

RAJASTHAN HIGH COURT

Shabir Ahmed Khilji

Vs.

Mehar M. Sadique

S.B. Civil Revision No. 391 of 2003

(Prakash Tatia, J.)

01.08.2003

JUDGMENT

Prakash Tatia, J.

1. Heard learned counsel for the parties.

Before proceeding to decide this revision petition, I deem it appropriate to bring to the notice of the State Government about the provision of law contained in the Rajasthan Court Fees and Suit Valuation Act, 1961 namely Sub-Clause (C) of Section 26 which permits plaintiff to value the suit of the plaintiff as per his discretion which may be absolutely arbitrary and for which, even the court has no jurisdiction to question the decision of the plaintiff for valuing the suit. By this the plaintiff is permitted to choose any of the courts from lowest court to highest court which can try the original suit like Court of Civil Judge (Junior Division), Court of Civil Judge (Senior Division) and the District Court. In this revision petition, all the facts are available to demonstrate how the plaintiff can choose the court as per either his convenience or by his choice or because of choice to avoid the court. Three suits have been filed in relation to dispute about management of one Educational Society in all the three courts namely Court of Civil Judge (Junior Division), Court of Civil Judge (Senior Division) and the Court of the District Judge of Jodhpur. In all the three suits the plaintiffs put the valuation of relief differently simply because law permit them to do so. The present controversy is an example or choosing courts for filing suits by the parties knowing it well that other suits are pending in different courts. In these suits, matter is in relation to management of Educational Society. First suit valued for more than Rs. 25,000/- therefore, has been filed in the court of Civil Judge (Senior Division) second suit, was filed in the Court of Civil Judge (Junior Division) by putting valuation of the relief as less than Rs.

25,000/- and last and third suit has been filed in the court of District Judge valuing suit for more than Rs. 50,000/-. Suits are filed by the parties in the courts of their choice.

2. This is for legislature to think over the matter, therefore, copy of this order be sent to the Chief Secretary, Government of *Rajasthan, Jaipur*.

3. The facts of this case are that there is one Marwar Muslim Educational Society. It is said by the learned counsel for the petitioner that it has its own constitution and the office bearers for managing the affairs of the society till 17.9.99. On 17.9.99 a resolution was passed by the members who were less than 50% of the total members of the society and new office bearers were nominated/elected by this resolution. There is dispute as to whether new office bearers are elected or nominated which is not relevant for deciding this revision petition. Dispute arose within 6 months of said meeting dated 17.9.99 resulting into filing of the first suit by Abdul Samad on 8.8.2000 which was registered as Civil Original Suit No. 78/2000 in the court of Civil Judge (Senior Division) Jodhpur wherein an application for injunction was submitted which was allowed by the trial Court by order dated 2.9.2000 restraining rest of defendants from preventing the plaintiff and defendant Nos. 4 to 6 from working as office bearers of the society. However, it was made clear that society was not restrained from proceeding to hold election as per the provision of constitution of society. In appeal the injunction order was vacated on 15.5.01, again this S.B.C. Rev. No. 627/01 was filed by the plaintiff Abdul Samad, that was also dismissed by the High Court by order dated 30.4.02. This Civil Original Suit No. 78/2000 is now pending in the court of Addl. Civil Judge (Senior Div.) No. 4 *Jodhpur*.

4. On 28.5.02 i.e. after the decision of the revision No. 627.01, Marwar Muslim Educational Society, filed a suit through its General Secretary Shabbir Ahmed who was the contesting defendant in Civil Original Suit No. 78/2000. In this suit declaration was sought that defendant Mehar M Sadique is nobody in the plaintiff society and consequential injunction decree was also sought. The suit was registered as Civil Original Suit No. 62/02. This suit is against one Mehar M. Sadique who is claiming himself to be General Secretary of the Marwar Muslim Educational Society and was defendant in Civil Original Suit No. 78/2000 (supporting plaintiff in Civil Original Suit Nos.78/2000). In this suit No. 62/02 an application for injunction was submitted by the plaintiff which was dismissed by the trial Court by order dated 2.7.02. Against this interim order dated 2.7.02 an appeal is pending before the First Appellate Court.

5. The third and present suit is filed by Mehar M. Sadique in the court of District Judge after valuing the suit having valuation more than Rs. 50,000/-. In this Suit also the declaration in addition to injunction and other reliefs have been sought including that it may be declared that Jeffu Khan, who was the defendant in the Original suit No. 78/2000 is not the elected President of the Society. This suit is registered as Civil Original Suit No. 148/02. This revision petition is arising from the order passed in third suit i.e. Civil Original Suit No. 148/02 filed by Mehar M. Sadique impleading of the contesting defendant of Civil Original Suit No. 78/2000. In this suit, the defendant submitted written statement and thereafter submitted an application under Section 10 C.P.C. stating therein that since Civil Original Suit No. 78/2000 Abdul Samad v. Jeffu Khan was filed in earlier time and in the present suit point in issue are substantially same, therefore, proceedings of this suit in Suit No. 148/02 be stayed under Section 10 Civil Procedure Code. The prayer was opposed by the plaintiff non-petitioner. The trial Court dismissed the application on the grounds that there are different parties, there is subsequent cause of action and there is new ground in the lastly filed suit. It is also observed by the trial court that the plaintiff Mehar M Sadique of this suit is defendant in the Civil Original Suit No.78/2000 and he cannot include the pleas which he has taken in this suit No. 148/02 in the suit filed by Abdul Samad. When learned counsel for the defendants pointed out before the trial Court that in case the suits will continue in different courts, there will be conflicting orders. The trial Court observed that this difficulty can be cured by moving appropriate application for the transfer of all cases, in one court. The trial Court, thereafter dismissed application under Section 10 C.P.C. filed by the defendant petitioner. The petition is aggrieved against the order dated 11.2.03.

6. Learned counsel for the petitioner vehemently submitted that the controversy involved in the suit No. 78/2000 and Civil Original Suit No. 148/02 are not only substantially or directly same but, it can be said that they are exactly same. It is also submitted that in view of the final order passed by this Court in Revision No. 627/01 dated 30.4.02, the plaintiff Mehar M Sadique has no right to even maintain the suit and the injunction application. The decision given by this court in Revision Petition No. 627/01 is between the parties and binding, therefore, the trial Court should not have ordered to proceed with the subsequently filed suit. Learned counsel for the petitioner even submitted that the order passed in the proceedings under Order 39 Rule 1 and 2 is *res judicata* and binding. It is also submitted by the learned counsel for the petitioner that even when there are different parties still Section 10 C.P.C. can be invoked and even suit can be stayed under Section 151 C.P.C. Learned counsel for

the petitioner relies upon the judgment of this court reported in 1992 RLR 352, 1998(1) RLR 680, 2003 RLW 1719, 2001 CCC 712 (SC), 2003(3) CCC 325 and the judgment reported in AIR 1959 Supreme Court 31. Learned counsel for the petitioner's apprehension is that in view of the order passed by the trial Court dated 11.2.03, the trial Court has *prima facie* opined that as though there is no effect of the order passed by this court in revision No. 627/01, the trial Court can proceed with the suit No. 148/02. Apprehension of learned counsel for the petitioner is due to trial Court's observations that there is difference of causes of action in two suits and there is difference of reliefs in the suit.

7. Learned counsel for the petitioner was asked to explain whether these suits can be consolidated as they all are relating to one Educational Society involving the question of management of the Society and all of plaintiffs and defendants in three suits are parties in Civil Original Suit No. 78/2000 ? Learned counsel for the petitioner very frankly submitted that no prejudice will be caused to the petitioner if the suits are consolidated nor any injustice will be done by that. Learned counsel still vehemently submitted that better mode and the way in accordance with law will be to stay the proceedings of Civil Original Suit No. 148/02 under Section 10 C.P.C. This Court requisitioned record of all the three suits by order dated 26.5.03 after hearing the learned counsel for the parties.

8. Learned counsel for the non-petitioners vehemently submitted that revision petition itself is not maintainable in view of the fact that there is no jurisdictional error in the order impugned. It is also submitted that the reliefs claimed by the non-petitioner plaintiff in Civil Original Suit No. 148/02 cannot be granted by the court in which the Civil Original Suit No. 78/2000 is pending as the valuation of the suit No. 148/02 is beyond the pecuniary jurisdiction of the court hearing the suit No. 78/2000. Therefore, legally the suit filed by the plaintiff non-petitioner cannot be stayed in view of the decision of this court reported in 1973 RLW 490. It is also submitted that the plaintiff of the Civil Original Suit No. 78/2000 is not the party in the present suit No. 148/02. It is also vehemently submitted that the present plaintiff Mehar M Sadique is defendant in the Civil Original Suit No. 78/2000 and he is not claiming through the plaintiff of the Case No. 78/2000 nor claiming the post of the President of the Society and the grounds taken in the suit of present plaintiff Mehar M Sadique are not in the earlier filed suit. He cannot taken these grounds in the suit No. 78/2000 because he is not plaintiff in that suit. It is also submitted that plaintiff has its own independent right and cannot be taken away merely because of filing of suit by some one else.

9. Learned counsel for the petitioner pointed out that the present plaintiff who is defendant in the suit is also beneficiary of the reliefs claimed in the Suit No. 78/2000 and he contested the dispute by giving favor to the plaintiff Abdul Samad of the Suit No. 78/2000. He also submitted reply of the injunction application and contested the injunction petition. It is also submitted that he can still move application for transposition himself in the array of the plaintiff along with Abdul Samad and in case, plaintiff of Suit No. 78/2000 decides to withdraw the suit even at that time also, the present plaintiff can request the court to implead himself as plaintiff in suit No. 78/2000.

10. The substance of the controversy appears to be more not legal but petitioner that the interim order binds the party to the suit till the final decision of the suit, there cannot be a dispute and learned counsel for the non-petitioner also did not dispute it. Learned counsel for the non-petitioner also submitted that the interim order is binding till the decision of the suits between the parties but cannot be a *res judicata* in any other proceedings. It is also submitted that even the court which passed the order can modify the injunction order. The substance is that the binding character of the order passed by the trial Court during pendency of suit is not in dispute and rightly not in dispute. This controversy is absolutely irrelevant for the point involved in this revision petition, because of simple reason that the controversy before this court is whether it is a case where the proceedings of the suit No. 148/02 is required to be stayed or not or whether the suits can be consolidated and which will be appropriate way to do so ?

11. It is clear from the facts mentioned above that all the parties to the three suits are parties in Civil Original Suit No. 78/2000. It is not in dispute that entire controversy between the parties is with respect to the management of Educational institution. It is not in dispute that there are rivalry between members and the person claiming members of the society. In these circumstances, when the trial Court itself accepted the contention of the learned counsel for the petitioner defendant that it may result into multiplicity and conflicting orders by different courts and the appropriate mode will be to get the suits decided in one court by getting them consolidated, I do not need to express any opinion on the merit of the case to avoid all the legal complications like whether after transposition the plaintiff of this case can alone amend the plaint of the Civil Original Suit No. 78/2000 and whether new ground taken by the plaintiff and which is not in the suit No. 78/2000, can be incorporated in that suit by the present plaintiff in the capacity of defendant and whether the trial Court in Suit No. 78/2000 can grant relief to the plaintiff of Suit No. 148/2000. This court that instead of staying

the proceedings of the suit, all the suits should be tried simultaneously by consolidating them.

12. In view of the above reasons, this court is exercising *suo motu* power under Section 24 C.P.C. to transfer two cases in a court where the proceedings can be taken after consolidating the suits. Therefore, the Civil Original Suit No. 78/2000 plaintiff-Abdul Samad v. Defendant Jeffu Khan now pending in the courts of Additional Civil Judge (Senior Division) No. 1, Jodhpur (new number Civil Original 01/2002) is withdrawn and transferred to the court of Addl. District Judge No. 3 Jodhpur. The Civil Original Suit No. 62/02 plaintiff Marwar Muslim Educational Society v. Mehar M Sadique pending in the court of Civil Judge (Junior Division) No. 1, Jodhpur is withdrawn from that court and is transferred for decision in accordance with law in the court of Addl. District Judge No. 3 Jodhpur. Since the Civil Original Suit No. 78/2000 is the earliest suit, therefore, the rest two suits mentioned above be consolidated with the Civil Original Suit No. 78/2000. Since this court is exercising *suo motu* power of transferring two cases by exercising powers under Section 24 C.P.C., it is made clear that no notice to party is required to be given as provided under Section 24 by this court before passing order of transfer of cases.

13. Since it is a matter with respect to the management of Educational Society and looking to the serious dispute between the parties, the trial Court though after the amendment of the Civil Procedure Code is required to proceed in time framed programme, still it is made clear that the trial Court should decide the suit expeditiously as far as possible within reasonable time. It is expected from both the parties that in a matter of management of Educational Society, the parties should cooperate for final decision of the controversy of the suit. The record be sent forthwith. It is submitted by the learned counsel for the non-petitioner plaintiff of the suit No. 148/02 that the application for interim relief is pending and next date is 25.8.03 therefore, the early date may be fixed. It is submitted that a long date was given because the record was lying in this court. However, whatever the reason may be the application for temporary injunction is required to be considered by the trial Court in accordance with law expeditiously and, therefore, the trial Court is directed to take up the interim application on 14.8.03 or on the date as per the convenience of the trial Court and the trial Court may pass the appropriate order on the application on or before 21.8.03. However, it is made absolutely clear that nothing to be treated as anything observed against any of the party to these cases and it is further made clear that nothing to be treated as an interpretation of any of the contention of the learned

counsel for the parties because of the reason that this court is only exercising its *suo motu* power of transferring the cases to the court where the suits can proceed. Both the parties to this revision petition are directed to appear before the trial Court on 14.8.03.

14. The trial Court may ensure attendance of the parties to the transferred suits by directing the plaintiffs of the suit to serve notice of date of suit upon the defendants but as parties to the Civil Original No. 148/02 are present here, therefore, date of their appearance is fixed by this court and the trial Court may proceed with hearing of injunction application of the plaintiff.

15. The revision petition is disposed of in view of the order of transfer of the cases. The copy of this order be sent to Chief Secretary, Govt. of Rajasthan, Jaipur as well as to all the three courts.

Petition disposed of.