

Pratiksha Vs. Pravin

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Court : Madhya Pradesh

Decided On : Oct-09-2001

Reported in : I(2002)DMC242; 2002(1)MPHT276; 2002(1)MPLJ68

Judge : A.K. Gohil, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9, 11, 12, 13(1), 21, 25 and 27; [Specific Relief Act, 1963](#) - Sections 2, 38 and 38(1); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9, 94 and 151 - Order 39, Rules 1 and 2 - Order 43, Rule 1

Appeal No. : Misc. Appeal No. 867/98

Appellant : Pratiksha

Respondent : Pravin

Advocate for Def. : Achla Joshi and ;R.C. Mehra, Advs.

Advocate for Pet/Ap. : S.K. Pawnekar, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

A.K. Gohil, J.

1. The appellant/wife, who is defendant in a divorce petition filed by the respondent/husband under Section 13(1)(a) of the Hindu Marriage Act, has filed this Misc. Appeal under Order XLIII Rule 1 of the Code of Civil Procedure (for short 'the Code') against the order dated 27-7-1998 passed by IXth Additional District Judge, Indore in Hindu Marriage Case No. 258 of 1998 granting an injunction against the appellant/wife restraining her not to enter forcibly into the house of the respondent/husband.

2. The facts giving rise to this appeal are that the respondent/husband filed a divorce petition under Section 13(1)(a) of the Hindu Marriage Act against the appellant/wife on the ground of cruelty. Alongwith this petition, respondent/husband has also filed an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code praying therein that appellant/wife be restrained not to forcibly enter into the house of the respondent/husband because the appellant/wife has threatened to the respondent/husband to commit suicide and the submission of the husband in the application was that on 28th March, 1998 she has finally left the house of the respondent/husband along with all her silver and gold ornaments in the absence of the respondent without his knowledge and since then she is residing alongwith her brother and the respondent is apprehending that the wife may come again in the house of the husband and may create some problem and also commit suicide and may involve the husband in some criminal case, therefore, she be restrained not to forcibly enter into the house of the husband. This application was heard by the Trial Court and by impugned order dated 27-7-1998 allowed the same and granted an injunction against the appellant/wife. This application was objected by the wife before the Trial Court and it was submitted that no such injunction can be granted as there is no provision under the Hindu Marriage Act for grant of such injunction but the Trial Court after considering the submissions of the learned counsel for the parties granted an injunction exercising inherent powers under Section 151 of the Code, against which appellant/wife has filed this Misc. Appeal.

3. I have heard Shri S.K. Pawnekar, learned counsel for appellant/ wife; Miss. Achla Joshi with Shri R.C. Mehra, learned counsels for respondent/ husband: and perused the record.

4. The submission of Shri S.K. Pawnekar, learned counsel for the appellant/wife is that there is no provision in the Hindu Marriage Act for grant of injunction. The only reliefs that are available under the Act are restitution of conjugal rights, judicial separation, a decree of divorce, and a decree of nullity can be granted but no declaratory relief or a relief of injunction can be granted and the Court has also no jurisdiction either to consider the prayer of an injunction of such a nature. In support of his submissions he cited the decisions in the case of Umashankar Prasad Singh v. Radha Devi and Ors., reported in AIR 1967 Patna 220; in the case of Trilokchand Modi and Anr. v. Om Prakash Jaiswal, reported in AIR 1974 Patna 335; and in the case of Parwati Devi v. Harbindra Singh, reported in AIR 1980 Rajasthan 249, in which it has been held that there is no provision in the Hindu Marriage Act for granting an injunction against the other party restraining him or her from contracting a marriage with another person and also there is no provision in the Act for filing a suit for permanent injunction. Therefore, it is not permissible for any Court to grant any such temporary injunction in such suits.

5. In reply the submission of Miss. Achla Joshi and Shri R.C. Mehra, learned counsels for respondent/husband is that by virtue of provisions of Section 21 of the Hindu Marriage Act, the provisions of Code of Civil Procedure, 1908, are applicable to the petitions under the Hindu Marriage Act and all the proceedings under the Hindu Marriage Act shall be regulated as far as may be by the Code of Civil Procedure. Her further submission is that in view of the provisions of Section 21 of the Hindu Marriage Act, the injunction application under Section 151 of the Code is tenable before the Court hearing the petition and the Court can exercise the powers for grant of injunction. It was further submitted by the learned counsel for respondent/husband that if the provisions of Rules 1 and 2 of Order XXXIX of the Code would not be applicable, then under Section 151 of the Code the Court hearing and deciding the petition under the Hindu Marriage Act having inherent powers to grant relief of injunction or to pass such orders or as may be necessary for the ends of justice or to prevent abuse of the process of the Court and under the inherent powers Court may grant general or other relief which it may think just and proper under the facts and circumstances of the case. It is further submitted that the Trial Court has rightly allowed the injunction application under the facts and circumstances of the case exercising the inherent powers under Section 151

of the Code and, therefore, the impugned order is perfectly legal and needs no interference by this Court in this appeal. In support of her submissions, she relied upon the decision in the case of *Braj Kishore Sinha and Anr. v. Rekha Sinha*, reported in I (1992) DMC 331; and also on Full Bench decision of Patna High Court in the case of *Bajrang Rai and Ors. v. Ismail Mian and Ors.*, reported in AIR 1978 Patna 339; and Division Bench decision in the case of *Chitra Sengupta v. Dhruba Jyoti Sengupta*, reported in AIR 1988 Calcutta 98; and also in the case of *Anita Karmokar and Anr. v. Birendra Chandra Karmokar*, reported in AIR 1962 Calcutta 88.

6. Having heard the learned counsel for the parties and considering the rival and forceful submissions, I am of the view that the provisions contained in the Code of Civil Procedure have been by virtue of Section 21 made applicable to different types of petitions under the Act, whether, for example, it be a petition for restitution of conjugal rights under Section 9; or a petition for alimony under Section 25 of the Act; or for a petition for a decree of nullity under Sections 11 and 12 (where the marriage is void or voidable), the Court by virtue of Section 21 is not powerless or precluded to issue temporary injunctions in these proceedings. Perpetual injunctions are granted under Section 38 of the [Specific Relief Act, 1963](#) and the temporary injunctions are granted under the Code of Civil Procedure. Under Sub-section (1) of Section 38 of the [Specific Relief Act, 1963](#), a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour whether expressly or by implication. The obligation means and includes every duty enforceable by law. The word 'obligation' defined under Section 2(a) of the [Specific Relief Act, 1963](#) means and includes every duty enforceable by law. As has been held that the word 'obligation' is not used in the Act in a limited or restricted sense thus the conjugal obligations are also not excluded from the scope of preventive injunction. Therefore, injunction can be issued to restrain a Hindu husband or wife from contracting a second marriage during the subsistence of the first. Any kind of breach about legal obligation to affect right of marriage can be covered in the wide importance of the word 'obligation' and in the circumstances of the case an injunction can be issued against spouse regarding breach of conjugal or matrimonial obligations and they may be said to be covered within the aforesaid scope of Section 38(1) of the Specific Relief Act under which a

perpetual injunction may be granted in favour of the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. The Hindu Marriage Act does not expressly create any bar about seeking the preventive relief of injunction in the proceedings filed under the Hindu Marriage Act. Therefore, in a petition filed under the provisions of Hindu Marriage Act as well as a suit filed under Section 9 of the Code of Civil Procedure, the proceedings in both the cases being of civil nature, its cognizance is not expressly or impliedly barred by any provisions under the Hindu Marriage Act and the Court which is taking the cognizance in the matter is primarily a Civil Court which is sufficiently vested with the inherent powers. Therefore, the jurisdiction cannot be treated as excluded.

7. The object of issue of temporary injunction is to prefer status-quo so that the party in whose favour a decision is ultimately given by the Court is not deprived of his benefit. For granting temporary injunction it is not necessary that relief of perpetual injunction must always be asked for. It, therefore, follows that simply because there is no provision under the Act for granting permanent injunction, the Court is powerless to issue temporary injunctions in any other case under the Act. To issue a temporary injunction it is necessary that the case should fall strictly within the provisions of Rules 1 and 2 of Order XXXIX of the Code and under those rules the injunction can only be issued when there is a threat to any property in dispute or the same is in danger or being wasted. Therefore, the element of property is a must in both the cases. Therefore, from the plain reading of the aforesaid provisions it may be clear that strictly injunction may not be granted under Order XXXIX Rules 1 and 2 of the Code in matrimonial disputes covered by the provisions of the Hindu Marriage Act but certainly by virtue of provisions of Section 21 of the Hindu Marriage Act, temporary injunction can be granted in exercise of its inherent powers which are not to be conferred by statute in the Court. This power relate to the procedure to be followed by the Courts in deciding cases before it.

8. Section 151 of the Code provides as under:--

'151. Saving of inherent powers of Court-- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.'

9. Section 151 of the Code is not a substantive provision conferring any right to get any relief of any kind. The object of the Legislature in enacting the various provisions of laws of procedure is also to serve the ends of justice. This section provides recognition of an age-old well established principle that every Court has inherent powers to act *ex debito justitiae* to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. It has been held by the Supreme Court in the case of *Jaipur Mineral Development Syndicate, Jaipur v. The Commr. of L-T., New Delhi*, reported in AIR 1977 SC 1348, that 'Every Court is constituted for the purposes of doing justice according to law and must be deemed to possess, as a necessary corollary; and as inherent in its very constitution, all such powers as may be necessary to do the right and to undo a wrong in the course of the administration of justice'.

10. It is also now a settled law that whenever there is no provision made in the Code of Civil Procedure for dealing with particular situation, inherent jurisdiction of the Court under the provisions of Section 151 of the Code can be availed of by a party for the redressal of his grievances. In cases not falling within the ambit of express provisions the inherent powers of the Court to pass such orders, as may be necessary for the ends of justice, remain. This section saves such inherent powers and it cannot be said that the Court has no power to do the right or to undo the wrong merely because there is no express provisions dealing with the matter.

11. In the case of *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, reported in AIR 1962 SC 527, the Supreme Court has held as under :--

'It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression 'if it is so prescribed' in Section 94 is only this that when the rules in Order 39, CPC, prescribe

the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interests of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of Section 94 were not there in the Code, the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction. It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions of Section 94 of the Code have their effect and not in taking away the right of the Court to exercise its inherent power.

Section 151 itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it. Further, when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code.

Thus, there being no such expression in Section 94 which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order 39 or by any rules made under the Code, the Courts have inherent jurisdiction to issue temporary injunction in circumstances which are not covered by provisions of Order 39, CPC, if the Court is of opinion that the interests of justice require the issue of such interim injunction.'

12. In the case of Braj Kishore Sinha (supra) decided by Patna High Court in which it has been held, relying on Supreme Court decision in the case of Newabganj Sugar Mills Co. Ltd. v. Union of India, reported in AIR 1976 SC 1152, and Full Bench decision of Patna High Court in the case of Bajrang Rai v. Ismail Mian, reported in AIR 1978 Patna 339, that :--

'Held that the Court while determining proceedings under the Act has got all powers of the Civil Courts subject to certain special provisions under the Act. It

has also inherent power to pass orders which are necessary for the ends of justice or to prevent abuse of the powers of the Court. Section 27 of the Act clothes jurisdiction in Court to pass appropriate orders before the passing of the decree. Even under its inherent powers as well the Court could have passed the order in respect to the property uncovered by Section 27 of the Act. In the said backdrop I am of the view that the Court below had correctly exercised its jurisdiction in passing the direction in question.'

13. From the aforesaid discussions, it is clear that under inherent powers the Courts hearing petitions regarding conjugal rights and matrimonial obligations can issue injunctions and preventive orders, and in a case the element of property under dispute, the Court can also exercise powers under Order XXXIX Rules 1 and 2 of the Code to prevent misuse and waste of the property.

14. In view of the aforesaid legal position and under the facts and circumstances of this case, the Trial Court has rightly issued the injunction order exercising the inherent powers under Section 151 of the Code against the appellant and I do not see that any case for interference is made out by the appellant. Thus, this Misc. Appeal is devoid of any substance and merit.

15. Consequently, this appeal fails and is hereby dismissed with no order as to costs. Record be returned.

16. Misc. Appeal dismissed.