

I N THE HI GH COURT OF JUDI CATURE FOR RAJASTHAN
BENCH AT JAI PUR

SB CIVIL FIRST APPEAL NO. 190/14.

MAHAVEER JAI N – APPELLANT.

VS

DURGAH COMM TTEE, AJMER – RESPONDENT.

DATE OF JUDGMENT : 30TH SEPTEMBER, 2014.

PRESENT

HON BLE MS. JUSTICE BELA M TRI VEDI

Mr. Al ok Chat urvedi for the appellant.

Mr. B. L. Agrawal with

Mr. J. C. Jain for the respondent.

ORDER

BY THE COURT :

1. The present appeal has been filed by the appellant - plaintiff challenging the decree dated 20.3.14 passed by the District Judge, Ajmer (hereinafter referred to as 'the trial court') in Civil Suit No. 336/13, whereby the trial court has rejected the plaint of the appellant - plaintiff under Order VII Rule 11(d) of CPC.
2. The short facts giving rise to the present appeal are that the appellant - plaintiff had instituted the suit on 11.9.13 before the trial court seeking declaration to the effect that the judgment and decree dated 22.11.04 passed by the Civil Judge (JD) South, Ajmer in Civil Suit No. 09/2002 was null and void and for permanent injunction restraining the respondent - defendant from taking possession of the suit premises which was rented to the plaintiff, without following due process of

law. The appellant - plaintiff had alleged inter alia that the earlier suit filed by the respondent seeking possession of the suit premises under Section 106 of the Transfer of Property Act was not maintainable before the Civil Court as the property belonging to respondent - Dar gah Committee was included within the definition of "public premises" contained in Section 2(b)(xi) of the Rajasthan Public (eviction of unauthorised occupant)s Act, 1964 (hereinafter referred to as 'the Act of 1964') and hence the suit was required to be filed under the said Act. According to the appellant - plaintiff, the decree passed in the earlier suit was challenged before the first appellate court as also before the second appellant court, and the appellant had also filed an undertaking before the trial court pursuant to the order passed in the second appeal before the High Court, however the said undertaking was filed reserving the right of the appellant to agitate legal rights by filing separate proceedings. According to the appellant - plaintiff the decree passed in earlier suit being without jurisdiction was liable to be set aside.

3. The respondent - defendant resisted the suit by filing the written statement contending inter alia that after the dismissal of the

second appeal filed by the appellant before the High Court, the appellant was not entitled to file the present suit. The respondent-defendant also filed an application under Order VII Rule 11(d) of CPC seeking rejection of the plaint on the ground that the suit was barred by the principles of res-judicata. The trial court vide the impugned order dated 20.3.14 allowed the said application and rejected the plaint of the appellant-plaintiff under Order VII Rule 11(d) of CPC. Hence the present appeal has been filed.

4. Mr. Alok Chaturvedi for the appellant vehemently submitted that the trial court has committed an error by relying upon the contentions raised in the written statement filed by the respondent-defendant and also by raising the point for determination, as mentioned in the impugned order. According to him as per the settled legal position, for the purpose of rejecting the plaint under Order VII Rule 11(d) only the averments made in the plaint are required to be looked into and not the contentions raised in the written statement. Mr. Chaturvedi pressing into service the provisions contained in the Act of 1964, submitted that properties of the Dar gah Committee were included in the definition of "public premises" as contained in Section 2(b)

(xi) of the said Act and therefore the respondent - defendant had to file the suit under the provisions contained in the said Act, and that the jurisdiction of civil court to entertain any suit in respect of eviction of any public premises was barred under Section 10A of the said Act of 1964. According to him the earlier suit filed by the respondent - Dar gah Committee before the civil court was not maintainable, and the decree passed by the said court being without jurisdiction was a nullity, which could be challenged at any stage in any proceedings including the collateral proceedings. Mr. Chaturvedi has also relied upon the decision of the Apex Court in the case of Sarup Singh & Anr. Vs. Union of India & Anr. AIR 2011 SC 514 in this regard.

5. However, the learned counsel Mr. B. L. Agrawal for the respondent has vehemently submitted that the present suit was filed by the appellant - plaintiff misusing the process of law, after having failed to obtain any favourable relief in the second appeal before the High Court. Relying upon the decisions of the Apex Court in case of Sita Ram Bhandar Society, Vs. Lieutenant Governor, Government of NCT, Delhi & Ors. (2009) 10 SCC 501 and of our High Court in the case of Temple of

Thakur Shri Mat hur adassji , Chhot a Bhandar Vs.

Shri Kanhaiyalal & Ors. 2008(2) RLW 1390

(Raj.), he has submitted that the plaint could be rejected under Order VII Rule 11(d), if the suit was filed misusing the process of court. He also submitted that the inclusion of Dar gah Khwaja Saheb was made by the Amendment in the Act in April, 2003 whereas the respondent had filed the earlier suit seeking eviction under the provisions contained in the Transfer of Property Act in the year 2001, and therefore the said Act of 1964 was not applicable to the facts of the case.

6. At the outset, it may be stated that there cannot be any disagreement with the proposition of law that for rejecting the plaint under Order VII Rule 11(d), the averments made in the plaint alone should be considered by the court and not the contentions raised in the written statement by the defendant and, therefore, the point for determination raised by the trial court in the impugned order as to "whether the suit of the plaintiff was maintainable in view of the contentions raised by the defendant in the written statement" was not proper. Therefore the court finds substance in the submission made by the learned counsel for the appellant that the reasoning given by the trial court

for rejection of plaint relying upon the contentions raised by the defendant in the written statement could not be said to be proper and valid.

7. However, if the facts of the case are seen, it clearly appears that the suit was filed by the appellant-plaintiff misusing and abusing the process of law after having lost in the second appeal before the High Court. It is averred by the appellant-plaintiff in the plaint itself that the earlier suit for eviction filed by the respondent under Section 106 of the Transfer of Property Act was decreed by the trial court, against which an appeal was preferred by the appellant, which was dismissed by the first appellate court. The second appeal being No. 43/10 was also dismissed by the High Court, however, the High Court had granted the appellant-plaintiff the time upto 14.7.07 to vacate the suit premises on certain terms and conditions, one of them was that the appellant shall file a written undertaking incorporating the conditions mentioned in the order. As per the averments made in the plaint the said undertaking was also filed by the appellant-plaintiff, however reserving his right to file separate legal proceedings as may be permissible under the law. From the bare reading of the averments of

the plaintiff, it clearly transpires that the appellant having failed in the second appeal had filed the present suit for setting aside the judgment and decree passed in the earlier suit, misusing the process of law. Though it has been sought to be contended by the learned counsel for the appellant that the civil court had no jurisdiction to entertain the earlier suit filed by the respondent - Dar gah Committee as the premises in question was covered under the definition of "public premises" as contained in the Act of 1964, the court does not find any substance in the said submission. It is settled legal position that the issue of jurisdiction has to be raised at the earliest point of time by the defendant. However in the instant case the said question was neither raised in the suit, nor in the appeals by the appellants in the earlier proceedings. Though it is true that the definition of the 'public premises" as contained in Section 2(b)(xi) includes the premises belonging to Dar gah Committee, Ajmer the said inclusion was made by way of amendment on 8.4.2003, whereas the earlier suit was filed by the respondent seeking eviction from the suit premises in the year 2001. The provisions of the said Act of 1964 being not applicable to the suit premises in the year 2001, only civil court had the

jurisdiction to entertain the suit. The court, therefore, is of the opinion that the second suit filed by the appellant-plaintiff was a frivolous and vexatious suit filed for prolonging the execution proceedings. Even otherwise, the issues between the parties having already been decided in the earlier suit, and confirmed in the appeals upto the High Court, the second suit was barred by the principles of res-judicata under Section 11 of CPC.

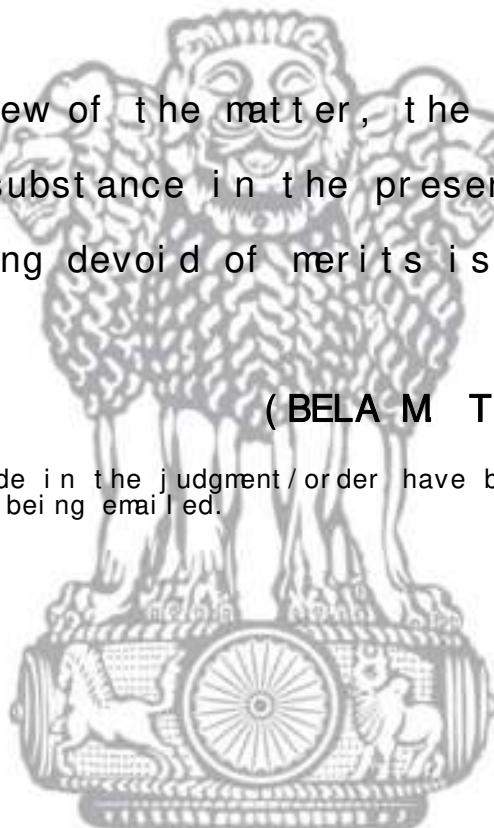
8. In that view of the matter, the court does not find any substance in the present appeal. The appeal being devoid of merits is dismissed.

(BELA M TRI VEDI) J.

MRG

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

MRG/PS



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