

Paramjit Singh Vs. Sohan Singh and ors.

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Court : Delhi

Decided On : Nov-01-1995

Reported in : 1995IVAD(Delhi)739; 60(1995)DLT842

Judge : S.D. Pandit, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151

Appeal No. : Interim Application Nos. 9973 of 1991, 11147 of 1992, 1681 of 1993, 2459 of 1994, 1082 of 1995 and S

Appellant : Paramjit Singh

Respondent : Sohan Singh and ors.

Advocate for Pet/Ap. : Nandini Sahni, Adv

Judgement :

S.D. Pandit, J.

(1) This application is filed by the plaintiff Paramjit Singh under Section 151 of the Code of Civil Procedure. It is alleged by the plaintiff/ applicant in this application that defendants 1 to 4 are getting income of more than Rs. 25,000.00 and that he has got 40 per cent share in the same. He has further alleged that he has suffered in 1984 riots and his house and factory has been listed and he is residing at Ludhiana Along with his wife and two school going children and he cannot work at

Ludhiana due to various Court matters at Delhi. Thus, he is finding it difficult to maintain himself and his family. therefore, he may be provided maintenance at the rate of Rs. 5,000.00 per month to support his wife and two school going children, as per the Supreme Court order dated 21.8.199.

(2) The claim of the plaintiff is resisted by defendants 1 to 4 by filing the reply. They have contended that the plaintiff had suppressed material facts from the Supreme Court in his Special Leave Petition , in which the order on which he is relying has been passed. They contend that the plaintiff is running a factory at Ludhiana and has sufficient income to maintain himself and his family and he had not disclosed this fact to the Hon'ble Supreme Court about his running his own factory and obtained the directions on which he is relying. Though plaintiff is claiming to be a victim of 1984 riots, plaintiff's claim is not correct and, as a matter of fact, the defendant No. I has suffered in the riots of 1984. It is further contended that the claim of suffering in 1984 riots is made for the first time before the Hon'ble Supreme Court and not in this proceeding though the plaintiff has filed the suit in 1986, i.e. after the riots of 1984.

(3) It is further contended that the plaintiff had brought one suit in the District Court claiming to be an indigent person and in this suit an inquiry was held and it was found that his claim of being an indigent person was not correct and his claim has been rejected. Similarly, in view of the order passed in this suit itself on 18.3.1991 the plaintiff is not entitled to claim and get any maintenance. The claim of the plaintiff that the defendants are getting income of Rs. 25,000.00 is false. Plaintiff had already relinquished his share in the partnership and the partnership firm is already dissolved and plaintiff is not entitled to claim and get any maintenance from the defendants and, hence, this application of the plaintiff be rejected.

(4) Before going to the merits of this application it is necessary to state the nature of the main suit filed by the plaintiff, viz. Suit No. 220/86. Plaintiff is son of Defendant No. 1 Sohan Singh, whereas Defendant No. 2 Charanjit Singh and Defendant No. 3 Gurmit Singh are real brothers of plaintiff and sons of Defendant No. I. Defendant No. 4. Smt. Inderjit Kaur, is the sister of defendant No. I. Plaintiff has come before the Court to get a decree of the dissolution of the alleged

partnership dated 1.4.1969 and to get accounts and the amount of his share in the alleged partnership business carried out in the name of Calcutta Soap Mills.

(5) The claim of the plaintiff is resisted by the defendants and according to them dissolution has taken place on 10.2.1982 and as per the terms of the said dissolution plaintiff was given shop bearing No. 1990, Mirdhan Lal Khan, Delhi, with a telephone installed therein and cash amount of Rs. 60,000/- and after getting the same the plaintiff had executed the deed of retirement from the partnership. Not only had he executed that document but he had also informed the banks about his retirement from the partnership. Thereafter, he had filed a false Suit No. 236/ 85 in the Subordinate Court of Delhi and, thereafter, has filed this false and vexatious suit in this Court.

(6) This is a claim for maintenance to be considered and granted under the provisions of Section 151 of the Code of Civil Procedure. In order to succeed in such a claim the petitioner must satisfy that there is a prima facie case for him in the main suit. It is settled law that in a suit for partition if the plaintiff has proved a prima facie case to get a share in the suit property and if the plaintiff is out of possession of the suit property and has no means to maintain himself, then the Court can pass an order of interim maintenance in favor of such a plaintiff. The defendants in this case have contended that no partnership of the plaintiff and defendants was in existence on the date of the suit and the plaintiff had already retired from the partnership after getting his share in the partnership business. They have produced documents on record to show that he had executed the Deed of Retirement. He had also executed the receipt for having received the cash amount of Rs. 60,000.00 and the receipt of a shop, as contended by them in their written statement. No doubt the plaintiff has alleged that though the documents are signed by him, those documents are obtained by deceit and fraud. The question of the plaintiff having a prima facie case in this suit was considered in this very suit by my learned predecessor, Hon'ble Mr. Justice P.K. Bahri, by his order dated 18.3.1991. He has passed that order in detail in IA. 7565/87 and it is a reasoned order and in the said order he has noted as under :-

'PRIMAfacie, the plaintiff appears to have very weak case inasmuch as the plaintiff had executed a dissolution deed and had received as his share one shop which earlier belonged to partnership. It is evident that the dissolution deed was acted upon. Even if certain amounts which were to be paid to the plaintiff as per dissolution deed have not been paid even then the same would not entitle the plaintiff to claim fresh relief of dissolution of partnership. Plaintiff has not denied the fact that he had also filed a suit for injunction in which his application for grant of temporary injunction was refused and his appeal was also dismissed and he allowed that suit to be dismissed in default.'

Then it is further observed as under :

'AT any rate, the plaintiff having failed to show prima facie case in his favor is not entitled to have the receiver appointed in respect of the property in question. I dismiss this application.'

The above order is passed by my learned Predecessor in a proceeding between the plaintiff and defendants on merits and that finding of the Court would create rest judicata against the present plaintiff, as has been held by the Apex Court in the case of Y.B.Patil v. Y.L.Patil AIR 1977 SC 392, wherein it has been observed as under:

'PRINCIPLE of rest judicata can be invoked not only in separate subsequent proceedings. They also get attracted in the subsequent stage of the same proceeding. When the order made in course of a proceeding become final, it would be binding at subsequent stage of that proceeding.'

(7) Apart from the above technical aspect, I proceed to consider the claim of the plaintiff. Plaintiff is claiming and contending that he has suffered in the riots in 1984 and that his factory and residence were subject matter of the said riots. It is true that after the assassination of the then Prime Minister Indira Gandhi riots had taken place and some Sikhs were the victims of the said riots. It seems that taking advantage of this situation plaintiff has made this claim because after the retirement of the plaintiff from the partnership he had left Delhi and had gone to Ludhiana and there he had started his business by opening a factory, as per the

claim of the defendants. Admittedly, plaintiff was living separately from the defendants. When it is the claim of the plaintiff that he a victim of riots and that his house and factory were destroyed then he ought to have produced some document to support that claim, like the memorandum of damage caused to his residence and factory, but no such document is coming forth. It is also very pertinent to note that till the filing of this application as well as making submissions before the Apex Court the present plaintiff had never raised the contention that he was a victim of the riots in 1984 and that his factory and residence were the subject-matter of the riots. therefore, in view of this conduct of the plaintiff in not raising that contention and in view of the fact that plaintiff has not produced any document to show that, as a matter of fact, he had suffered due to riots of 1984, the claim of the plaintiff could not be believed and accepted. It is also very pertinent to note that in the application plaintiff does not mention that his factory was at such and such place and that the said factory was destroyed in the 1984 riots.

(8) As regards the contention of the defendants that the present plaintiff had retired from the partnership the defendants have produced on record the documents which are signed by the plaintiff. It is not at all probable that plaintiff will sign those documents produced by the defendants unless the facts stated in the said documents had taken place. A vague allegation that the plaintiff's signatures on the documents were obtained by fraud and misrepresentation is not suffice. It is necessary to state as to how the fraud was played and misrepresentation was committed. No such pleading is there on the record. It is very pertinent to note that it is the contention of the defendants that plaintiff was given a specific shop No. 1990, Mirdhan Lal Khan, Delhi. Plaintiff has not denied that fact specifically and has not shown that, as a matter of fact, that shop continued to be with the defendants even after the alleged retirement from the said partnership-firm. Plaintiff has executed a receipt for having received the amount of Rs. 60,000.00 in cash. Plaintiff has informed the banks that he ceased to have any interest in the partnership of which he was formerly a partner. These two documents also do not allow me to accept plaintiff's claim prima facie.

(9) No doubt plaintiff has filed numerous applications, viz. IAs. 13277/92, 1681/93, 2459/94 and 1082/95 in order to summon the Income tax Authorities and Sales Tax Authorities to bring on record what is the income of defendants 1 to 5.

(10) Out of these applications IA. 13277/92 has been dismissed on 10.2.1993 by holding that the said prayer of the plaintiff is not tenable unless the plaintiff is in a position to show that he has no income and that he has got a prima fade case to get share in the suit property. The question as to what is the income from the suit property need not be gone into. I have found that the plaintiff has no prima fade case for getting the decree in question and plaintiff has failed to show a prima fade case that he has no source of income and he is unable to maintain himself, his wife and two children. thereforee, in view of the said failure on the part of the plaintiff, it is not at all necessary to go into the question of considering as to what is the income of the defendants.

(11) It is vehemently urged before me by the plaintiff himself that the Supreme Court has passed an order to grant him maintenance and, thereforee, this Court is bound to Award maintenance to him. thereforee, it is necessary to see what is the order of our Apex Court passed in is No. 1 in/and Special Leave to Appeal No. 91, preferred against the Judgment and order dated 19.4.1991 of Delhi High Court in FA(OS).82/91, wherein it has been observed as under :

'PETITIONER claims to be a victim of 1984 riots. In the pending action there was a petition for appointment of Receiver which has been rejected by the learned Trial Judge and rejection has been upheld in appeal by the Division Bench. We do not think there will be any justification to interfere in the matter. We, however, are inclined to indicate that in case the petitioner makes an application to the High Court in the pending suit the Court would do well to consider the feasibility of providing some monthly maintenance to the petitioner keeping the facts of the case in view.'

(12) If the above order of the Apex Court is considered then it would be quite clear that it has been laid down by the Apex Court that if the plaintiff happened to make an application for maintenance in this Court then this Court will consider the feasibility of providing some monthly maintenance to the petitioner, keeping the

facts of the case in view. I have accordingly consider the plaintiff's claim regarding maintenance and in view of the facts of the case I have come to the conclusion that plaintiff has not made out a case for getting an order of maintenance in this Suit. The merits of the case have been considered and on merits there is no feasibility of granting any maintenance to the petitioner.

(13) The petitioner is thus, not entitled to get any maintenance. I, thereforee, reject this application but in the circumstances of the case I direct the parties to bear their respective costs. IAs. 11147/92, 1681/93, 2459/94 and 1082/95

(14) By these applications plaintiff is seeking the issuance of witness summons to the income tax and sales authorities to produce on record what is the income of defendants 1 to 4 and to direct the defendants to give details of their accounts. In IA.13277/92 an order has been passed on 10.2.1993 and this prayer for summoning of witnesses has been rejected. By subsequent order dated 16.3.1993 the defendants are directed to file the copies of their Profit & Loss Account from the financial year 1988-89 and the defendants have complied with the said orders of the Court. That order is passed in view of IA.11147/92 as well as another application, IA.1681/93, filed by the plaintiff to appoint a Commissioner to verify the correctness of the income of the plaintiff.

(15) thereforee, in view of the orders passed on 16.3.1993 and 10.2.1993, IAs. 11147/92, 1681 /93,2559/94 and 1082/95 also stand disposed of with no order as to costs. Swit No. 220/86

(16) In view of the order passed on 18.3.1992 the suit stands adjourned for considering the preliminary issue as to whether the present suit is liable to be stayed under Section 10 of the Code of Civil Procedure or not and for settling the other issues.

(17) The suit be now listed on _____.