

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAI PUR BENCH, JAI PUR

ORDER

S. B. Civil Writ Petition No. 11358/2011

S. B. Civil Misc. Stay Application No.

10460/2011

(Kailash & Others Versus Gopi & Others)

Date of Order :: 30th November, 2011

HON'BLE MR. JUSTICE MAHESH BHAGWATI

Mr. Sudesh Bansal, counsel for the petitioners

By way of the instant writ petition, the petitioners have beseeched to quash and set-aside the order dated 5.7.2011 and 5.2.2011 passed by Additional District Judge No. 5, Jai pur Metropolitan, Jai pur and Additional Civil Judge (Jr. Division) No. 25, Jai pur Metropolitan, Jai pur respectively.

2. Having heard the learned counsel for the parties and carefully perused the relevant material on record including the impugned orders, it is noticed that the plaintiffs-respondents filed a suit for declaration, permanent and mandatory injunction together with an application for temporary injunction before the learned trial court. The learned trial court, having analyzed the matter in detail, allowed the application for temporary injunction vide order dated 5.2.2011. Aggrieved with the order dated 5.2.2011, the petitioners-

defendants preferred an appeal before the Additional District Judge No. 6, Jai pur Metropolitan, Jai pur. The learned appellate court, vide its order dated 5.7.2011, dismissed the appeal of the petitioners-defendants and affirmed the order of the trial court. Thus, there has been a concurrent finding of fact of both the courts below.

4. The Full Bench of the Hon'ble Apex court in the case of **Kshiti sh Chandra Bose Versus Commissioner of Ranchi** reported in AIR 1981 Supreme Court 707 (1) categorically observed that the Patna High Court clearly exceeded its jurisdiction in reversing the pure concurrent findings of fact given by the trial court and the then appellate court.

5. In the case of **Mst. Kharbuja Kuer Versus Jangbahadur Rai**, (1963) 1 SCR 456, the Hon'ble Apex Court held that the High Court had no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. In this connection, the Apex court observed as follows:

"It is settled law that the High Court has no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact.

As the two Courts, approached the evidence from a correct perspective and gave a concurrent finding of fact, the High Court had no jurisdiction to interfere with the said finding."

6. To the same effect is another decision of the Hon'ble Apex Court in the case of R. Ramachandra Ayyar V. Ramalingam, Chettiar reported in (1963) 3 SCR 604, where the Court observed as follows:

"But the High Court cannot interfere with the conclusions of fact recorded by the Lower Appellate Court, however erroneous the said conclusions may appear to be to the High Court, because as the Privy Council observed, however, gross or inexcusably the error may seem to be there is no jurisdiction under Section 100 to correct that error."

7. The same view was taken in two earlier decisions of the Hon'ble Apex court in the case of D. Pattabhiramaswamy V. Hanumayya reported in AIR 1959 SC 57 and Raruha Singh Versus Achal Singh reported in AIR 1961 SC 1097.

8. In this case, the Hon'ble Apex Court observed that the High Court had no jurisdiction after reversing the concurrent findings of fact of the courts below and remand

the case to the Additional Judicial Commissioner.

9. The conclusion, therefore, is inescapable that this Court should not invoke extraordinary jurisdiction under Article 227 of the Constitution to upset the pure findings of fact of two courts below. The scope of the High Court under Article 227 of the Constitution is limited. This extraordinary jurisdiction can be invoked only when the judgment of the court below is found to be perverse or contrary to material or it results in manifesting injustice. I do not find any ground to upset the pure findings of fact and thus, the writ petition filed by the petitioner deserves to be dismissed as the impugned judgments rendered by both the courts below do not warrant any intervention.

10. For these reasons, the writ petition fails and the same being bereft of any merit stands dismissed.

11. Consequent upon the dismissal of writ petition, the stay application, filed therewith, does not survive and that also stands dismissed.

(MAHESH BHAGWATI), J.

DK