(1998) 2 MPJR 205

Madhya Pradesh High Court

Case No: C. R. No. 353 of 1996 (J)

Mohd. Amin Khan — APPELLANT

Vs

Altaf Khan — RESPONDENT

Date of Decision: Jan. 7, 1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 39 Rule 1, 115

Citation: (1998) 2 MPJR 205

Hon'ble Judges: S.P. Khare, J

Bench: Single Bench

Advocate: Ravish Agrawal, for the Appellant; Abhay Sapre, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.P. Khare, J.

This is a revision by the plaintiffs against the appellate order by which the interim injunction granted in their favour by the trial Court has been

vacated.

Hayat Khan started the business of a soda factory at Khandwa. He died in May, 1973 leaving behind his two sons Altaf Khan and Iqbal Khan.

Altaf Khan was a Government teacher. The name of Iqbal Khan was mutated in Government records in place of his father as owner of this

factory. Iqbal Khan died in the year 1988. The plaintiffs are his sons. Their uncle Altaf Khan is the defendant, who retired form Government

service in the year 1987.

The plaintiff''s case was that this business of the Soda factory was gifted by Hayat Khan to his younger Son Iqbal Khan before his death. Iqbal

Khan became the exclusive owner of the Soda Factory which was later named as ''Aab-E-Hayat Cold Drinks''''. The defendant by his latter dated

11.4.1974 addressed to the Sales Tax Officer, Khandwa acknowledged that his brother Iqbal Khan is the owner of the shop. In this letter, Altaf

Khan has specifically mentioned; ''''I have no share in it.

The defendant''s case is that though he was Government teacher he was helping his father in this business. After the death of Hayat Khan this

business was inherited by his two sons who carried it on the partnership. After the death of Iqbal Khan, the defendant became exclusive owner of

the shop.

The trial Court after considering the documents and the affidavit filed by the parties held that the plaintiff''s case is prima facie true and granted

temporary injunction in their favour restraining the defendant from interfering in their business. The appellate Court has set aside this order mainly

on the ground that in the application dated 10.4.1979 addressed to the Chief Municipal Officer, Khandwa, Iqbal Khan had acknowledged that the

shop which was on lease from the Municipal Corporation be mutated in the joint names of the two brothers.

This matter had earlier come to this court. A Division Bench of this Court by the order dated 25.8.1992 in M. A. No. 2428 of 1992 had set aside

the appellate Order and restored the order of the trial Court. But the Supreme Court by the order dated 29.7.1994 in Civil Appeal No. 5401 of

1994 set aside this order and remanded the case to the appellate Court to re-hear the appeal. Thereafter, the impugned order has been passed by

the appellate Court.

It is argued on behalf of the petitioners that the trial Court in exercise of its judicial discretion and after considering the material on record has

granted the relief of interim injunction then it could not be interfered with by the appellate Court. Reliance is placed on the decision in M. P.

Colliery Workers Federation Vs. United Collieries Limited (1972) M. P. L. J. 78. On the other hand it is contended that the order of the

Appellate Court which is a final Court on facts is not open to interference in this revision. The decision of the Supreme Court in Major S.S.

Khanna Vs. Brig. F.J. Dillon, has been cited in support of this legal proposition. It is also pointed out that in the present case the finding of the

appellate Court is based on the additional documentary evidence submitted by both the sides which was not before the trial Court and therefore

the order passed by it could be set aside in appeal. As the appellate Court has found joint possession of both sides the order granting interim

injunction by the trial Court could not be sustained. It is also contended that the appellate Court wrongly ""failed to take into account"" the Sahmati

Patra dated 12.6.1990 which established exclusive possession of defendant Altaf Khan over this business.

After careful scrutiny of the orders of both the courts below and the material on record, this Court is of the opinion that the discretion exercised by

the trial Court ought not to have been interfered with by the appellate Court. The trial Court and the appellate Court both have found as fact that

the defendant by the letter dated 11.4.1974 addressed to the Sales Tax Officer, Khandwa acknowledged that Iqbal Khan is full owner of the shop

and the defendants has no share in it. Thereafter the certificate of the registration of the Shop was issued in the name of Iqbal Khan. The licenses

under the shops and Establishment Act, 1958 and the Municipal Corporation Act stood in the name of Iqbal Khan and after his death in 1958

have been issued in the name of Mohd. Amin Khan son of Iqbal Khan. To this extent the findings of the trial Court and the appellate Court are

concurrent.

The appellate Court then considered the copy of the application dated 10.4.1979 which is said to have been made by Iqbal Khan to the Chief

Municipal Officer, Khandwa acknowledging that the borther Altaf Khan is also co-tenant of the shops which had been taken on lease by Hayat

Khan from the Municipal Corporation, Khandwa. On the basis of this application, an order is said to have been passed on 7.5.1979 by which the

names of two brothers Altaf Khan and Iqbal Khan were recorded on the shops. This had led the appellate Court to hold that both the brothers are

co-owners of this business. According to the plaintiff, their father Iqbal Khan never made the application dated 10.4.1979 and that is forged. The

authenticity of these two documents is doubtful. In case Iqbal Khan had acknowledged his brother to be the co-owner then in all the subsequent

documents, the name of two brothers would have appeared as the joint owners of this business. But in the subsequent document which have been

relied upon both by the trial Court and the appellate Court the name of Iqbal Khan alone appears and after his death the name of his sons have

been recorded. The documents are not of such unimpeachable character which could outweigh the overwhelming evidence in favour of the

plaintiffs. Assuming that the shops were mutated in the names of both the brothers it does not lead to the conclusion that the business which was

being carried in those shops was the joint business of the two brothers. The defendant was admittedly a Government teacher till 1987 and

therefore he could not participate in the business. It must have been carried on by the plaintiff''s father alone till he was alive and after his death by

his sons. The appellate Court made a reference to Sahmati Patra dated 12.6.1990 but did not rely upon it as its genuineness was seriously

challenged by the plaintiffs and the defendant was not a party to it. It is purported to have been executed by mother and sisters of the plaintiff in

their favour. This document will be considered during the trial. At this stage, it could not tilt the balance in favour of the defendant. The material

documents on which the decision could turn one way or the other were available before the trial Court and also the appellate Court. The additional

evidence produced before the appellate Court was not of such character which could turn the scales.

If the trial Court has considered the application for temporary injunction on the touchstone of the three well established norms; prima - facie case,

balance of convenience and irreparable injury and in exercise of its sound judicial discretion has granted or refused it, the appellate Court will not

interfere simply on the ground that a different view is possible. It can set aside the order of the trial Court if its approach has been arbitrary,

capricious or perverse. If the appellate Court exceeds its jurisdiction in setting aside the order of the trial Court the High Court can interfere in

exercise of its revisional power u/s 115 of the Code of Civil Procedure.

In M. P. Colliery Workers Federation Vs. United Collieries Limited 1974 M. P. L. J. 78 this Court held that the grant of a temporary injunction

under the powers conferred by Order 39, Rule 1 CPC is a matter of discretion of the Judge trying the suit. If the Court, which grants the

injunction, rightly appreciates the facts and applies to these facts the true principles, then that is a sound exercise of judicial discretion, and a Court

hearing an appeal from such an order would not ordinarily interfere. The same view has been taken in U.P. Avas Evam Vikash Parishad and

Others Vs. Dr. N.V. Rajgopalan Acharya and Others, . Lalithakshi Annadanagouda Vs. Sadashivappa Basappa Patil and Another, and Smt.

Vimla Devi Vs. Jang Bahadur, .

The plaintiffs have been carrying on the business for long time as the defendant was a Government teacher. He retired in the year 1987, He had

declared in 1974 that he has no share in this business. The plaintiff have (sic) strong prima facie case. The business cannot be carried on jointly by

the plaintiff and the defendant as their relations are strained. Therefore, it would be proper that tilt the decision of the suit, the plaintiff should carry

on this business of the Soda Factory. Balance of convenience is in favour of the plaintiff and they would suffer substential injury if the order of the

interim injunction granted by the trial Court is not maintained. It will virtually be impossible for both the branches to carry on this business jointly.

Interest of the defendant can be safe guarded by directing the plaintiffs that they would keep proper accounts of the business and in case ultimately

it is found that the defendant is the co-owner or full owner the plaintiffs would adequately compensate the defendant. For that the plaintiffs can be

directed to furnish security.

In the result the impugned order dated 7.2.1996 is set aside and order dated 10.8.1991 of the trial Court is restored. The plaintiffs / petitioners are

directed to furnish a bond supported by a surety that in case it is found in this suit that the defendant is co-owner or full owner of the business, the

plaintiffs would pay half or whole of the profits from the date of the institution of the suit to the defendant. The plaintiffs shall maintain the account of

the business honestly and file a copy of the annual accounts before the trial Court. The trial Court will pass necessary directions in this behalf at the

time of passing of the judgment and decree in this suit. The limit of pecuniary jurisdiction of the trial Court will not be an impediment to the grant of

compensation to the defendant. These directions are being given in conformity with the law laid down by the Supreme Court in Mahadev Vs. Pune

Municipal Corporation (1) and Gujrat Bottling. Co. Ltd. Vs. Coca Cola Company (2). The bond and the security in terms of this order be

furnished by the plaintiffs before the trial Court.