

Gauhati High Court

Bakul Chandra Chakraborty vs Giri Bala Debi (Chakraborty) on 23 December, 2003

Equivalent citations: (2004) 2 GLR 714

Author: T Vaiphei

Bench: T Vaiphei

JUDGMENT T. Vaiphei, J.

1. By this revision petition under Section 115 of the Code of Civil Procedure, the petitioner is assailing the legality or otherwise of the judgment and order dated 22.11.2002 passed by the learned District Judge, South Tripura, Udaipur in Civil Misc. Appeal No. 11/02 affirming the judgment and order dated 3.10.2002 passed by the trial Court dismissing the application for temporary injunction filed by the respondent herein.

2. Heard Mr. H. Sarkar, the learned counsel for the petitioner. I have also heard Mr. B. Das, learned senior counsel for the respondents.

3. To appreciate the controversy involved in this case, the material facts of the case may be briefly stated. The plaintiff-respondents (hereinafter called "the respondent") filed Title Suit No. 20/2002 before the learned Civil Judge (Sr. Division), South Tripura, Udaipur against the defendant/petitioner for declaration that the respondent is entitled to 2 annas share of the priestship for the Siva Puja of Sree Mata Tripura Sundari Devi in a year and also declaration that she is entitled to choose from the priest family to do such Shiva Puja on her behalf with a perpetual injunction to restrain the petitioner and his men from performing Shiva Puja on her behalf with a further declaration that the registered sale deed dated 24.11.1984 executed by her in favour of the petitioner is void and inoperative. The respondent also prayed for temporary injunction to restrain the respondents from performing the Shiva Puja pending disposal of the suit. The Ld. Civil Judge by the judgment and order dated 3.10.2002 in Civil Misc. No. 25/2002 dismissed the application. Aggrieved by the same, the respondent preferred an appeal being Civil Misc. Appeal No. 11/2002 against the said judgment and order. The Ld. District Judge by the impugned judgment and order disposed of the appeal allowing the petitioner to perform the Shiva Puja and directing him to pay a sum of Rs. 500 (Rupees five hundred only) per month to the respondent out of the income earned from performing the Shiva Puja. It is against this order that the petitioner has filed the instant revision petition.

4. It is the case of the petitioner that he has already purchased 2 annas share of the priestship of the respondent for valuable consideration as per the said registered sale deed and has since the purchase been performing the Shiva Puja as of right. The registered sale deed is at Annexure C. On the other hand, it is the case of the respondent as emerged from the written statement that she never executed the said sale deed and that all that she executed was a deed of Power of Attorney.

5. The Ld. Civil Judge held that since the sale deed in question is in force, the same having been not yet cancelled, the respondent has no cause of action and accordingly, the respondent is not entitled to temporary injunction against the petitioner as prayed for. The application for temporary injunction was thus rejected. The appellate Court, however, did not give any finding on whether the

respondent/ plaintiff has a prima facie case. He, however, observes that no money receipt could be shown by the petitioner that the balance amount of Rs. 6,500 as consideration for the sale of the priesthood was paid by him. It is also the finding of the Ld. District Judge that the respondent is 80/82 years old and has no source of livelihood and that sufficient income is earned from performing Shiva Puja by the petitioner. It is apparently upon the above findings that the Ld. District Judge directed the petitioner to pay Rs. 500 per month to the respondent even though he thought it fit not to grant temporary injunction.

6. Mr. H. Sarkar, the learned counsel for the petitioner contends that the direction of the Ld. District Judge for payment of Rs. 500 to the respondent is not sustainable in law since this particular relief is not prayed for by the respondent in the suit or in the application for temporary injunction. By giving this direction, submits the counsel for the petitioner, a third case is made out by the Ld. District Judge, which is without jurisdiction. It is also submitted that once the Ld. District Judge is not satisfied that a prima facie case is there, he should not only reject the prayer for temporary injunction, which he has rightly done in the case, but should also have the order for payment of the said amount. On the other hand, Mr. B. Das, the learned counsel for the respondent, submits that the appellate Court on the trial court has the power to mould the relief claimed if the record otherwise warrants such an order. According to the learned counsel for the respondent, the direction of the Ld. District Judge for monthly maintenance to the respondent is based on equity considering the age of and the financial difficulties faced by the respondent and also the income earned by the petitioner in performing the Shiva Puja. He, therefore, submits that no interference is called for by the Court on the peculiar facts of this case.

7. The principles for granting temporary injunction" order. Order 39 Rules 1 and 2 of the Code is no longer in dispute. The party applying for temporary injunction must establish that he or she has a prima facie case ; the balance of convenience is with him/her and irreparable damage shall be caused to him/her unless temporary injunction is issued in his/her favour. On examination of the impugned judgment and order, I am satisfied that both the courts below have properly exercised their jurisdiction in refusing the prayer of the respondent for issuing temporary injunction. However, it is with respect to the direction of the Ld. District Judge for payment of the maintenance allowance that the petitioner has felt aggrieved. It may be appropriate to reproduce hereinunder the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure :

"1. Cases in which temporary injunction may be granted Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to (defrauding) his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by Order grant a temporary

injunction to restrain such Act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property (or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit) as the court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The court may by order grant such, injunction, on such terms, as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit."

8. There can be no dispute that there is no provision in Order 39 Rules 1 and 2 of the Code empowering a Civil Court to pass the impugned direction of maintenance. In view of this legal position, the learned counsel for the petitioner is right in contending that the Ld. District Judge has exceeded his jurisdiction by directing the petitioner to pay a sum of Rs. 500 per month from the income of the Shiva Puja to the respondent. But then, in a revision petition under Section 115 of the Code, the exercise of jurisdiction is purely discretionary. Proviso (b) to Section 115(1) of the Code requires the Court not to interfere if Order impugned would not occasion a failure of justice or cause irreparable injury to the party against whom it was made. In other words, the High Court is not bound to interfere merely because the conditions in the Section are satisfied. While exercising its discretion, the High Court can take into consideration such circumstances and facts as may disentitle the petitioner in a revision petition from being granted any relief. Such relevant circumstances could be whether the order sought to be revised has occasioned a failure of justice or conversely, whether the cause of justice demands revision of the impugned order. Interference in revision is purely a discretionary and even if the lower court has acted without jurisdiction or acted illegally in the exercise of jurisdiction, the High Court will not interfere unless grave injustice or hardship would result from failure to do so-See Sarkar's Evidence Act, 8th Edn. at page 413.

9. In the instant case, the learned District Judge, in making the direction for payment of maintenance allowance by the petitioner has rightly taken into account the old age of the respondent who may be in the last days of her life, and the considerable income derived from performing Shiva Puja by the petitioner and the lack of dependable source of livelihood for the respondent. These findings are not disputed by the petitioner in his pleadings. On the peculiar facts and circumstances of this, I am thus of the considered opinion that there is no failure of justice in issuing the impugned direction by the learned District Judge warranting the interference of this Court even though the Ld. District Judge can be said to have exceeded his jurisdiction.

10. For the reasons stated above, this Revision petition is hereby dismissed/However, in the facts and circumstances of this case, the parties are directed to bear their costs.