SUPREME COURT OF INDIA

Bansidhar Sharma

Vs.

State of Rajasthan

C.A.No.8400 of 2019

(Mohan M.Shantanagoudar and Ajay Rastog,JJ.,)

05.11.2019

JUDGMENT

Ajay Rastogi,J.,

SLP(Civil)No.23679 of 2019

1. Leave granted.

2. This appeal arises from the order dated 21st August, 2019 passed by the High Court of Rajasthan Bench at Jaipur.

3. The seminal facts relevant for the purpose are that late Shri Bansidhar Sharma(predecessor of the appellant) filed a suit on 15 th July, 1961 for possession, rendition of accounts and permanent injunction before the Additional District and Session Judge, No. 1, Jaipur City in which following issues were framed:-

> 1. Whether the suit temples were founded by the plaintiffs ancestors and his ancestors were Shebeit and Mahant of the temples entitled to manage the same?
>
> 2. Whether the said temples and 24 shops attached to them were founded, built and maintained by the former Jaipur State and managed through their servants?
>
> 3. Whether the plaintiff is in possession and management of the suit temples in his own rights and not on behalf of the state as their Pujari or servant?
>
> 4. Whether Pandit Mahadev Ji was the Mahant or Shebait of the suit temples and he handed over management of the temples and shock attached to them to the Dharmarth Vibhag of the former Jaipur estate in the year 1925 for safety and security and proper management as he was going on long pilgrimage?
>
> 5. Whether the plaintiff is the descendant of Pandit Mahadev Ji and entitled to

claim the possession of the temple and shops and the account of the income thereof for the period since 1925 from the defendants?

6. Whether the notice under Section 80 of C.P.C. is defective?

7. Whether the suit is within time?

8. Relief?

4. After the matter being heard, trial Court vide its judgment dated 26th November, 1977 holding that there was no substance in the suit dismissed it with costs. The judgment of the trial Court dated 26th November, 1977 came to be assailed in S.B. Civil First Appeal No. 86/1979. During pendency of the appeal, the High Court of Rajasthan passed an ad-interim order on 11th January, 1978:-

"Issue notice to the G.A. and the respondents. Meanwhile the appellant shall not be dispossessed from the premises where he resides. The rest of the relief claimed by the appellant will be considered after the notices are served."

5. In furtherance of the ad-interim order dated 11th January, 1978, S.B. Civil second stay application no. 163/96 came to be filed at the instance of the appellant-plaintiff on 9th October, 1996 and the Single Judge of the High Court passed a further interim order on second stay application on 10th October, 1996 which is as under:-

"I have heard learned counsel for the parties on the second stay application.

During the course of hearing, learned counsel for the appellant has placed at large upon the copy of the Order dated 11.1.78 whereby the learned Division Bench of this Court had directed that "in the meanwhile the party will not be dispossessed." This fact has also not been controverted by the respondents in their reply to the application, since the same has been reproduced in the reply.

Shri Mathur, learned counsel for the respondents has placed on record some documents along with his affidavit. The copies of the said document have already been supplied to the learned counsel for the appellant. Let reply to the said affidavit be filed by the learned counsel for the appellant within one week from today.

In the meanwhile the status quo which existed as on the date of passing of the order dated 11.1.78 in respect of the premises in question shall continue pending the hearing and disposal of this appeal. Let this appeal be listed on 20th October, 1996."

6. In sequel thereof, further interim order came to be passed on 22nd November, 1996. The operative part of the Order dated 22nd November, 1996 is referred hereunder:-

"Consequently the second stay application is allowed. The respondents are directed not to interfere with the rights of the applicants to perform sewa Pooja of the idols in the said temple and also not to dispossess the applicants from the premises of the temple in which they are residing. Respondents are further directed to restore the possession of the temple of Lord Laxminarainji, i.e., the temple in question to the applicants/appellants forthwith or in any case not later than 3rd of December, 1996 and the compliance report be submitted by the respondents in this regard immediately since the possession of the aforesaid temple was taken by the respondents in 1988 from late Bansidhar forcibly and without due process of law and without obtaining any decree of possession or an order of eviction against late Bansidhar or the present applicant/appellants from a competent court. The interim order, dated 10.10.1996 passed by this Court clarifying the earlier order dated 11.1.1978 passed by learned Division bench of this Court is confirmed pending hearing and final disposal of the appeal. Let the appeal be listed for hearing and final disposal on 17.12.1996."

7. Later, the S.B. Civil First Appeal no. 86/1979 after finally being heard, came to be dismissed vide judgment dated 20th April, 2018 and the learned Single Judge was conscious of the fact that certain interim orders had been passed pending first appeal and noticing the order dated 10th October, 1996 and 22nd November, 1996, while dismissing the appeal, passed the following operative order:-

> " In compliance of the said order, appellant had been given the possession of the suit property. Through the instant application, it is prayed that the position as existed prior to 10.10.1996 be restored or the order dated 10.10.1996 be recalled or modified. In the opinion of this Court, when the appeal has been dismissed and the appellant has been found to have no rights whatsoever over the disputed temple and properties appurtenant to it, the application deserves to be allowed and the position as existed before 10.10.1996 deserves to be restored. Application is allowed accordingly. Resultantly, this appeal is dismissed with a cost of Rupees One Lakh and the plaintiff is directed to hand over the possession of the disputed property to the defendants- respondents within a period of two months from today, failing which, the defendants-respondents will be entitled to get the possession through the Court. Further, the defendant-respondents are also entitled to get the cost of litigation from the plaintiff-appellant."

8. The judgment dated 20th April, 2018 was further challenged in SLP(C) No. 13439 of 2018 before this Court and that came to be dismissed on 17th May, 2018. After dismissal of the special leave petition by this Court, the respondents sent an intimation to the appellant-plaintiff to hand over the possession in compliance of the order of the Single Judge of the High Court dated 20 th April, 2018, but when no action was taken by the appellant, interlocutory application was filed under Section 151 read with Section 144 of Code of Civil Procedure, 1908(hereinafter being referred to as CPC) before the Single Judge of the High Court.

9. After hearing the parties, the Single Judge of the High Court noticing the rival contention of the parties allowed the application vide its order dated 21st August, 2019,

with a liberty to the respondent-State to take possession of the suit property and to take police or other aid, if necessary, in taking possession of the subject property in question which is under challenge in appeal before us.

10. Basic bone of contention of the learned counsel for the appellant is that the execution application under Section 144 CPC would lie only before the Court of first instance which, in the instant case, is the Court of Additional District and Session Judge, No. 1, Jaipur City and not the High Court and according to the learned counsel, the impugned order passed by the High Court dated 21st August, 2019 is without jurisdiction.

11. Learned counsel further submits that appellant has lost a valuable right of appeal in view of exercise of jurisdiction by the High Court and submits that the order being not sustainable in law deserves to be set aside and the respondents may be permitted to adopt and avail the remedy prescribed under the law.

12. Learned counsel for the respondents, on the other hand, while supporting the finding recorded by the learned Single Judge submits that there was no decree or order of the trial Court by virtue of which the appellant was given possession of the subject property as the suit came to be dismissed in the first instance by the trial Court which came to be affirmed in first appeal and also by this Court. In the present circumstances, the provisions of Section 144 CPC are not attracted as there being no variation or reversal of a decree or order as contemplated by Section 144 CPC.

13. Learned counsel further submits that since the possession was handed over to the appellant under the interim order passed by the Single Judge of the High Court pending first appeal, which finally came to be dismissed and thus, in the given circumstances, it was imperative upon the appellant to restore possession of the subject property and mere mentioning of Section 144 would not denude the rights of the parties in adopting an appropriate admissible mechanism under the law and this what has been considered by the High Court under the impugned order dated 21 st August, 2019 and that needs no interference by this Court.

14. Before evaluating the rival submissions, it would be appropriate to advert to Section 144 CPC:-

> "144. Application for restitution - (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting

aside or modification of the decree or order."

15. The scope of post 1976 amended Section 144 CPC has been considered by this Court in *Neelathupara Kummi Seethi Kova Phangal(Dead) by LRs Vs. Montharapalla Padippua Attakova & Ors*[1]. in paragraph 3 as under:-

> "3. In the 1976 Amendment Act suitable amendment was made and Explanations (a) to (c) were added but they have no relevance for the purpose of the case. The question therefore, is whether the transferee executing court is a "court of first instance" within the meaning of Section 144(1) CPC. A bare reading of sub-section (1) does indicate that the application for restitution would lie when the decree executed is reversed or varied or modified. The doctrine of restitution is based upon the high cardinal principle that the acts of the court should not be allowed to work in injury or injustice to the suitors. Section 144, therefore, contemplates restitution in a case where property has been received by the decree-holder under the decree, which was subsequently either reversed or varied wholly or partly in those proceedings or other proceedings. In those set of circumstances law raised an obligation on the party that received the benefit of such reversed judgment to restitute the property to the person who had lost it. In that behalf in sub-section (2) a right of suit was taken out and an application under sub-section (1) was contemplated for execution of the decree by way of restitution. Sub-section (1) clearly indicates that it is a "court of first instance" in which the proceedings in the suit had been initiated and a decree was passed or the suit was dismissed, but subsequently on appeal decreed or vice versa. The court of first instance would, therefore, mean the court which passed the decree or order. The transferee executing court is not the court that passed the decree or order, but the decree was transmitted to facilitate execution of that decree or order since the property sought to be executed or the person who is liable for execution is situated or residing within the jurisdiction of that executing court. Therefore, the court which is competent to entertain the application for restitution is the court of first instance i.e. Administrator's Court (Subordinate Judge) that decreed the suit, and not the court to which the decree was transmitted for execution. The court of first instance of the administrator is now designated as Court of Subordinate Judge, but application for restitution was filed in executing court, namely, the Court of District Munsif at Androth. Thus in the face of the language of Section 144, the District Munsif at Androth, by no stretch of imagination be considered to be court of first instance. Its order of restitution is without jurisdiction and, therefore, it is a nullity. The High Court is accordingly right in its conclusion that the order for restitution is clearly vitiated by error of law and lack of jurisdiction. We do not find any ground warranting interference. The appeal is dismissed, but in the circumstances without costs."

16. It has been further considered by other coordinate Bench of this Court in the recent past in *Murti Bhawani Mata Mandir Rep. Through Pujari Ganeshi Lal(D) Through LR Kailash Vs. Rajesh & Ors*[2]. as under:-

> "Section 144 applies to a situation where a decree or an order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. In that situation, the Court which has passed the decree may cause restitution to be made, on an application of any party entitled, so as to place the parties in the position which they would have occupied but for the decree or order or such part thereof as has been varied, reversed, set aside or modified. The court is empowered to pass orders which are consequential in nature to the decree or order being varied or reversed."

17. It clearly transpires that Section 144 applies to a situation where a decree or order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. The principle of doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the decree which has been set aside or an order is varied or reversed and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position as they were in at the time when the Court by its action had displaced them.

18. Indisputedly, in the instant case, there was no decree or order of the trial Court by virtue of which the appellant was given possession of the subject property. On the contrary, the suit filed at the instance of the appellant-plaintiff came to be dismissed with costs and that came to be confirmed on dismissal of the first appeal by the Single Judge of the High Court and special leave petition filed before this Court also came to be dismissed. The possession was handed over to the appellant of the subject property under the interim order passed by the High Court pending first appeal of which a reference has been made and after the appeal came to be dismissed, its logical consequence was noticed by the High Court in its judgment dated 20th April, 2018 directing the appellant to hand over possession of the subject property to the respondents- defendants obviously for the reason that on dismissal of the first appeal preferred by the appellant, he was under an obligation to restore back peaceful possession to the respondents on vacation of the interim orders .

19. In the present facts and circumstances, the respondents have not committed any error in taking decision to call upon the appellant for handing over possession of the subject property at least after the special leave petition filed at the instance of the appellant came to be dismissed under order dated 17th May, 2018 and in sequel thereto, there was no other remedy left with the respondents than to file an application under Section 151 CPC before the High Court for restoration of possession of the subject property.

20. After we have heard the parties, find no error being committed by the High Court in passing of the order dated 21st August, 2019 directing the appellant to hand over possession of the subject property in question which was handed over to the appellant under the interim orders passed by the High Court pending S.B. Civil First Appeal No.

86/1979 which finally came to be dismissed vide judgment dated 20th April, 2018.

21. The submission of the learned counsel for the appellant that execution application under Section 144 CPC would lie only before the Court of first instance, which in the instant case is Additional District and Session Judge, No. 1, Jaipur City and not the High Court and the impugned judgment is without jurisdiction, is without substance for the reason that there was no decree or order of the trial Court which is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. Indisputedly, the possession was handed over to the appellant-plaintiff pursuant to the interim order passed by the High Court, pending first appeal which finally came to be dismissed, its logical consequence was to restore back the peaceful possession of the subject property to respondents- defendants. In the given circumstances, the provisions of Section 144 CPC, in our view, are not attracted as there being no variation or reversal of a decree or order as contemplated by Section 144 CPC.

22. Before parting with the order, taking note of the fact that the proceedings were initiated at the instance of the appellant-plaintiff way back in the year 1961 and almost 59 years have rolled by now, to give a quietus to the litigation and also the fact that the appellant had failed at all the stages, having no authority to hold possession of the subject property, we, therefore, consider it appropriate to direct the appellant to hand over peaceful possession of the subject property to the respondents-defendants in compliance of the judgment of the High Court dated 20th April, 2018 followed with order dated 21st August, 2019 positively within a period of eight weeks from today failing which this Court will take serious note of the matter and proceedings may be instituted against the appellant-plaintiff for deliberate defiance of the order of this Court.

23. The appeal is without substance and accordingly dismissed with the observations as indicated above. No costs.

24. Pending application(s), if any, stand disposed of.

Judgment Referred.

[1]*1993 INSC 0544*