

Ganesh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-05-1969

Reported in : 1969WLN418

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Regular Second Appeal No. 598 of 1966

Appellant : Ganesh

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. Shishodia

Disposition : Appeal dismissed

Judgement :

C.M. Lodha, J.

1. This is a plaintiff s second appeal arising out of a suit for injunction for restraining the Government of Rajasthan from deporting the plaintiff from India to Pakistan in pursuance of the Government order notice dated 13th June, J 952.

2. The facts giving rise to this appeal may be stated in a narrow compass, the plaintiff s case is that he was born at Chittorgarh on 15th February 1929 and was married at village Babrana District Udaipur, in 1940 A.D. It is alleged that

sometime in the year 1942 he went to Karachi in search of livelihood and used to work in Military cantonment upto 30th March, 1946. His case is that he wanted to return to India, and for that purpose, approached the High Commissioner for India in Pakistan but could not get permission and therefore by force of circumstances he obtained a passport from the Pakistan Government and came to India in 1952. It is stated by him that his parents as well as his wife have been throughout residing in India and he had no intention at any point of time to give up his domicile of origin and acquire the domicile of Pakistan. He also states that he was prosecuted under the Passport Act and the Rules made thereunder in 1956, but was acquitted. However, on the 16th June 1962, he received an order from the Government of Rajasthan (Ex 1) dated 13-6-62 whereby he was directed not to remain in India beyond the 18th June 1962 and that he would be deported from India through the Banner Check post and shall not thereafter re-enter India. In compliance with this order of the Government, it was alleged that steps were being taken to deport him and therefore he filed the present suit out of which this appeal arises on 18-6-62 in the court of Civil Judge, Chittorgarh praying that an injunction be issued against the Government of Rajasthan restraining the latter from deporting the plaintiff from India in pursuance of the illegal order issued by the Government of Rajasthan on 13th June, 1962.

3. The suit was opposed by the Government of Rajasthan and in the written statement it pleaded inter alia that the plaintiff had not served a notice under Section 80 C.P.C. before filing the present suit and therefore the suit was liable to be dismissed on this ground alone.

4. After recording the evidence, the learned Civil Judge Chittorgarh by his judgment dated 20th October 1965 held that the plaintiff was not a citizen of India and further that his suit in the absence of a notice under Section 80 C.P.C. was not maintainable.

5. Aggrieved by the judgment and decree of the trial court, the plaintiff filed an appeal in the Court of the District Judge, Patabgarh, but was unsuccessful, and, has, therefore, come in second appeal to this Court.

6. Mr. Shishodia, learned Counsel for the appellant, has urged that the plaintiff was born in India and has his domicile in India. It is urged that the plaintiff had no intention to reside in Pakistan permanently and could not return to India where his parents and wife are living earlier than 1952 on account of circumstances beyond his control. As regards the notice under Section 80 C.P.C. his contention is that, the plaintiff had merely sought an injunction against the Government of Rajasthan in respect of a threatened act of deportation, and, therefore, the suit was maintainable even without a notice under Section 80 C.P.C. It may be stated here that admittedly no notice under Section C.P.C. had been given in this case.

7. After hearing learned Counsel for the parties, I am of the opinion that the suit filed by the plaintiff is not maintainable for want of notice of under Section 80 C.P.C. Learned Counsel for the appellant is not right in his contention that the suit is purely for injunction and is not based on any past act of the Government. A bare perusal of the order of the Government dated 13-6-62 (Ex. 1) which has been filed along with the plaint shows that the Government of Rajasthan had directed that the plaintiff shall not remain in India beyond the 18th June 1962 and shall be deported from India through the Barmer check post and shall not thereafter reenter India.' This very order was served on the plaintiff. In the relief clause para 14 of the plaint it has been prayed that the Government of Rajasthan may be restrained from deporting the plaintiff from India in compliance with the Government's illegal order and notice dated 13-6-62. Thus, it is more than clear that no relief by way of injunction can be granted to the plaintiff unless it is held that the order dated 13-6-62 is illegal and void. In view of the impugned order dated 13-6-62 and the relief claimed by the plaintiff. It is idle to argue that the plaintiff filed a simple suit for injunction in order to get the defendant restrained from committing a threatened future act. Thus, in my view, the suit clearly falls within the purview of the words any act purporting to be done' occurring in Section 80 CPC

8. Learned Counsel for the appellant relied upon the State of Bihar v. Raghunandan Singh and Anr. A.I.R. 1960 Patna. Bai Jilekhabai Adreman and Anr. v. Competent Officer, Evacuee Interest Separation and Ors. : AIR1961 Guj85 and K.R. Muthu A.R. Arunchalam Chetty v. Davind, Esq, The Official Receiver, Ramnad District and Ors. A.I.R. 1927 Mad. 166.

9. On the other hand, learned Deputy Government Advocate has relied upon *Sawai Singhai Nirman Chand v. Union of India* : [1966]1SCR988 and *Bhagchand Dagdusa Gujrathi and Ors. v. Secretary of State for India* A.I.R. 1927 P.C. 176. Their Lordships of the Supreme Court in *Sawai Singhai Nirmal Chand v. Union of India* : [1966]1SCR988 observed, as follows:

(13) It will be recalled that prior to the decision of the Privy Council in *Bhagchand Dagadusa v. Secretary of State* 54 Ind. App. 338 there was a sharp difference of opinion among the Indian High Courts on the question as to whether Section 80 applied to suits where injunction was claimed. The Privy Council held that Section 80 applied to all forms of suit and whatever the relief sought including a suit for injunction. In dealing with the question about the construction of Section 80. the Privy Council took notice of the fact that some of the decisions which attempted to exclude from the purview of Section 80 suits for injunction, were influenced by the assumption as to the practical objects with which it was framed. They also proceeded on the basis that Section 80 was a rule of procedure and that any construction which may lead to injustice is one which ought not to be adopted, since it would be repugnant to the notion of Justice. Having noticed these grounds on which an attempt was judicially made to except from the purview of Section 80 suits, for instance, in which injunction was claimed, Viscount Sumner, who spoke for the Privy Council, observed that 'the Act albeit a Procedure Code, must be read in accordance with the natural meaning of its words' & he added that Section 80 is express explicit & mandatory & it admits of no implications or exceptions.' That is why it was held that a suit in which an injunction is prayed, is still a suit within the words of the section, and to read any qualification into it is an encroachment on the function of legislation. In our opinion, these observations apply with equal force in dealing with the question as to whether a suit under Order 21 Rule 63 is outside the purview of Section 80 of the Code.

10. It will be amply clear from the observations of their Lordships of the Supreme Court extracted above that their Lordships were of the view that Section 80 would be applicable even in case of a suit for injunction. In view of this authoritative pronouncement of their Lordships of the Supreme Court, I do not consider it necessary to advert to the rulings relied upon by the learned Counsel for the

appellant. But even apart from that, as I have already observed, the present is not purely a suit for injunction and therefore Section 80 would operate against the plaintiff with full rigour.

11. As a result of the foregoing discussion, there is escape from the conclusion that the present suit filed by the plaintiff, in absence of a notice under Section 80 C.P.C., was not maintainable and should have been dismissed on this score alone.

12. In view of my conclusion on the question of notice it is no more necessary to give any decision on the question whether the plaintiff continues to be a citizen of India? I, therefore, dismiss the appeal, but in the circumstances of the case, I leave the parties to bear their own costs in this Court. The appellant may, file a fresh suit, if so advised, after serving a notice on the Government under Section 80 C.P.C. according to law.

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