

State of Rajasthan and Another Vs. Yogendra Kumar Garg

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Court : Rajasthan

Decided On : Jul-26-2011

Judge : Mahesh Bhagwati, J.

Acts : Code of Civil Procedure (CPC) , - Order 39 Rule 1; [Constitution of India](#) - Article 227

Appeal No. : S.B. Civil Writ Petition No.3808 Of 2010

Appellant : State of Rajasthan and Another

Respondent : Yogendra Kumar Garg

Advocate for Def. : Mr. Anil Jain, Adv

Advocate for Pet/Ap. : Mr. Zakir Hussain, Adv

Judgement :

1. By way of the instant writ petition, the petitioner has beseeched to quash and set-aside the order dated 9th September, 2008 as also the order dated 28th February, 2009 passed by Civil Judge (Junior Division) Badi and District Judge, Dholpur respectively.

2. Having considered the submissions made by the learned counsel for the parties and carefully perused the relevant material on record including the impugned orders, it is noticed that a mining lease came to be granted by the petitioner-

defendant no.2 in favour of the respondent-plaintiff for a period of 10 years with effect from 6th August, 1981 to 5th August, 1991. The dead rent was accordingly deposited by the respondent from time to time. Thereafter on 9th October, 2007, the petitioner-defendant no.2 cancelled the lease and took the mine in possession on 20th October, 2007. Aggrieved with this order, the respondent-plaintiff filed a suit for permanent injunction together with an application of temporary injunction filed under order 39 Rule 1 and 2 CPC, whereupon the learned trial court allowed the application partially and directed the petitioner-defendant to issue Ravanna in favour of the lease holder plaintiff for a period upto 5th November, 2007. The petitioner-defendant felt aggrieved with the order of the learned trial court and preferred an appeal before the District Judge, Dholpur, who also confirmed the order of the trial court and dismissed the appeal accordingly. By way of the instant writ petition, the petitioner has impugned both the said orders.

3. Learned counsel for the petitioner canvassed that the respondent-plaintiff challenged the cancellation order dated 9th October, 2007 passed by the petitioner, but the learned trial court erringly observed that the mining lease granted in favour of the respondent - plaintiff was in force upto 5th November, 2007, whereas the lease had already been cancelled on 9th October, 2007 and the possession thereof was taken on 20th October, 2007. If the observation of the learned trial court that the lease was in force upto 5th November, 2007 is taken to be true, then the suit could not proceed as the respondent-plaintiff is not found to have impugned the order dated 5th November, 2007. However, the observations made by the learned trial court as also the learned appellate court are contrary to the material and both the impugned orders deserve to be set-aside.

4. E Converso, the learned counsel for the respondent-plaintiff took me through the order dated 9th October, 2007 (Annexure-1) and contended that the mining lease granted in favour of the respondent-plaintiff was cancelled for the reasons mentioned below, but in this order, no reason was assigned for the cancellation of the mining lease. This incomplete order led the petitioner-defendant to pass a fresh amended order on 5th November, 2007, whereby the petitioner rectified the defects of Annexure-1 and issued a fresh order stating that on account of non compliance of notice dated 25th June, 2007, the mining lease granted in favour of

the respondent-plaintiff stood cancelled. In view of the order dated 5th November, 2007, which contained the reasons of cancellation of mining lease was a final order and thus, the mining lease can be deduced to have been in force upto 5th November, 2007. So far as the order with regard to issuance of Ravanna is concerned, that was also partially allowed and the learned trial court unequivocally clarified the position that the Ravanna shall be issued only for a period upto 5th November, 2007. Thereafter, no Ravanna is found to have been ordered to be issued by the learned trial court nor the respondent has come with this case before this Court.

5. It is relevant to point out that the extraordinary jurisdiction under Article 227 of the Constitution can be invoked only when the impugned orders are found to be perverse or contrary to material or they result in manifesting injustice. The learned trial court as also the learned appellate court are found to have critically analyzed all the facts emerging on record ad-longum. The issuance of order dated 5th November 2007 itself suggests that the order dated 9th October, 2007 was not in conformity with the Rules as no reason was assigned in that order with regard to cancellation of the mining lease. The petitioner having rectified the defect cropped up in the order dated 9.10.2007, issued the amended order on 5th November, 2007, which suggested that on account of the non compliance of notice dated 25th June, 2007, the mining lease granted in favour of the respondent-plaintiff stood cancelled, albeit the possession of the mine had already been taken on 20th October, 2007. This Court is not required to interfere with the pure finding of facts under Article 227 of the Constitution. In the facts and circumstances of the case, the learned trial court as also the appellate court are found not to have committed any error in passing the order with regard to issuance of Ravanna in favour of the respondent-plaintiff and thus, both the orders do not warrant any intervention.

6. For the reasons stated above, the writ petition fails and the same being bereft of any merit stands dismissed.