

A

BRIG. SAWAI BHAWANI SINGH
v.
M/S. INDIAN HOTELS COMPANY LTD.

NOVEMBER 18, 1996

B

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Code of Civil Procedure, 1908 :

C

Or. 39, R.1 and Or, 40 R.1—Suit for perpetual injunction—Applications for ad interim injunction and appointment of receiver—Respondents claiming, under an agreements to be in possession of suit property for running hotel business—Appellant claiming himself exclusive owner of property—Suit for perpetual injunction by respondent with application for ad interim injunction against appellant—Appellant's application for appointment of receiver—Held, since respondents allege to have been continuing under an agreement, they would act as a custodia legis pending the suit as receiver on behalf of the Court—Any right accrued or claimed by them would be subject to the result in the suit.

D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 15083-84 of 1996.

E

From the Judgment and Order dated 4.2.94 of the Rajasthan High Court in S.B.C.M.A. No. 294 and 311 of 1988.

F

Shanti Bhushan, H.N. Salve, B.P. Aggrawal, Prashant Bhushan, Vinay Bhasin, Vineet Kumar, Pradeep Aggrawal and Sushil K. Jain for the appearing parties.

The following Order of the Court was delivered :

G

Leave granted.

These appeals by special leave arise from the order of the High Court of Rajasthan, Jaipur Bench made on February 4, 1994 in Civil Misc. Appeal Nos. 294/88 and 311/88.

H

The admitted position is that pursuant to an agreement, the respondents

are alleged to have come into possession of the suit property for running the business of a hotel. It is the case of the respondents that the appellant was unlawfully interfering with their possession and running of the business. On the other hand, it is the case of the appellant that it is his exclusive property and the respondents have no manner of right to come into possession. Consequently, the respondents filed the suit for perpetual injunction restraining the appellant from interfering with their possession and running of the business. Pending suit, both the parties came to file applications. The appellants filed an application under Order 40, Rule 1 CPC for appointment of a Receiver and the respondent filed an application under Order 39 Rule 1 for an *ad interim* injunction. Though the trial Court had refused to issue the direction for appointment of Receiver, it had issued an injunction against the respondents restraining them from running the business. But, on appeal, the district Court has set aside the direction not to run the business and dismissed the application for appointment of the Receiver which came to be affirmed by the High Court. The High Court has set aside the appointment of the Receiver qua the property. Thus, these appeals by special leave.

In view of the fact that the respondents are continuing, as alleged, to be under an agreement, they would obviously act as a *custodia legis* pending the suit as Receivers on behalf of the Court. But any rights accrued or claimed by them will be subject to the result in the suit. The claim for enhancement of the rentals cannot be gone into in this case and it is *de hors* the relief in the suit. Under these circumstances, if it is permissible, appropriate steps may be taken by the appellant in any appropriate proceedings as per law.

With these observations, these appeals are dismissed. No costs.

R.P.

Appeals dismissed.