

Supreme General Films Exchange Ltd vs His Highness Maharaja Sir Brijnath ... on 4 August, 1975

Equivalent citations: 1975 AIR 1810, 1976 SCR (1) 237, AIR 1975 SUPREME COURT 1810, 1975 2 SCC 530 1976 (1) SCR 237, 1976 (1) SCR 237, 1976 (1) SCR 237 1975 2 SCC 530, 1975 2 SCC 530

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.C. Gupta

PETITIONER:

SUPREME GENERAL FILMS EXCHANGE LTD.

Vs.

RESPONDENT:

HIS HIGHNESS MAHARAJA SIR BRIJNATH SINGHJI DEO OF MAIHAR &OR

DATE OF JUDGMENT 04/08/1975

BENCH:

BEG, M. HAMEEDULLAH

BENCH:

BEG, M. HAMEEDULLAH

GUPTA, A.C.

CITATION:

1975 AIR 1810 1976 SCR (1) 237

1975 SCC (2) 530

CITATOR INFO :

D 1981 SC 981 (2,3,4,12)

ACT:

Specific Relief Act, 1877_S. 42-Scope of Transfer of Property Act s. 52 scope of.

HEADNOTE:

The plaintiff-respondents was a mortgagee in respect of a cinema theater of which the appellant claimed to be a lessee in occupation. A compromise decree . was passed on 7th May, 1960 in the suit filed by the plaintiff-respondent against the mortgagor be which it was agreed that the amounts due would be released by the sale of the theater. The Central Bank of India, another creditor of the mortgagor, assigned its rights under the decree to the

plaintiff-respondent. The theater was attached in the course of the execution of the decree. The original lease of 1940 which the appellant company had entered into, expired in 1946 but the company continued as a tenant holding over until the impugned lease deed of 1956 was executed. The appellant company filed a suit in 1954 for the specific performance of the agreement to lease. The lease deed of 1956 purported to carry out the terms of that compromise decree. In this suit the plaintiff-respondent was not impleaded as a party. The plaintiff-respondent claimed that the lease of 1956 was void as it was struck by ss. 52 and 65A of the Transfer of Property Act and s. 64 of the Code of Civil Procedure. The appellant company on the other hand, claimed that a suit of the nature filed by the plaintiff respondent did not lie as it fell outside the purview of s. 42 of the Specific Relief Act, 1877. The trial court decreed the plaintiff-respondent's suit. The appellant's appeal was dismissed by the High Court.

Dismissing the appeal,

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HELD: (1) The circumstances in which a declaratory decree under s. 42, Specific Relief Act should be awarded is a matter of discretion depending upon the facts of each case. A complete stranger whose interest is not affected by another's legal character or who has no interest in another's property could not get a declaration under s. 42, Specific Relief Act with reference to the legal character or the property involved. Such is not the present case. The plaintiff respondent had not only the rights of a mortgagee decree-holder with regard to the property involved, but he was also the assignee of the rights of the Bank; which had got the property in question attached in execution of its mortgage before he filed his suit. The plaintiff-respondent possessed sufficient legal interest in the theater as a mortgagee as well as an assignee of a decree-holder, who had got the property attached before he filed his suit, so as to enable him to sue for the declarations he sought. He was not seeking a merely whimsical or eccentric or an unreasonable declaration of a right in property with no enforceable legal claims over it which could remain unaffected by the appellant's claims as a lessee. [242G-243C] .

Sheoparsan Singh & ors. v. Ramnandan Singh (since deceased) & ors. 43 I.A. 91 held inapplicable.

Deokali Koer v. Kedar Nath ILR 39 Cal. 704 @ 707. Bai Shri Vaktrba Thakore Agarsinghji Raisinghji ILR 34 Bombay 676 @ 680; Kisholi Lal v. Beg Raj & ors AIR 1952 Punjab 387 and Ramaraghava Reddy & ors. v. Konduru Seshu Reddy & 2 ors. [1966] (Suppl.) SCR p. 270 @ 277 referred to.

(2) The plaintiff needed a declaration and in the circumstances of the case the declaration sought for could not be reasonably denied to him. From the pleadings it is clear that the appellant had actually denied the plaintiff-

respondent's .. rights as a mortgagee and also the validity of the compromise decree. The respondents had reasonable grounds to apprehend that the appellant will rely upon s alleged lease to resist delivery of actual possession to an auction purchaser.

The existence of lessee rights would certainly affect the price which an auction purchaser would be prepared to pay for the property. [243C-F] 2-L839Sup.CI/17

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(3) As the special doctrine of lis pendens is applicable the purported lease of 1956 was availed from the outset. The lease of 1956 purported to create entirely new rights purported lite. It was therefore struck by the doctrine of lis pendens embodied in s. 52 of the Transfer of Property Act. The terms of the 3 compromise decree in the appellant's Suit against the mortgagor and the lease deed of 1956 purported to confer upon the appellant new rights. There are good deed for suspecting that the compromise in the suit for specific performance was adopted as a device to get round legal difficulties in the execution of the lease of 1956 in favour of the appellant company. [243G-244A, C] , B

Bishan Singh & ors. v. Khazan Singh & Anr. [1959] SCR 878 and Jayaram -Mudaliar & ors.,... [1973] (1) SCR 139, referred to.

(4) The lease of 1956 was struck by the provisions of s. 64 C.P.C. Section 64 constitutes a special application of the doctrine of lis pendens in the circumstance specified there. The order of the trial court shows that the compromise had been arrived at between the decree-holder and the judgment-debtor under which the decree-holder had agreed to lift attachment of property except with regard to the theater which was to continue. It is, therefore, difficult to holder had that the concurrent findings of the trial court and the High Court that the theater was attached in execution of a decree and that this attachment was in existence when the impugned lease was executed in 1956 are erroneous. [244G-245A]

JUDGMENT:

CIVIL APPELLATE Jurisdiction: Civil Appeal No. 1041 of 1968.

Appeal by Special Leave from the Judgment and Decree dated the 30th day of August, 1967 of the Madhya Pradesh High Court in First Appeal No. 8 of 1966 and Special Leave Petitions (Civil) Nos. 2494 & 2533 of From the judgment and order dated the 30th September, 1974 of the Madhya Pradesh High Court in Civil Review No. 456 of 1974.

D. V. Patel, P. R. Naolokar, H. K. Puri and K. K. Mohan, for the appellant (In C.A. No. 1041/68).

A. K. Sen . K. Gambhir and K. P. Gupta, for respondent no. (V) & 2.

T. V. S. N. Chari and Urmila Sirur, for L.Rs of respondent 3 (In C.A No. 1041/68).

D. V. Patel, N. M. Ghatate, 5. Balnkrishnan and P. R. Naolakar for petitioners (In S.L.Ps.).

A. K. Sen, S. K. Mukherjee, K. P Gupta and S. K. Gambhir, for respondent No. 1 (In both the S.L.Ps.)

T.V. S. N. Chari and Urmila Sirur, for respondent no. 2 (In both the S.I .Ps).

The judgment of the Court was delivered by BEG, J. The plaintiff-respondent had filed a suit in the District Judge's Court at Jabalpur claiming a declaration that a lease executed in favour of the Defendant-Appellant, M/s. Supreme General Films Exchange Ltd., (hereinafter referred to as 'the Company'), in respect of Strider Vilas Theater (now known as Plaza Talkies) by its former owners. Jiwan Das Bhatia and his sons (hereinafter referred to as 'the Bhatias'), is void and ineffective against the plaintiff's rights under decrees obtained in Civil Suit No. 15A of 1954 dated 7-S-60 and in Civil Suit No. 3B of 1952 dated 20-4-1954 in execution of which the Theater had been attached. The plaintiff wanted the declaration also to make it clear that an auction purchaser, purchasing the theater in execution of either of the two decrees, gets rights free from any obligation towards the Defendant-Appellant under the void lease. The former owners of the theater, the Bhatias, had borrowed Rs. 2,50,000/- from the Plaintiff-Respondent, a Maharaja, against the security of bales of cotton. On 29-12- 1951, they executed a registered mortgage deed in respect of the Plaza Theater in favour of the plaintiff as the price of pledged goods was insufficient to satisfy the dues. The plaintiff, unable to recover the amount due, had brought Civil Suit No. 15A of 1954 in which a compromise decree was passed on 7-5-1960, in terms of an agreement between the parties that amounts due will be realized by the sale of Plaza theater.

The Central Bank of India, another creditor of Bhatias, had brought Civil Suit No. 3B of 1952 and obtained a decree for Rs. 1,24,000- on 29-4-1952. Rights under this decree were assigned in favour of the plaintiff-respondent. The Plaza theater, together with other properties of Bhatias, was attached on 4-5-1955 in the course of execution of that decree.

The appellant company claimed to be a lessee in occupation of the theater where it had carried on the business of running a Cinema under an unregistered lease obtained on 27-2-1940. The lease of 1940 had expired on 10- 4-1946. The Company continued as a tenant holding over until the impugned lease deed of 30-3-1956 was executed. If this was a valid lease, it would have conferred upon the company the right to be a tenant of the property under the lease for eight years, from 10-2-1956 to 10-2-1964, with an option for a renewal until 10-2-1970. This lease was executed after the company had filed a suit No. 16A of 1954) on 20-11-1954 for the specific performance of an agreement to lease contained in a letter dated 19-7-1948. A compromise decree was passed on 24-3-1956 in this suit also. the lease deed of 30-3 1956 purported to carry out the terms of that compromise decree passed in a suit in which the plaintiff was not impleaded at all.

The plaintiff's case was that the lease of 30-3-1956 was void as it was struck by three statutory provisions, namely, section 52 of the Transfer of Property Act, Section 65A of the Transfer of

Property Act, and Section 64 of the Civil Procedure Code. The defendant-appellant company, in addition to denying the alleged rights of the plaintiff to the benefits of these provisions, pleaded that a Suit of the nature filed by the plaintiff did not lie at all as it fell outside the purview of Section 42 of the Specific Relief Act, 1877, altogether.

The Trial Court and the High Court, after having over-ruled the pleas of the defendant-appellant, had decreed the plaintiff's suit. The defendant company obtained special leave to appeal to this Court under Article of the Constitution. Learned Counsel for the appellant company tried to persuade us to hold that the plaintiff had neither a legal character nor any such present right in any property for which a declaration could be granted under Section 42 of the Specific Relief Act 1877 (re-enacted as Section 34 of the Specific Relief Act of 1963). Furthermore, he contended that the defendant-company had never denied any of the rights of the plaintiff. Finally, he submitted that, in any case, no declaration at all was needed by the plaintiff if the lease of 1956, executed by the former owners of the theater in favour of the defendant-appellant, was void. 'these arguments rest on the assumption that no declaratory relief can be granted outside the ambit of Section of the Specific Relief Act, 1877 which read as follows:

"42. Discretion of Court as to declarations of status or right.. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Bar to such declaration.. Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation.... A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee".

Learned Counsel for the appellant sought to support his arguments by citing: *Deokalikoer v. Kedar Nath(i) Sheoparsan Singh & ors. v. Ramnandan Singh (since deceased) & ors.*(2); *Bai Shri Vaktuba v. Thakore Agarsinghji Raisinghji*(3); *Kishori Lal v. Beg Raj & ors.*(4) *Deokali Koer's case* (supra) arose out of a dispute on the amount of court fee payable. It was observed there that the history of "decrees merely declaratory" indicated that these were innovations given authoritative sanction in England by Section 50 of the Chancery Procedure Act, 1852. It was pointed out that Section 15 of the Civil Procedure Code of 1852 extended this recognition to decrees in suits in this country by enacting that "no suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby and it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief". This provision was repealed by Act 10 of 1877 as this form of relief was recognized by Section 42 of Specific Relief Act I of 1877 subject to the- limitation indicated there. *Jenkins C.J.*, explained the new provision as follows (at p. 709):

"The terms of the section are not a precise reproduction of the provision contained in the Act of 1859 and the English Law: in one direction they are more comprehensive,

in an other more limited. It is common tradition that the section was designed to be a substantial reproduction of the scotch action of declaration, but whether this be so or not is of no great moment. We have to be guided by its provisions as they are expressed. the section does not sanction every form of declaration, but only a declaration that the plaintiff is entitled to any legal character or to any right as to any property; it is the disregard of this that accounts for the multi form and, at times, eccentric declarations which find a place in Indian plaints"

In Deokali's case (supra), the learned Chief Justice pointed out that one declaration sought by the plaintiff there seemed designed to get round the need to set aside a decree on grounds of fraud and collusion. He held two other declarations sought to be vague. He, how ever, explained (at p. 710):

"I would only add this that the limit imposed by Section 42 is on decrees which are merely declaratory, and does not expressly extend to decrees in which relief is administered. and declarations are embodied as introductory to that relief. For such declarations legislative sanction is not required: they rest on long established practice. But for all that the Court should be circumspect and even chary as to the declarations it makes: it is ordinarily enough that relief should be granted without the declaration".

In Deokali's case (supra), the plaintiff's suit was not thrown out on a preliminary ground, but the plaintiff was given an opportunity. to amend the plaint by asking for a consequential relief for setting aside the impugned decree and paying an additional court fee. The case could have only an indirect bearing on the case now before us where no question of a payment of any additional court-fee after adding a consequential relief involved arises. The observations made ill Deokali's case must be read in the context of what arose for decision there.

In Sheoparsan Singh & Ors. case (supra), what was really held by the Privy Council was that a grant of probate under the Probate and Administration Act (V of 1881), which operated as a judgment in rem, could not be collaterally assailed by a suit for a declaration brought by reversioners seeking to question the will. Sir Lawrence Jenkins who had, incidentally, decided Deokali Koer's case (supra) too said (at p. 97):

"It is not suggested that in this litigation the testamentary jurisdiction is, or can be, invoked, and yet there can be no doubt that this suit is an attempt to evade or annul the adjudication in the testamentary suit, and nothing more."

We think that the decision in this case also does not assist the appellant much.

In Bai Shri Vaktuba's case (supra), the Bombay High Court held that a Talukdar plaintiff could bring a suit for a declaration and an injunction to restrain the defendant from claiming that he was the plaintiff's son. Learned Counsel for the appellant, however, relied upon the following passage from it (at p. 650):

"It has long been established that the general power vested in the Courts in India under the Civil Procedure Code to entertain all suits of a civil nature excepting suits of which cognizance is barred by any enactment for the time being in force, does not carry with it the general power of making declarations except in so far as such power is expressly conferred by statute."

Kishori Lal's case (supra) was cited to show that declaratory decrees falling outside Section 42 of the Specific Relief Act are not permissible because Section 42 Specific Relief Act is exhaustive on this subject. This view must be held to have been rejected by this Court when it declared in Veruareddi Rmaranghava Reddy & Ors. v. Konduru Seshu Reddy & 2 ors (1) (at p. 277) "In our opinion, S. 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the section It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of S. 42 of the Specific Relief Act".

The result is that Section 42 merely gives statutory recognition to a well-recognised type of declaratory relief and subjects it to a limitation, but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of Courts to give declarations of right in appropriate cases falling outside Section 42.

We, think that the circumstances in which a declaratory decree under Section 42 should be awarded is a matter of discretion depending upon the facts of each case. No doubt a complete stranger whose interest is not affected by another's legal character or who has no interest in another's property could not get a declaration under Section 42 Specific Relief Act with reference to the legal character or the property involved. Such, however, is not the case before us. The plaintiff-respondent, in the case before us, had not only the rights of a mortgagee decree-holder with regard to the property involved, but he was also the assignee of the rights of the Bank which had got the property in question attached in execution of its decree. We find, from connected special leave petitions against orders under o. 21, Rule 95, Civil Procedure Code that the plaintiff's wife became the auction purchaser of this property during the pendency of the litigation now before us. At the time when he filed the suit the plaintiff may have been looking forward to purchasing the property. Although, the mere possibility of future rights of an intending purchaser could not, by itself, be enough to entitle him to get a declaration relating to a purported lease affecting the right to possess and enjoy the property, yet, we think that the plaintiff possessed sufficient legal interest in the theater, as a mortgagee as well as an assignee of a decree holder who had got the property attached before he filed his suit, so as to enable him to sue for the declarations he sought. He was not seeking a merely whimsical or eccentric or all unreasonable declaration of a right in property with no enforceable legal claims over it which could remain unaffected by the defendant-appellant's claims as a lessee.

Suriya Kumar Dhar v. Girish Chandra Ghose & Anr.(1), was cited to contend that the declaration sought by the plaintiff was unnecessary if the lease or the defendant- appellant was void. We find, from the pleadings in the case before us, that the defendant-appellant had actually denied the plaintiff's rights as a mortgagee and also the validity of the compromise decree in suit No. 15A of

1954. No doubt the plaintiff had not sought a decree for possession as that could not be granted at the time when the suit was filed. Nevertheless, he had reasonable grounds to apprehend that the defendant-appellant company will rely upon its alleged lease, as it did, in the course of execution proceedings, to resist delivery of actual possession to an auction purchaser. The existence of lessee rights would certainly affect the price an auction purchaser would be prepared to pay for the property, or, in other words, what a mortgagee or one who had got the property attached could realize for the property to satisfy his dues. Thus, the plaintiff needed the declaration; and, in the circumstances of the case, the declarations sought for could not be reasonably denied to him.

The contention that the case fell outside the purview of Section 52 of the Transfer of Property Act as the lease was executed in purported satisfaction of an antecedent claim rests upon the terms of an agreement of 1948, embodied in a letter, on the strength of which the defendant- appellant had filed his suit for specific performance. We find that the terms of the compromise decree in that suit and lease-deed of 1956 purported to confer upon the defendant-appellant new rights. Indeed, there are good grounds for suspecting that the compromise in the suit for specific performance was adopted as a device to get round legal difficulties in the execution of the lease of 1956 in favour of the defendant-company. We are unable to accept the argument, sought to be supported by the citation of *Bishan Singh & Ors. v. Khazan Singh & Anr.*(2), that the lease was merely an enforcement of an antecedent or pre-existing right. We think that it purported to create entirely new rights pendente lite. It was, therefore, struck by the doctrine of lis-

pendens, as explained by this Court in *Jayaram Mudaliar v. Ayyaswami & Ors.*(1), embodied in Section 52 of the Transfer of Property Act.

An alternative argument of the appellant was that a case falling within Section 65A(2)(e) of the Transfer of Property Act, confining the duration of a lease by a mortgagor to three years, being a special provision, displaces the provisions of Section 52 of the Transfer of Property Act. This argument overlooks the special objects of the doctrine of lis pendens which applies to a case in which litigation, relating to property in which rights are sought to be created pendente lite by acts of parties, is pending. Moreover, for the purposes of this argument, the defendant- appellant assumes that the provisions of Section 65A(2)(e) Transfer of Property Act are applicable. If that was so, it would make no substantial difference to the rights of the defendant-appellant which would vanish before the suit was filed if Section 65A applies. We, however, think that, as the special doctrine of lis pendens is applicable here, the purported lease of 1956 was invalid from the outset. In this view of the matter, it is not necessary to consider the applicability of Section 65A(2) (e), which the defendant- appellant denies, to the facts of this case.

As regards the applicability of Section 64, Civil Procedure Code, we find that parties disagree on the question whether the attachment made by the Central Bank on 20-4-1955, in execution of the decree of which the plaintiff-respondent was the assignee, existed on the date the impugned lease of 30-3-1956. Learned Counsel for the appellate relied upon the terms of an order recorded on the order sheet, in the Court of Additional District Judge, Jabalpur, in Civil Suit No. 3B of 1952, on 25-1-1956, showing that, in view of the stay order received from the High Court, execution could not proceed. The order sheet, however, also contains the enigmatic statement that execution was

dismissed as infructuous but the attachment was to continue for six months. The High Court had treated the last part of the statement in the order sheet as void and ineffective presumably on the ground that the Additional District Judge had no jurisdiction either to lift the attachment or to dismiss the execution proceedings after the High Court had given its order staying all further action in execution proceedings. The terms of the High Court's order are not evident from anything placed before us. On the other hand, learned Counsel for the plaintiff-respondent relies upon a subsequent order of the same Court, passed on 30-4- 1960, in the same suit. This order shows that a compromise had been arrived at between the decree holder and the judgment debtor under which the decree holder had agreed to lift attachment of property except with regard to Plaza Talkies which was to continue. We are, therefore, unable to hold that the concurrent findings of the Trial Court and the High Court, that the Plaza Talkie was attached in execution of decree in suit No. 3B of 1952 on 4-5-1955 and that this attachment was in existence when the impugned lease was executed on 30-3-1956, are erroneous. On these findings, the lease of 1956 was certainly struck by the provisions of Section 64 Civil procedure Code also. Section 64, Civil Procedure Code, in fact, constitutes an application of the doctrine of lis pendence in the circumstance specified there.

For the reasons given above, we dismiss this appeal with costs.

ORDER In view of our judgment in Civil Appeal No. 1041 of 1968, delivered today, we think that these Special Leave Petitions (Civil) must be and are hereby dismissed P.B.R.