Rex Vs. Mohd. Etizad Rasul Khan

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Court : Allahabad

Decided On : May-12-1949

Reported in : AIR1953All266

Judge : Misra and ;Chandiramani, JJ.

Acts : Contempt of Courts Act, 1926 - Sections 1

Appeal No. : Criminal Misc. No. 45 of 1949

Appellant : Rex

Respondent : Mohd. Etizad Rasul Khan

Advocate for Def. : Niamat Ullah, ;E.R. Kedwai, ;Nafir Uddin and ;Ali Hasan, Advs. for ;Jamal Rasul Khan and Ors., ;Akhtar Husain and ;Bishun Singh, Advs.

Advocate for Pet/Ap. : Nasir Ullah Beg, Govt. Adv.

Disposition : Application allowed

Judgement :

ORDER

1. These contempt proceedings are closely connected with Jehangirabad Taluqa case which is being tried in the Court of the learned Civil Judge, Lucknow.

2. The late Maharaja of Jehangirabad. Sir Ejaz Easul Khan died on 21-5-1947. The plaintiff Kr. Shaikh Mohammad Etizad Easul Khan is the owner of Taluqa Rasulpur in his own rights. He is also the nephew of the late Maharaja and claims to be the preferential heir to the estate of Jehangirabad as against the minor defendants Jamal Rasul and Irran Easul, who claimed to be late Taluqdar's sons from his second wife Maharani Zubeda Khatoon. The late Maharaja executed a registered deed of gift in favour of Jamal Rasul in 1944 and transferred to him thereby a number of villages of which he gave possession, and mutation in respect of which was made shortly thereafter. Later, on 1-4-1945 he bequeathed his entire movable and immovable property to the minors describing both as his legitimate sons and heirs, The will was deposited with the District Registrar and was registered after the late Taluqdar's death on 23-5-1947.

3. On the date of death of Maharaja Sir Ejaz Easul Khan, the Court of Wards took possession of the estate on behalf of the two minors under Section 14, and mutation of names was effected in their favour at the instance of the Court of Wards on 30-9-

1947 without any objections from the plaintiff or anyone else. The succession dispute between Kr. Shaikh Mohammad Etizad Easul Khan and the two minors came to a head in 1948. The Taluqa suit for possession was instituted on the 16th of March of that year while the Court of Wards was still in charge. The estate was released in favour of the minors on 1-6-1948. There was already a committee of guardians appointed by the will of the late Maharaja. That committee was entrusted formally with the guardianship of the minors by the District Judge, Bara Banki.

4. The course of conduct that Kr. Etizad Easul Khan adopted thereafter is in controversy between the parties. It was alleged on behalf of the minors that immediately after the release of the Taluqa the plaintiff started making collections of rent from the tenants on the allegation that he was the nephew of the late Maharaja and entitled to succeed to the Jehangirabad estate as against the defendants who were mere imposters. On the allegation the defendants filed two applications in the Court of the learned Civil Judge, Lucknow on 4-6-1948. In the first application they prayed that proceedings for contempt of Court be taken against the plaintiff in respect of his conduct in forcibly realising rent and in posing as Eaja's successor. It was said that the plaintiff's actions tended to interfere with the course of justice. By the second application the defendants prayed for a temporary injunction to restrain Kr. Mohammad Etizad Easul Khan from interfering with their possession. The Court granted a temporary injunction and the order in that behalf was issued forthwith. The process server, however, could not serve the notices of the two applications and the injunction order on Kr. Etizad Rasul Khan personally on 5-6-1948. He, therefore, affixed them at his residence in the presence of his Ziledar. There was some doubt cast upon the honesty of the process server, but with that aspect of the matter we need not concern ourselves here. Notices had eventually to be served on Kr. Mohd. Etizad Easul Khan's counsel.

In reply to the allegations of contempt, the plaintiff denied the charge and pleaded that the tenants voluntarily paid rent to him without any solicitation or persuasion on his part. Initially there was no specific allegation against the plaintiff about publicising his title. At a later stage of the case such allegations appear to have been made, and they were to the effect that the plaintiff publicised his title both personally and through his men and publicly denied the title of the defendants. It was said that this action on the part of the plaintiff constituted undue interference with the course of trial of the Taluqa suit and, therefore, rendered the plaintiff liable for contempt on this ground as well.

5. The parties tried to substantiate their respective cases by filing affidavits and documents. They dispensed with the right to cross-examine the deponents of the affidavits on either side. It would seem from the proceedings of the lower Court that after the release of the estate on 1-6-1948 the plaintiff admitted that he collected as much as Rs. 64,000 from the tenants of the Jehangirabad estate up to 5-6-1948. Subsequent to the issue of injunction, collections are also alleged to have been made, and proceedings under Order 39, Rule 2, C. P. C. for disobedience of the interim order for injunction are pending separately in the Court of the learned Civil Judge. Lucknow. In view of them we have to be somewhat guarded in this judgment for we particularly desire that our decision should not prejudice the issues there involved.

6. The learned Civil Judge found it difficult to believe that a large number of tenants should have voluntarily paid their rent to the plaintiff within the four or five days during which the collections were admittedly made. He was, therefore, not prepared

to accept Kr. Mohammad Etizad Rasul Khan's defence at its face value, but even on the assumption that the payments were made by the tenants in their enthusiasm for the plaintiff's cause the learned Judge thought that the plaintiff's conduct in accepting rent from a large body of tenants amounted prima facie to publicising his title and it was likely to prejudice the defendants inasmuch as it would tend to create upon the tenantry in general an impression that the defendants, who were in possession and in whose favour mutation already stood, had no title and were not entitled to realise rent from them. Being of that view he made a report to this Court for necessary action under Section 3, Contempt of Courts Act.

7. Notice was in due course issued to Kr. Mohammad Etizad Rasul Khan to show cause why action should not be taken against him for committing the offence of contempt of Court for the various acts complained of, which were calculated to create an atmosphere of prejudice against the defendants such as to interfere with the course of fair trial and in any case for his conduct in accepting the rent from a large body of tenants which prima facie amounted to publication of his title and was likely to seriously prejudice the defendants and interfere with the administration of justice. It may be mentioned that the charge regarding publicising of title was not at first clearly mentioned in the notice and in order to guard against any prejudice being caused thereby to the opposite party an amended charge was served on him and since Mr. P.L. Banerji who appeared for Kr. Etizad Rasul Khan complained that his client was not till then aware of any such allegations and had, therefore, not produced evidence to meet the case on that point, the parties were allowed on 13-4-1949 to produce additional documentary evidence and further affidavits if they so desired. Both parties took advantage of that order and they filed some more affidavits and documents. (After discussing the evidence, the judgment proceeded) : After going through this mass of contradictory swearing we may say at once that generally speaking we are not well impressed by the evidence produced on behalf of the plaintiff.

8. The true facts can, we think, be ascertained beyond possibility of doubt by accepting that evidence which is in consonance with facts which are beyond dispute, and with this end in view we have endeavoured to see as to which of the two cases accords with the established facts and is in consonance with the ordinary course of human affairs and usual habits of life. This is a well established mode of sifting evidence in cases where perjury and fraud must exist on one side or the other : see in this connection Meer-usud-oollah v. Mst. Beeby Imaman, 1 MOO. Ind. App. 19 at pp. 44 and 45.

9. We find that the following facts are of crucial importance and cannot be doubted--(i) that within five days of the release of the Jehangirabad estate in favour of the minor defendants the plaintiff succeeded in collecting as much as Rs. 64,000 from the tenants of the various villages, The total demand for the half year, we are told, was only two and a half lakhs, and it does not appear to us to be true that the estate tenants had such enthusiasm for the plaintiff that within a very short space of time that elapsed between the 1st and the 5th Juno 1948 they would without any effort on the part of the plaintiff and his men come of their own accord to pay their dues to a person who was at the time merely a claimant and whose title still remained to be established judicially, (2) that the plaintiff's Karindas issued receipts to the tenants describing the Raja of Easulpur as the zamindar of the property. These receipts had two kinds of rubber seals impressed on them. The one which was circular in form was the seal of Rasulpur estate. The other which was oblong was the seal of Rasulpur-

cum-Jehangirabad estates. This fact shows that it was openly asserted to thousands of the tenants who made the payments that Etizad Rasul represented himself to be the rightful successor and they impliedly created an impression that he was entitled to possession, (3) that in a number of rent suits filed by the minor defendants against the tenants who made payments to the plaintiff the tenants have set up the plea of payment in good faith to Kr. Mohammad Etizad Rasul Khan. It would appear from this fact that after the release the tenants were induced into the belief that the persons whom they previously considered to be the zamindar to whom they paid the rent through the Court of Wards were no longer entitled to collect and that the right to do so thenceforth belonged to the plaintiff.

Such a belief, it appears to us, could not be engendered without active and sustained effort by the plaintiff in that behalf either personally or through his men. This conclusion is strengthened by the following considerations, (a) that there existed a registered deed of gift in favour of Jamal Rasul, defendant I, and a will which was deposited with the District Registrar and subsequently registered which was in favour of two minors, namely Jamal Rasul and Irfan 'Rasul, (b) that the defendants' names were entered in the revenue records as owners of the various villages comprised in the Taluqa and that the mutation proceedings in their favour went uncontested, and (c) that the Court of Wards held the estate on behalf of defendants 1 and 2 and that the tenants to whom receipts were issued mentioning that the rents were being collected on behalf of Raja Jamal Rasul and Irfan Rasul must have been generally aware of this fact. It is true that in some isolated instances the receipts did not state the names of the two minors, but such cases appear to have been rare.

10. We think, therefore, that in the circumstances of the case the defendants' version so far as the following facts are concerned is sufficiently established (1) that in spite of the pendency of his suit for possession Kr. Mohammad Etizad Rasul Khan endeavoured between the 1st and the 5th of June 1948 to take possession of the estate by making collections from tenants and in order to facilitate his doing so he sent out his men to spread the belief in the tenantry that he was the person who was held entitled to the estate of his uncle, (2) that Kr. Mohammad Etizad Rasul Khan was himself responsible for the collections and the issue of receipts to the tenants describing him as the owner of the estate villages and in inculcating the belief that the defendant's possession was found to be without any right, and (3) that the aforesaid acts of Kr. Mohammad Etizad Rasul Khan were calculated to create an atmosphere of prejudice against the defendants and to interfere with the course of justice and fair trial of the suit. Whether or not any actual prejudice has been caused or actual interference has taken place is, as held in Radha, Krishna, v. Baja Ram, 41 cri. L. J. 584 (Oudh), immaterial, for the test is not whether the actions or the conduct of the party which is accused of contempt have in fact caused any obstruction or interference to the administration of justice but whether they are calculated to do so or are likely to have that effect : see Demibai Gengji v. Roivji Sojpal : AIR1937Bom305 and Mohammad Ibrahim v. Bhopal Singh, 1947 oudh W. N. 549. As observed by Lord Hardwicke in Roach v. Garvan (or Hall), (1742) 26 E. b. 683, nothing is more incumbent upon the Courts of justice than to preserve their proceedings from being misrepresented for there may be a contempt of Court in prejudicing human mind against a party before his cause is heard.

11. In Reg. v. Gray, (1900) 2 Q. B. 36 at p. 40, Lord Russell summarized the law of contempt thus :

' Any act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court.'

lla. Publicising, it is clear, does not consist merely in publishing something through the medium of a newspaper or in making a speech from a public platform. The rule extends to any conduct which tends to inculcate a belief in the public or any section of it that a particular state of affairs prejudicial to the other party to the litigation in fact exists which affairs are in issue between the parties to the cause. The case of Guru Charan Prasad v. 'Aj' Newspaper Benares City : AIR1931All420 , is in point, for there the publication of a will which was contested in a pending suit was held to amount to a contempt of Court because the object of the publication in the advertisement column was to make the public believe in the genuineness of the will and to act upon it.

In Rajendra Singh v. Uma Prasad, 57 ALL. 573, a notice was sent by the plaintiff's advocate threatening the defendant that unless ho withdrew certain plea taken by him in defence in a mortgage suit he would be prosecuted for defamation. The learned Judges held that notice amounted to a direct interference with the administration of justice inasmuch as it attempted to prevent the defendant from pressing a plea which may be one of a substantial character. In Suresh Chandra v. Biswa Nath : AIR1938Cal772 , during the pendency of a suit instituted on behalf of the public that certain lands were public pathways the plaintiff published a notice calling a meeting and stating therein that the land belonged to the general public from time immemorial and that the public was being deprived of its use. At the meeting a resolution was passed, and later an article was published in a newspaper asserting the fact of ownership of the public and protesting against the defendants' acts in closing the pathway. It was held that these acts amounted to contempt for they undoubtedly conveyed the impression of a public denunciation of the petitioner's conduct and such a denunciation might well deter inhabitants of the locality from bearing testimony in support of the petitioner's case. It is unnecessary to multiply authorities, for we are clear that it is contempt to publicise any matter which has a tendency to prejudice the public for or against a party before the cause is finally determined.

12. Mr. Piarey Lal Banerji who appeared for Kr. Mohammad Etizad endeavoured to press on us the reasonableness of his clients defence, namely that in spite of the fact that the estate was taken under the Court of Wards under Section 14 the tenantry retained its sympathy for the plaintiff, and as soon as the estate was released, it proved its partiality for his claim by making voluntary payments to him, that the form of receipt issued by the plaintiff's Karindas to these tenants is scarcely of any significance and that the plea of the tenants in the rent suits that they paid the estate dues to the plaintiff in good faith was in pursuance of Section 247, U. P. Tenancy Act, and did not necessarily represent that they were induced into the belief that the plaintiff was the rightful claimant. We are not impressed by these arguments and are not able to stretch our credulity so far as to believe that thousands of tenants would without special effort flock to the plaintiff's residence each eager to pay him the rent and that the plaintiff acted merely as a passive receiver of rent.

Mr. Banerji also urged that a mere realisation of rent during the pendency of a suit

for possession would not and has never been regarded as bringing a party within the mischief of the law of contempt. His contention was that the decided eases only relate to interference of possession of properties in custodia legis and not to interference with those which are in the private possession of the opponent. It was said that there is in the latter case a remedy open to a party to put right the wrong complained of and in such a case the extraordinary remedy of instituting proceedings for contempt should not be allowed to be taken. Reference was in this connection made to 'the case of In re Maria Annie Davies, 21 Q. B. D. 236 and Costa Rica v. Erlanger; In re Clement, (1877) 46 L. J. ch. 375. We would here like to say that it is not the collection made by the plaintiff which per se constitutes contempt. It is the circumstances in which the collections were made that have very largely affected our decision.

13. As regards the argument that the contempt jurisdiction should not be exercised where an alternative remedy is available to opposite party it would seem that the case of Ali Mohammad Admalli v. King Emperor, 72 Ind. App. 226 (p.c.) provides a complete answer for there referring to Clement's case, ((1877) 46 L J Ch. 375) their Lordships of the Judicial Committee observed that 'the question of committal or non-committal for contempt of Court is one for the exercise of the discretion of the Court and the fact that there is another remedy available is a matter for the Court to consider when exercising its discretion.'

In the present case it appears to us that the grave consequences which must follow on the acts and conduct of the plaintiff in making the collections and publicising his title in negation of the title of the defendants amounts to a deliberate contempt and it should not be allowed to go unpunished simply because the defendants can make their loss good by filing suits for rent against those who have paid rents to the plaintiff. The adoption of a cool and calculated conduct in defiance of the law cannot, in our opinion, be regarded as a merely technical offence and ought not to be overlooked. There is a distinction between the present case and the class of cases to which Hunt v. Clarke, (1889) 58 L J Q B 490, or Anantalal Singh v. Alfred Henry Watson, 58 Cal. 884, belong for here the contempt is real and serious.

14. Mr. Banerji cited the case of In the matter of Tushar Kanti Ghosh : AIR1935Cal419 , for tho proposition that new heads of contempt should not be invented in order to expand the scope of the Court's summary jurisdiction and of Homi Rustomji v. Sub-Inspector Baig, A. I. R. 1944 Lah. 196 (S.B.), for the proposition that it is not appropriate to launch contempt proceedings for the decision of serious controversies on facts. The decisions in both these cases turned on their own facts. Contempt consists of conducts of various descriptions. There can be no limitations to human ingenuity to devise ways and means for prejudicing the other party in the conduct of his case and it would be obviously impossible to lay down exhaustively what particular actions would or would not in given circumstances fall within the mischief of the law of contempt. The rule laid down in the Lahore case, it appears to us, cannot be extended to a case like the present where the complaint is real and is not designed to obtain decisions on serious controversies of facts. The plaintiff's denial of the crucial facts was designed to befog the real facts and to hide a well thought out plan for prejudicing a fair trial of the succession dispute. We hold that Kr. Mohammad Etizad Rasul Khan is guilty of contempt of Court.

15. The only question which remains to be decided is that of punishment. For this purpose it is necessary to mention that an apology has been offered by the plaintiff in his written statement filed in this Court. That apology, we are constrained to say, is

neither full nor unreserved. The written statement challenges every point raised on behalf of the applicants. It stoutly denies that any contempt of Court has taken place and it finally ends up by saying that in the event of the plaintiff's defence being unacceptable his apology should be accepted. The effect of this halting apology is further diminished by the proceedings of 4-5-1949 in which Mr. Piary Lal Banerji on behalf of his client stated that :

'The apology contained in the reply filed on 13th April 194D is not intended to cover the case of publicising but only the case of collection of rent. The apology has been made on the assumption that the collection of rent may in law per se amount to contempt.'

The contempt, as we have stated above, is of a serious nature and in our opinion the plaintiff must be ordered to purge it adequately. We think that in the interest of administration of justice Kr. Etizad Easul Khan should be fined RS. 1000 and he ahoald also pay the costs of the Government-advocate for five days amounting to RS. 800 at the rate of Rs. 160 per day. We order accordingly and refuse to accept the apology.

16. Before we take leave of this case, we ought to mention that it was urged on behalf of the minor applicants that Kr. Mohammad Etizad Rasul Khan should be called upon to deposit in Court the sums realised by him from the estate after the release or at lease the admitted sum of Rs. 64,000. We have carefully considered this aspect of the matter but have come to the conclusion that so far as the amounts realised by the plaintiff are concerned the applicants should be left to their legal remedies.