

[1]

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Jai Narayan Vs. State & Ors.
S.B. CIVIL FIRST APPEAL NO.293/03

Against judgment and decree
dated 09.10.2003 passed by
learned Addl. District Judge
No.1, Bikaner in Civil Original
Suit No. 5A/2003 - Jai Narayan
Vs. State & Ors.

DATE OF PRONOUNCEMENT OF JUDGMENT ::
28TH November, 2005.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Vikas Balia for appellant
Mr. Sajjan Singh for respondent No.6.

BY THE COURT:

Appellant-plaintiff Jai Narayan has
challenged the judgment and decree dated
09.10.2003 passed by learned Addl. District
Judge No.1, Bikaner, whereby while deciding the
application moved under Order 7 Rule 11 CPC by
respondent-defendant, the Court below has
dismissed the suit filed by appellant-plaintiff
for partition and permanent injunction finding
it a matter falling under the Arbitration and

Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996').

Brief facts, giving rise to the present appeal, are that the appellant-plaintiff filed a suit giving details of the joint disputed property of appellant and defendants No.3 to 10 situated at Station Road, Bikaner. It was averred in the suit that the said property was mortgaged to the firm Meghraj Mohanlal by one Gewarchand and later on the firm Meghraj Mohanlal purchased the said property of which Sohanlal and Meghraj were partners. It is also averred in the suit that the said property belonged to both the partners of the firm, who expired long back and they had equal share and the said property, which came in possession and ownership of their decendents. It is further averred that present appellant is son of one of the partners Meghraj and there being a dispute in respect of the suit property it was settled by arbitration on 28.08.1997 in which the share of present

[3]

appellant-plaintiff was determined as 1/6 of the joint property. It is also averred that without partitioning the property the respondents are creating interest in favour of purchasers respondent No.11 & 12 and therefore the appellant-plaintiff filed the suit seeking relief for partitioning the suit property by metes and bounds and restraining the respondent-defendants No.3 to 12 from demolition or construction in the suit property so also restraining respondent No.2 from registering any document in respect of the suit property. An application for temporary injunction under Order 39 Rule 1 & 2 was also filed. The respondent-defendants replied the suit by filing written statement and the learned trial Court appointed Commissioner on 02.07.2003. After that, respondent-defendant No.6 filed an application under Order 7 Rule 11 CPC read with Sec. 35 & 36 of the Arbitration & Conciliation Act 1996 and contended that the matter relate to enforcement of the arbitration award and as such the suit is barred by law.

The learned trial Court after hearing parties on the application while allowing the application of respondent-defendant No.6 has dismissed the suit of the plaintiff. Aggrieved, the appellant-plaintiff has approached this Court.

I have heard learned counsel for the parties and considered the submissions made before me.

It is to be seen that in the present case, a suit for partition by metes and bounds was filed and while deciding the application moved by defendant No. 6 under Order 7 Rule 11 CPC vide judgment dated 09.10.2003 the suit itself has been dismissed holding that it was barred by law. The learned trial Court while accepting the application under Order 7 Rule 11 CPC came to the conclusion that in view of Secs. 5, 14, 35 & 36 of the Act of 1996 the suit was barred by law. The learned trial

[5]

Court also came to the conclusion that in view of arbitral award dated 28.08.1997 the dispute was between Bulakidas and his brothers in relation to the disputed property.

After carefully examining the impugned judgment of the learned trial Court, I am of the opinion that the learned trial has not correctly appreciated the legal position in the case in arriving at a conclusion that the case is barred by law. Sec.5 of the Act of 1996 only makes a mention that the matters governed under Part I of the Act shall not be intervened by the judicial authority whereas Sec. 16 is in relation to the jurisdiction of arbitral tribunals and Sec.35 states that arbitral award shall be final and binding between the parties. Sec. 36 which is relevant for the present purposes, reads as under:

"36. Enforcement.- Where the time for making an application to set aside the arbitral award under Sec.34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (V of 1908)

[6]

in the same manner as if it were a decree of the Court."

A perusal of above provisions indicates that arbitral award can be enforced under the provisions of the Civil Procedure Code considering the same to be a decree of the civil Court. The arbitral award which has been reproduced in the impugned judgment is in relation to the disputed shops situated at Station Road, Bikaner in which shares of the parties have been declared. It says only with regard to the respective share of the parties. No possession of the respective shares of the parties appears to have been handed over. The prayer made in the suit is with regard to possession also. The arbitral award, thus, can at best be termed as it may be a decree and in such circumstances a final decree is yet to be arrived at by metes and bounds. The suit appears to have been filed for this purpose. The provisions referred by the learned trial Court do not take the present case out of the the purview of the Civil Court for the purposes

[7]

of execution as after a regular decree, the final decree is yet to be arrived at. The arbitral award was passed in the year 1997 declaring the respective shares and thereafter nothing was done to declarations so made. In the present case, it also appears that several issues have been framed. The issues are also with regard to maintainability of the suit and also with regard to the arbitral award and its execution.

As discussed above, there remains no doubt that in view of Sec.36 of the Act of 1996 enforcement of arbitral award can be made taking into consideration the award as a decree of the civil Court.

In Sant Lal & Ors. Vs. Ramaya Ram & Anr. (AIR 1938 Lahore 177), it was held that declaration of share does not mean that division of the property has been made though metes and bounds. In that case dispute arose in relation to coparcenary properties including

agricultural lands, houses and other things. The suit was filed by one Santlal in the trial Court and was referred during the course of proceedings to a sole arbitrator, who passed an award and on the basis of that award a decree was made by the Court. Thereafter, Santlal, the appellant in the case, who wanted to get the the land mutated in his favour, moved the Revenue authority to record his share in relation to some agricultural properties alleging that by the award and the decree which followed thereon, he had been declared to be the sole owner thereof. The Asstt. Collector held that Sant Lal had been granted only one-half share in those properties and that he was not the owner of the whole as alleged by him and accordingly sanctioned mutation in his favour as owner of one-half. Santlal appealed to the Collector, who was of the opinion that mere declaration was not enough and as such cancelled the mutation. The Commissioner upheld the order of the Collector. Sant Lal then filed a petition for execution with the

prayer of possession and in the alternate for converting the execution proceedings into a suit. The Senior Subordinate Judge dismissed the petition. In the appeal before Hon'ble Lahore High Court, it was held that Senior Subordinate Judge committed illegality by not converting the execution proceedings into a suit for the reason that the arbitral award was a declaration and it was not sufficient for the purposes of determining the actual portion of share in the property unless it was done by metes and bounds.

In the instant case, it appears that the learned trial Court has not properly interpreted the provisions of the Act of 1996 and particularly Sec.36 of the Act and has not construed the arbitral award in a proper manner as the arbitral award has only determined the shares of various parties in the disputed joint property which amounts to a preliminary decree only and unless partition by metes and bounds is carried out the same cannot be termed as a

final decree. The appellant-plaintiff was seeking a final decree based on the arbitration award determining the shares of various parties in the joint property and the learned trial Court while deciding the application under Order 7 Rule 11 CPC even after coming to a conclusion that the award could be enforced only by execution proceedings in pursuance of the arbitration award should not have dismissed the suit rather the suit proceedings ought to have been treated as execution proceedings and the arbitration award ought to have been enforced by carrying out partition by metes and bounds.

In view of foregoing discussions, I find substance in the arguments raised by the learned counsel for the appellant and the appeal requires to be accepted.

In the result, the appeal is hereby allowed, the judgment and decree passed by learned trial Court is set aside and the case

[11]

is remitted back to the learned trial Court to try it afresh in accordance with law.

(SATYA PRAKASH PATHAK) J.

/jpa