

G.D. Gandhi And Anr. vs Sri Jyoti Bhushan Gupta And Ors. on 9 December, 1952

Equivalent citations: AIR1954ALL113, AIR 1954 ALLAHABAD 113

JUDGMENT

Agarwala, J.

1. These are two connected appeals from an order passed by the learned Civil Judge of Banares, rejecting an application for the issue of an injunction but at the same time directing the defendants to furnish security and to submit accounts. The facts, briefly stated, are as follows :

2. The dispute in the case relates to a cinema hall called the "Prahlad Ka Theatre Hall" at Banares, hereinafter referred to as the Hall. It was owned by a joint Hindu family consisting of Seth Sagarmal and his sons, Sri Nand Kishore and Sri Bhagwati Prasad. These three persons were arrayed as defendants 2, 3 and 4 in the court below. They carry on joint Hindu family business in the name and style of Messrs. Sagarmal Brij Mohan Das. This firm was also impleaded as defendant 1. The plaintiff, Sri Joti Bhushan Gupta, was a tenant of the Hall for the purpose of carrying on business, of showing films, etc.

3. In 1949, there was a litigation between the plaintiff and the proprietors of the Hall, namely, defendants 1 to 4 hereafter referred to as proprietors. Two suits were filed -- one was filed by Sri Joti Bhushan Gupta for fixation of rent and the other was filed by the proprietors for arrears of rent and for ejectment of Joti Bhushan Gupta from the Hall. On 4-4-1950 the suits were compromised and Joti Bhushan Gupta was allowed by the terms of the compromise to remain in possession of the Hall as a tenant for three years certain with power of renewal of the lease for another period of two years. There was also a clause that if the proprietors bona fide sold the Hall to a third person, Joti Bhushan Gupta would vacate the premises on receiving three months' notice. Joti Bhushan Gupta continued in possession of the Hall. New rules for running cinema business, however, came into force requiring certain specific alterations and renovations in the Hall. As the proprietors did not make the required alterations and renovations the parties came to an agreement that, if the proprietors sold the premises within one month, the tenancy of the plaintiff would be deemed to have ceased with effect from 1-2-1952, but that if no sale was made within the stipulated period, the agreement would be deemed to be null and void and the tenancy would be deemed to be continuing, as if it had never come to an end. This agreement was recorded in two documents both dated 13-3-1952. In one of the documents it was stated that the Hall was being vacated and its possession was handed over to the proprietors on 1-2-1952 and that no rent would be accruing after that date. In the other document, which was in the form of a letter from the proprietors to Joti Bhushan Gupta, it was stated that the first document had been signed with a view to help the proprietors in

selling the cinema building and that it would become absolute only if the proprietors were successful in selling it within one month of the agreement. It was further stated that, in the absence of such sale, the proprietors agreed that the tenancy of the plaintiff would continue without a break on the same terms and conditions as before, and that the rent would not be charged for the period for which the cinema remained closed after 1-2-1952. It was alleged by the plaintiff that the proprietors did not intend to sell the premises at all but got the two documents from him under a pretext in order to run the Hall as a cinema in their own name and for their own benefit, and that on learning of the true intention of the proprietors, the plaintiff applied to the District Magistrate on 14-8-1952 for revival of the licence to run the cinema in his name.

On 16-8-1952 an application was made by Bhag-wati Prasad, defendant 3 one of the proprietors, to the District Magistrate for the licence to be issued in his name. Before any licence could be issued the plaintiff filed the suit which has given rise to the present appeals, impleading the proprietors as defendants 1 to 4 in the suit, praying that by means of a permanent injunction the defendants be restrained from interfering with the possession of the plaintiff over the Theatre Hall and from executing any document for the transfer of the Hall to some other person, or in the alternative if the plaintiff be not deemed to be in possession of the Hall, to pass a decree for possession in his favour. On the same date he made an application for the issue of an injunction prohibiting the defendants from making any sale to a third person and also prohibiting them from obtaining a licence for running the cinema. It was alleged in the plaint, that as the sale was not made by the defendants within the period of one month stipulated in the agreement of 13-3-1952, the agreement had become null and void and the plaintiff remained in possession as a tenant in the eye of law.

4. The court passed an interim order, but the proprietors are alleged to have made a sale of the property in favour of the Western Stages Trading Company Ltd., on 5th or 6th of September 1952. The plaintiff impleaded the Western Stages Trading Company Ltd. also as defendant 5 and prayed for an injunction against them not to lease the Hall to third persons. The court granted an interim injunction to that effect, but before it could be served defendant 5 is alleged to have leased out the Hall to Messrs. G. D. Gandhi and S. D. Gandhi on 8-9-1952. The plaintiff then impleaded the two Gandhis as defendants 6 and 7 and asked for an injunction against them not to obtain a licence for the Cinema for exhibition of pictures. The court issued an interim injunction but ultimately passed the final order under appeal.

Recalling its temporary injunction and directing the defendants to furnish security in the sum of Rs. 25,000/- within two weeks and to submit a statement of accounts for the first six months from the date when the Hall was actually used for the exhibition of pictures, showing the nett income. The court reserved to itself the liberty of varying the amount of security on looking into the accounts. It also directed that the accounts were to be submitted monthly. It is against this order that the above two appeals have been filed in this Court -- one by the plaintiff against the order withdrawing the interim injunction and refusing his application for the issue of an injunction and the other by defendants 6 and 7, the alleged lessees of the Hall, challenging the direction in the order requiring them to furnish security and to submit accounts. While the appeals were pending in this Court two interim orders were made -- (1) staying the operation of the order directing the defendants to furnish security and to submit accounts and (2) restraining the defendants from taking out a licence

for the running of a cinema.

5. In the appeal filed by the two Gandhis, defendants 6 and 7, it has been urged that the Court below had no jurisdiction to make an order directing the defendants to furnish security and to submit accounts. It was urged that the suit was essentially for possession of the building and not for damages and that in such a case the court could not ask the defendants to render an account of the income which he might earn by using the property. It was pointed out that no relief for mesne profits was claimed by the plaintiff. We do not think that this contention has any force.

6. The plaintiff alleged that there has been a breach of the terms of the agreement of 13-3-1952 and that no sale had been effected within the period stipulated in that agreement and, as such, his tenancy continued. He therefore, claimed the right to hold possession of the Hall and further claimed that he was in the eye of law to be deemed to be in possession according to the terms of the agreement. As by the date on which the suit was instituted, namely, 4-9-1932, neither the sale had been made nor the lease had been executed in favour of the defendants, there was no question of his claiming any damages. By way of protecting his interests during the pendency of the suit, he prayed for an injunction restraining the defendants from transferring the property or using it in a way which would be detrimental to his interests. The Hall was intended to be used as a cinema. Using it as such required a licence. If a third person were to set a licence the plaintiff's interest would be jeopardised even if he got possession over the Hall, because he not being a licensee for running the cinema would not be able to make any use of the Hall. It was to protect, this interest of his that he made the application for the issue of an injunction. If the Court finds that the issue of an injunction would unnecessarily hamper the utility of the Hall to the defendants or might injure the interest of both the parties, it has jurisdiction, in the ends of justice, to make an order securing the interests of the plaintiff in some other way. The Court has inherent power to make such orders as it considers just. The order requiring, security and accounts to be furnished was calculated to protect the interests of the plaintiff during the pendency of the litigation and, as such, the court had jurisdiction to make it.

7. It was urged on behalf of the plaintiff that no appeal lies against the order demanding security and directing accounts to be furnished because such an order was passed under the inherent powers of the Court under Section 151, Civil P. C., and not under Order 39, Rule 1 or Rule 2, Civil P. C. As there is no force in the Gandhi's appeal on the merits, it is not necessary to go into this question at any length. Suffice it to say that we agree with the contention. In this connection reference may be made to the decision of the Calcutta High Court in -- 'Sito Mahton v. F. F. Christien', 17 Ind Cas 351 (Cal) (A). The facts of that case were similar to the facts of the present case, and it was held that such an order did not fall under Rule 1 or Rule 2 of Order 39 and that no appeal lay therefrom. We respectfully agree with this decision. It was also held in that case that the order in question could be passed under Clause (e) of Section 94, Civil P. C. No doubt Section 94 including Clause (e) thereof empowers the Court to make such other interlocutory orders as may appear to the Court to be just and convenient but this power is circumscribed by what has been stated in the governing clause of the section which reads:

"In order to prevent the ends of Justice being defeated, the court may, 'if it is so prescribed'."

The power to make such other interlocutory orders mentioned in Clause (e) can only be exercised if it is so prescribed by the rules. If there is nothing in Order 39, Rule 1, or in any other provision of the rules, the power conferred on the Court under Clause (e) could not be exercised at all. This, however, does not prevent the court from exercising its inherent jurisdiction which is referred to in Section 151, Civil P. C., as already stated.

8. The result, therefore, is that so far as the appeal of defendants 6 and 7 is concerned, it fails and we dismiss it with costs.

9. In the appeal filed by the plaintiff it was contended that the lower Court erred in not issuing an injunction restraining the defendant from taking out a licence and using the Hall as-a cinema hall to the detriment of the interests of the plaintiff. It has already been noted that no party has yet been able to obtain a licence. If the plaintiff's prayer that the defendants be restrained from obtaining a licence were to be granted, the result would be that the Hall would remain vacant and everybody concerned would suffer. The court below was, therefore, right in refusing to issue an injunction. At the same time, in our opinion, the circumstances of the case demanded that in order to protect the interest of the plaintiff, a receiver should have been appointed who might obtain the licence and run the cinema hall for the benefit of the person ultimately entitled to the possession of the Hall. The plaintiff is obviously not in possession and the defendants are in possession. The proper order that should have been passed by the court below was to appoint defendants 6 and 7, who allege to be lessees of the premises, as joint receivers to obtain licence to run the cinema and, as such, to render accounts to the court. Such a course would not have interfered with the use of the Hall as a cinema by the defendants and would have amply protected the interests of the plaintiff.

10. We, therefore, in modification of the order passed by the Court below appoint defendants 6 and 7 as receivers of the Hall for the purpose of carrying on a cinema business therein. They may obtain a licence for that purpose which will enure for the benefit of the party who will succeed in the suit. The directions issued by the court below regarding the furnishing of security by them and submitting of accounts shall stand.

11. Two weeks period laid down by the court below for furnishing security has expired and they shall now furnish security within a period of two months. In case of their failure to furnish security or to submit accounts as directed by the court below, the plaintiff shall act as a receiver and in that case the licence for running the cinema show will be obtained by him and he will furnish security to the same extent, that is to say, in the amount of Rs. 25,000/- and submit account in the same terms as the defendants have been directed.

12. In case the plaintiff takes the place of defendant as receiver he shall deposit in court the amount of profit every month that accrues out of the cinema business. In any case, whether the defendants 6 and 7 are receivers or the plaintiff is the receiver a sum of Rs. 1100/- will be paid to the credit of defendant 5 who may withdraw it with the consent of defendants 1 to 4 as rent which the plaintiff

was admittedly bound to pay for the premises. This order does not affect the liability of defendants 6 and 7 to pay such amount of rent to defendant 5 as he may have agreed to pay to it.

13. Hearing of the suit in the court below shall be expedited.

14. Our order has been passed to operate during the pendency of the suit in the court below. After the decision of the suit it will be open to the parties to apply afresh for such orders as they be advised.