

Jai Ram Vs. State of Rajasthan and Others

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Court : Rajasthan

Decided On : Jul-11-2000

Reported in : 2000(4)WLC471; 2000(3)WLN129

Judge : B.J. Shethna, J.

Acts : [Rajasthan Irrigation and Drainage Act, 1954](#) - Sections 29(2); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115; [Constitution of India](#) - Articles 226 and 227; [Rajasthan Irrigation and Drainage Act, 1954](#) - Sections 29 (2)

Appeal No. : S.B. Civil Writ Petition No. 5090 of 1999

Appellant : Jai Ram

Respondent : State of Rajasthan and Others

Advocate for Def. : Kulwant Singh, Adv.

Advocate for Pet/Ap. : Vinod Bhadu, Adv.

Judgement :

ORDER

SHETHNA, J.

1. Heard learned counsel Mr. Bhadu for the petitioner and Mr. Kulwant Singh, for Respondent No. 5. Though served, but none appears for Respondents No. 1 to 4.

(2). The petitioner has challenged the impugned order dated 22.5.98 (Annex.2), passed by the Respondent No. 2, whereby he allowed the appeal filed by the private respondent No.5 against the order dated 15.10.97 at Annex. 1.

(3). Learned counsel Mr. Kulwant Singh for private respondent No. 5 raised a preliminary objection regarding maintainability of this petition on the ground that before filing this petition the petitioner has already availed of alternative remedy by way of a suit before the competent Civil Court, wherein he had also filed an injunction application which was dismissed by the trial Court on 15.2.99, after hearing both the parties. Against which, the appeal was preferred before the Appellate Court, which was also dismissed by the learned Additional District Judge, Hanumangarh on 25th October, 1999. He submitted that it is only thereafter, he withdrew that suit and filed this petition, instead of challenging the rejection order passed by the Courts below in the Civil Suit. He, therefore, submitted that on this ground alone, the petition be dismissed.

(4). However, the learned counsel Mr. Bhadu for the petitioner submitted that the petitioner had wrongly filed suit before the Civil Court against the impugned order at Annex. 2, therefore, he had withdrawn the same on 27.11.99 and without wasting further time, he had immediately filed this petition before this Court on 17.12.99, within one month. He, therefore, submitted that this Court should not dismiss this petition on the ground that before coming to this Court, he had availed of alternative remedy of suit.

(5). Another preliminary objection raised by the learned counsel Mr. Kulwant Singh, is regarding gross delay and laches in challenging the impugned order at Annex. 2 dated 22.5.98, passed by the respondent No. 2. He submitted that this order has been challenged before this Court after a period of more than one year and seven months, therefore, it should be dismissed only on the ground of gross delay and laches. However, learned counsel Mr. Bhadu for the petitioner submitted that though there is a delay of 17 months in challenging order at Annex. 2 passed by the respondent No. 2, but the delay has been satisfactorily explained by the petitioner. He submitted that before coming to this Court, he had already filed civil suit before the Civil Court and when the petitioner realised that he had

committed an error in filing a suit which was not maintainable before the Civil Court, therefore, he immediately withdrew the suit on 27.11.99. Thus, according to him, there is no delay.

(6). It is true that after withdrawing the suit on 27.11.99, within less than a month, the petitioner filed this petition on 17.12.99 and challenged the impugned order at Annex. 2 dated 22.5.98 on the ground that the suit was wrongly filed. It may be stated that the petitioner waited for withdrawal of the suit for all this period. Mr. Kulwant Singh is right in submitting that it was only when the two courts below dismissed the injunction application filed by the petitioner in the civil suit, therefore, only he withdrew the suit and filed this petition. He rightly submitted that if this Court entertained this petition, it will open the flood gates for such type of litigations and every one will first go to the Civil Court and file suit and when they fail to get the injunction in their favour on an interim application, then they will come to this Court by way of writ petition after withdrawing the suit. I fully agree with the submission and in my opinion such a practice should be discouraged by this Court. It may be stated that the learned trial Judge dismissed the interim injunction by his order dated 15.2.99 on three grounds; (1) that there was no prima facie case in favour of the plaintiff, (ii) balance of convenience was not in favour of the petitioner, and (iii) no irreparable loss was going to cause to the petitioner. Similarly, the Appellate Court dismissed the appeal filed against that order on 25th October, 1999, it may be stated that the courts below have not rejected the injunction application of the petitioner on the ground that the suit filed before the Civil Court was not maintainable.

(7). In view of this, when there is a gross delay of more than 17 months in challenging the impugned order dated 22.5.98, this petition should be dismissed only on this ground, without going into the merits of the case.

(8). It may be stated that instead of challenging the orders passed by the courts below, by way of revision u/S. 115 CPC before this Court, the petitioner preferred to file this petition directly before this Court against the impugned order at Annex. 2 dated 22.5.98 under Article 226/227 of the [Constitution of India](#). If the petitioner had challenged the orders passed by the courts below against him in the civil suit,

then the petitioner would have narrow scope in the matter, and perhaps, this Court, in Revision, would not have entertained. It is only because of this, the petitioner has chosen to withdraw the suit and file this petition. I am of the confirmed opinion that when the petitioner had alternative remedy and, when he had already availed of the same, but unsuccessfully, then, this Court should not exercise its powers either under Article 226 or 227 of the Constitution. Hence, on this ground also, the petition is required to be dismissed.

(9). On merits, it was submitted by the learned counsel Mr. Bhadu for the petitioner that the impugned order at Annex. 2 passed against the petitioner is in clear violation of Sec. 29 (2) of the [Rajasthan Irrigation and Drainage Act, 1954](#) (hereinafter referred to as 'the Act 1954) because water course was lying unused since more than 40 years. However, it was submitted by the learned counsel Mr. Kulwant Singh learned counsel for private respondent No. 5, that after having committed illegal trespass on Government land, the petitioner wants to stick to that place and when the respondent No. 2 who is a Technical Authority, has passed an order, after considering each and every aspect of the case, then this Court should not interfere with such orders.

(10). Having gone through the impugned order at Annex. 2, I am convinced that while allowing the appeal, the respondent No. 2 has not committed any illegality either on fact or law which is required to be corrected by this Court in its supervisory jurisdiction under Article 226 or 227 of the Constitution. In Mohammad Yunus vs. Mohd. Mustaquim (1), it has been held by the Hon'ble Supreme Court that this Court can correct the error of law committed order at by the Subordinate Authority or the Court. In this case, while passing the impugned at Annex. 2, the Appellate Authority has not committed any error of law or jurisdictional error which calls for interference by this Court under Art. 226 or 227 of the Constitution.

(11). Photostat copies of the orders passed by the Civil Court on 15.2.99 and Additional District Judge, Hanumangarh on 5.10.99 are ordered to be taken on record.

(12). In view of the above discussion, this petition fails and is dismissed. Interim relief if any, granted earlier, stands vacated.

(13). Stay petition is also dismissed.

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