctions in the exercise of power between Article 226 and 227 are well known and pointed out in *Surya Dev Rai (supra)* and with that we have no disagreement.

30. But we are unable to agree with the legal proposition laid down in *Surya Dev Rai (supra)* that judicial orders passed by a Civil Court can be examined and then corrected/reversed by the writ Court under Article 226 in exercise of its power under a writ of certiorari.

31. We are of the view that the aforesaid proposition laid down in *Surya Dev Rai (supra)*, is contrary to the ratio in *Mirajkar (supra)* and the ratio in *irajkar(supra)* has not been overruled in *Rupa Ashok Hurra(supra)*.

32. In view of our difference of opinion with the views expressed in *Surya Dev Rai (supra)*, matter may be placed before His Lordship the Hon'ble the Chief Justice of India for constituting a Larger Bench, to consider the correctness or otherwise of the law laid down in *Surya Dev Rai (supra)* on the question discussed above.

¹*AIR 1957 SC 529*

²*1955 (1) SCR 250*

³*AIR 1993 SC 1225*

⁴*2006 (4) SCC 501*

⁵*2003 (6) SCC 675*

⁶*AIR 1967 SC 1 (V 54 C 1)*

⁷*(2002) 4 SCC 388*