

# RAJASTHAN HIGH COURT

BabuPuri

Vs.

Kalu

Civil Revn.Petn. No. 167 of 2004

(Sunil Kumar Garg, J.)

26.08.2004

## ORDER

**Sunil Kumar Garg, J.**

1. This revision petition has been filed by the petitioners-judgment debtors against the order D/- 18-5-2004 passed by the learned Civil Judge (J. D.), Merta in Execution Case No. 3/2004 by which the application for execution of the decree D/- 14-1-1970 passed by the learned Dist. Judge, Merta was allowed and the learned Executing Court held that in terms of decree D/- 14-1-1970 the respondents-decree holder were entitled to perform Seva Puja in the Bhanwal Mata Ji Temple and also to receive offerings and for that warrant for possession was issued so that they could make Seva Puja and receive offerings, be quashed and set aside.

2. It may be stated that Ram Pal Puri (present decree holder-respondents are Legal Representatives of RampalPuri) filed a civil suit No. 369/1953 in the Court of Munsif, Merta for declaration against Kuna Puri and Mohan Puri (judgment debtors-petitioners are legal representatives of Kuna Puri and Mohan Puri) seeking declaration regarding their right to worship in Bhanwal Mata Ji Temple.

2A. The said suit was dismissed by the learned Civil Judge, Merta vide judgment and decree D/- 30-11-1956. Against the judgment and decree D/- 30-11-1956, Ram Pal Puri filed a Civil Appeal No. 35/57 in the Court of Dist. Judge, Merta in which a decree by way of compromise was passed declaring the rights of the worship between the parties (RampalPuri and Mohan Puri) in the manner that both the parties would have right of worship and receiving offerings 6 months each in a year by turn and thereafter turn by turn, they would perform the Seva Puja and receive offerings and the offerings which were being presented before the deity would be taken by that party

in whose favour turn was running.

3. That compromise decree which was passed on 29-4-1957 was again amended on the basis of compromise through judgment and decree D/- 14-1-1970 passed by the Dist. Judge, Merta and according to fresh compromise decree D/- 14-1-1970, name of Kuna Puri was also added along with Mohan Puri (present petitioners are Legal Representatives of Mohan Puri as well as Kuna Puri) meaning thereby that share of judgment-debtors, namely, Mohan Puri and Kuna Puri in the Seva Puja of the temple was 50% and similarly share of decree holder RampalPuri (present respondents are Legal Representatives of Ram Pal Puri) was 50% and thus Mohan Puri and Kuna Puri would have right of Seva Puja for 6 months each in a year, whereas right of Seva Puja of decree-holder RampalPuri would be for one year and thereafter the turn would rotate.

4. Thereafter the respondents-decree holders filed an application on 28-4-2004 for execution of the decree D/- 29-4-1957 as amended on 14-1-1970 against the present petitioners-judgment debtors stating *inter alia* that the petitioner- judgment debtors were not allowing the respondents-decree holders to perform seva puja when their turn was due and the petitioners-judgment debtors have put the locks in the premises of the temple and thus petitioners-judgment debtors had deprived them of performing Seva Puja and receiving offerings in their turn and therefore, they sought execution of the decree D/- 14-1-1970 passed by the learned Dist. Judge with police help.

5. Notices of that execution applications were issued to the present petitioners and they filed their reply under Section 47, C.P.C. on 7-5-2004 and they took preliminary objection in the reply stating :

i) That the compromise decree in question D/- 29-4-1957 which was amended on 14-1-1970 was null and void and therefore, it could not be got executed.

ii) That compromise decree if for the sake of argument was not null and void, but since it was declaratory decree, therefore, its execution could not be made and hence from this point of view also, the execution application should be dismissed as not maintainable.

iii) That as per Article 136 of the Limitation Act, 1963, the period of limitation was 12 years and since execution of the decree D/- 14-1-1970 was sought in the year 2004, therefore, from that point of view also, the execution application was time barred and therefore, this should be dismissed on this ground also.

6. That after hearing both the parties, the learned Civil Judge through order D/- 18-5-2004 allowed the application of the respondents-decree holders and dismissed the preliminary objections filed by the petitioners judgment-debtors under Section 47, C. P. C. *inter alia* holding

i) That legal representatives of Ram Pal Puri (decree holder) had right to receive offerings and perform Seva Puja for one year, while legal representatives of Mohan Puri and Kuna Puri had right to receive offerings and perform Seva Puja for 6 months' each in a year on turn by turn.

ii) That period of limitation for execution of decree starts from the date when obstruction was put and since in this case obstruction was put by the judgment-debtors not from the date when the compromise decree was passed, but later on, therefore, to say that execution application was time barred is wrong and hence, preliminary objection that the execution application was time barred was rejected by the learned Executing Court.

iii) That in the execution proceedings, the present judgment debtors have no right to say that the decree was void because the Executing Court has got no business to make comments about the propriety and legality of the decree and that objection was also rejected and thus, the learned Executing Court came to the conclusion that propriety of the decree could not be questioned in execution proceedings.

iv) On the point that the decree was executable or not, the learned Executing Court came to the conclusion that since the judgment and decree D/- 14-1-1970 was acted upon by the parties, therefore, it was executable.

7. Aggrieved from the order D/- 18-5-2004 passed by the learned Executing Court, this revision petition has been preferred by the judgment-debtors.

8. In this revision petition, following submissions have been made by the learned counsel for the petitioners-judgment debtors:

i) That the findings of the learned Executing Court that the execution application was not time barred is palpably wrong as under Article 136 of the Limitation Act, 1963, limitation of 12 years has been prescribed from the date of passing of the decree, but in the present case, the compromise decree was passed on 14-1-1970 and the execution application was filed in the year 2004 and therefore, the execution application was time barred.

ii) That in no case, declaratory decree can be got executed and for that the learned counsel for the petitioners-judgment debtors has placed reliance on the judgment of Full Bench of Punjab and Haryana High Court reported in *Parkash Chand v. S. S. Grewal*<sup>1</sup> and the judgment of Hon'ble Supreme Court reported in *(The State of Madhya Pradesh v. MangiLal Sharma)*.<sup>2</sup>

9. On the other hand, the learned counsel for the respondents-decree holders has submitted that the order D/- 18-5-2004 does not suffer from any basic infirmity or illegality and thus, the same does not require any interference by this Court and the present revision petition deserves to be dismissed.

10. Heard and perused the record.

11. There is no dispute on the point that the compromise decree was first passed on 29-4-1957 by the Dist. Judge, Merta declaring right of the parties and that decree was further amended vide judgment and decree D/- 14-1-1970 passed by the Dist. Judge, Merta by which it was declared that Ram Pal Puri would perform Seva Puja for a year and Mohan Puri and Kuna Puri would perform Seva Puja for 6 months each in a year.

12. There is also no dispute on the point that the execution application has been filed on 28-4-2004 in the Court of learned Civil Judge (J. D.), Merta for seeking execution of the compromise decree D/- 14-1-1970.

13. There is also no dispute on the point that in the present case rights of the parties were conferred by compromise decree D/- 14-1-1970.

14. There is also no dispute on the point that the Court passed the impugned order D/- 18-5-2004 after giving an opportunity of hearing to the present petitioners-judgment debtors.

Point No. 1.

15. In the present case, the first decree was passed on 29-4-1957 and the said decree was amended on 14-1-1970, whereas the execution application was filed in the year 2004 and it is specific finding of the learned Executing Court that since the decree D/- 14-1-1970 was being complied with by the parties and since later on the present petitioners-judgment debtors put obstructions and therefore, the limitation would start from the date when the obstruction was put and not from the date of passing of the decree. In my considered opinion, the preliminary objection of the petitioners-judgment debtors that the execution application was time barred was rightly rejected

by the learned Executing Court as the limitation would start from the date when the obstruction was put by the petitioners-judgment debtors and thus, the findings of the learned Executing Court that the execution application was within limitation are liable to be confirmed one and hence the first preliminary objection raised by the learned counsel for the petitioners-judgment debtors stands rejected.

Point No. 2

16. The next question which arises for consideration is whether in the facts and circumstances of the present case, the impugned order D/- 18-5-2004 passed by the learned Executing Court can be sustained or not especially when the learned counsel for the petitioners-judgment debtors has submitted that the decree D/- 14-1-1970 was declaratory decree.

17. Before proceeding further something should be said about the duties of shebait and custody of idol.

18. The duties of shebaits, both spiritual and temporal, consist in their taking charge of the temple and its properties and see that the worship in the temple is carried on in the traditional manner, like bathing, anointing, offering food and incense to the idol and prayers and invocations in appropriate mantras; adorning with flowers and jewels, conducting periodical worships, etc.

19. The custody of the idol is always in the shebait. A difficulty often arises when there are more than one shebait in the management by turns and the present case is one of them of the same nature.

20. Thus in the conception of mahantship, as is shebaitship both the elements of office and property are blended together and neither can be detached from the other.

21. The Hon'ble Supreme Court in the case of *SinhaRamanuja v. RangaRamanuja reported in* <sup>3</sup> has observed that a century of case-law has recognised certain rights of different grades of devotees and they and their innumerable followers began to cherish them or even to fight for them in criminal and civil Courts. The right of worship has been considered to stand on the same footing as the right to an office : a person is entitled to enforce it by suit in the same way and if any honours or perquisites are attached thereto, they can also be claimed under the same conditions as honours attached to religious offices.

22. Thus, it can be said that the right of worship being civil right any interference with

the same can be restrained by means of an injunction etc. and a declaratory decree can be passed for declaring such rights under Section 34 of the Specific Relief Act, 1963 and hence worshiper of a temple can sue for declaration.

23. The next question which arises for consideration is whether the decree D/- 14-1-1970 which was passed on the basis of compromise was simply a declaratory decree and its execution could not be enforced by execution application or not?

24. There is no dispute on the point that a declaratory decree cannot be executed as has been held by Punjab and Haryana High Court in the case of Parkash Chand (1975 Cri LJ 679) (FB) (supra). The Punjab and Haryana High Court in the case of Parkash Chand (supra) has held as under :

"A declaratory decree cannot be executed as it only declares the rights of the decree-holder *qua* the judgment-debtor and does not, in terms, direct the judgment-debtor to do or to refrain from doing any particular act or things. Since there is no command issued to the judgment-debtor to obey, the civil process cannot be issued for the compliance of that mandate or command. The decree holder is free to seek his legal remedies by way of suit or otherwise on the basis of the declaration given in his favour."

25. The Hon'ble Supreme Court in the case of *State of Madhya Pradesh v. Mangi Lal Sharma* ( AIR 1999 Supreme Court 743) (supra) has held that declaratory decree merely declares the right of the decree holder vis-a-vis the judgment debtor and no relief was further claimed nor any direction was given, in such a case execution of the declaratory decree cannot be made.

26. Thus, the position of law can be summarized in the manner that if there is simply declaratory decree with no consequential benefits, then such type of decree cannot be executed. This is one of the aspects of the matter.

27. In the present case, now the fact has emerged that the compromise decree D/- 14-1-1970 was being complied with by the parties since long from the date of passing up to the date when the obstruction was put by the present judgment debtor. Taking this aspect into consideration, the nature of present decree D/- 14-1-1970 by which rights of the parties were conferred has to be seen.

28. In the proviso to Section 34 of the Specific Relief Act which deals with declaratory decree, the expression used by the Legislature is not "other relief" but "further relief". The further relief must be a relief, flowing directly and necessarily

from the declaration sought and a relief appropriate to and necessarily consequent upon the right or title asserted. It does not mean "every kind of relief that may be prayed for" but only "a relief arising from the cause of action on which the plaintiff's suit is based.

29. Thus, the relief which is consequent upon the cause of action, that can be enforced by the executing Court.

30. In other words the expression "further relief" would mean the relief which would complete the claim of the plaintiff and not lead to multiplicity of suits. Further relief must flow necessarily from the relief of declaration and a relief appropriate to and necessarily consequent on the right or claim asserted. It is such relief as flows necessarily from the relief of declaration. It must be a relief ancillary to the main relief and not one in the alternative.

31. Since the priest of a temple fills a legal character, therefore, a suit is maintainable for declaration that the plaintiff is entitled to officiate as a priest in alternate years, or to establish his right to the office of an Adhikari or shebait, though no emoluments are attached to it or to recite stotras on certain occasions in a temple. A suit for declaration of the right to an office and a right to offerings or emoluments, however, small is sustainable. Not only this a suit for a mere declaration of the plaintiff's right to an office is maintainable where certain estates attach automatically to the office, and it is not necessary in such a case to pray for consequential relief.

32. Since in this case there was compromise decree dtd. 14-1-1970 passed by the competent Court, in such a decree it was not necessary to pray for consequential relief as it was implied in terms of the decree as both parties were entitled to perform seva puja as per the terms of the decree which they were doing for last number of years and therefore, to say that the present decree dtd. 14-1-1970 is not executable only because it was declaratory decree cannot be accepted.

33. It may further be stated here that simple declaratory decree passed by the competent Court and the declaratory decree passed by the competent Court on the basis of compromise stand to some extent on different footing and in a compromise declaratory decree, consequential relief flows necessarily from the relief of declaration, therefore, from that point of view also, the decree in question dtd. 14-1-1970 was executable decree though in nature it might be a declaratory decree and hence the findings of the learned Executing Court that the decree dtd. 14-1-1970 passed by the learned Dist. Judge, Merta was executable are liable to be confirmed

one and the argument of the learned counsel for the petitioners judgment debtors that the decree dtd. 14-1-1970 passed by the learned dist. Judge, Merta is not executable also stands rejected and the same was rightly rejected by the learned Executing Court.

34. For the reasons mentioned above, the order dtd. 18-5-2004 passed by the learned Civil Judge (J.D.), Merta does not suffer from any basic infirmity or illegality and hence the same does not require any interference by this Court and the present revision petition filed by the petitioners - judgment debtors deserves to be dismissed.

Accordingly, the present revision petition is dismissed.

No order as to costs.

Revision dismissed.

Cases Referred.

1. 1975 Cri LJ 679
2. (1997) 10 JT (SC) 345: (AIR 1998 SC 743)
3. AIR 1961 SC 1720