
(1994) 06 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 401 of 1994-B

A.B. Prabhu

APPELLANT

Vs

Indira Thrikamdas Sampat and Others

RESPONDENT

Date of Decision : 07-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Specific Relief Act, 1963 — Section 6

Citation : (1994) 2 KLJ 30

Hon'ble Judges : M.M. Pareed Pillay, Acting C.J.; T.V. Ramakrishnan, J

Bench : Division Bench

Advocate : S.K. Brahmanandan, for the Appellant; S. Sreekumar, for 1st Respondent, for the Respondent

Judgement

M.M. Pareed Pillay, Actg. C.J.

1. The challenge against the judgment in O.P. 8185 of 1993 by the Appellants is on the ground that there is no justification for the learned Single Judge to have granted police protection in a case which is essentially a civil dispute between the contesting parties.

2. First Respondent (Petitioner in O.P.) (hereinafter referred to as the Respondent) filed the Original Petition contending inter alia that she had locked her house and proceeded to reside with her youngest son Yogesh on 24th May 1993 as she fell ill and on return on 1st June 1993 the original locks placed by her on the gate and in the front door of the house were found removed and new locks put up, that on enquiry she came to realise that it was the officers of the Appellant-Devaswom (landlord of the building) who engineered this and that her efforts to get the keys proved futile. According to the Respondent, Assistant Commissioner of Police and Divisional Inspector of Police, Mattanchery promised to bestow their attention into the matter but did not afford her any protection. It is her case that her deceased husband had bequeathed properties belonging to him to her, that her three sons demanded share of assets from her, that she was

not amenable to the same as she was in a state of mourning consequent to the death of her husband, that she filed Ext. P-2 petition before the Circle Inspector of Police, that he sent for her two sons Kiran and Deepam and advised them to behave properly and that Deepam had filed a suit against her and two sons for injunction restraining her from operating the accounts and from opening the safe deposit locker that was hired by her husband. It is also stated that Deepam had obtained injunction restraining his brothers from forcibly evicting him from the house. According to her, Deepam removed his articles from the building where she was residing and as she fell ill on 24th May 1993 she was forced to lock the house and proceeded to reside with her youngest son Yogesh and it was when she returned that she found that the original locks placed by her on the gate and in the front door of the house were removed and new locks put up. Contention of the Respondent is that this was done by the officers of the Appellant-Devaswom.

3. Appellant in the counter-affidavit filed in the Original Petition stated that on 22nd May 1993 after the inventory of the articles was prepared the Respondent and her sons surrendered possession of the house to the Appellant, that they agreed that the articles left in the house would be removed within a few days as none of them wanted to reside in the building, that Deepam had given Ext. R-3(c) letter intimating about the surrender, that after surrender of the building by the Respondent and her sons the Appellant-Devaswom locked the building and gate using their locks and that though Respondent and her sons had agreed to remove all the articles left in the house within a few days they failed to do so.

4. Thus, from the pleadings it can be discerned that the dispute between the parties is essentially of a civil nature and only a fact finding Court could really resolve it. Main contention of the Appellant's counsel is that in view of the facts pleaded there cannot be any doubt at all that the dispute is of a civil nature and only the Civil Court could decide the matter. As against the contention of the Respondent that there was no surrender of the building to the Appellant, totally contrariwise stand has been taken by the Appellant and they stand by their assertion regarding the surrender. Whether there was surrender or not could be decided only by the Civil Court after taking evidence. There is considerable force in the contention of the Appellant that in such a matter the learned Single Judge was not justified in ordering police protection to the Respondent.

5. As the Respondent has a case that by locking the gate and front door she has been prevented from entering into the house she could have very well approached the Civil Court u/s 6 of the Specific Relief Act. Section 6 of the Act envisages that the dispute of immovable property has to be decided by the due course of law and not otherwise. For the protection of her possessory right in the property she could have approached the Civil Court without any difficulty. Without doing so, she had approached this Court for police protection and that too without filing any petition before the police authorities for necessary help. Ext. P-2 petition filed by her is only against her sons M/s Deepam, Kiran and Dainesh. Thus, it can be seen that this is a case where the Respondent had not

filed any petition before the Assistant Commissioner of Police or the Divisional Inspector complaining against the illegal action of the Appellant. As the act alleged by the Respondent against the Appellant amounted to criminal offences punishable under the Indian Penal Code, she could have very well approached the concerned Police or Magistrate. In other words, Respondent has not availed of equally efficacious remedy available to her under civil or criminal law.

6. In a case which is essentially of a civil nature and where the controversy between the parties has to be resolved by the taking evidence by the Civil Court, one of the parties cannot rush to this Court invoking extraordinary jurisdiction under Article 226 of the Constitution of India especially when alternative remedy is available and also when there is no allegation of the likelihood of any law and order situation warranting police action or police protection to the party concerned. Though availability of an alternative remedy is not a bar for the exercise of jurisdiction by the High Court under Article 226 of the Constitution of India, the exercise of the discretionary jurisdiction will certainly depend upon the availability of alternative remedy also. But in emergent cases and when there is evidence that one of the parties has taken law into his own hands and committed or has been committing flagrant violations of law the High Court can certainly afford police protection to the party concerned. For that, strong and sound reasons must exist and the pleadings should divulge the same. In normal circumstances the rule is that in a dispute between parties which is essentially of a civil nature one of them cannot approach the High Court seeking its exercise of jurisdiction under Article 226 of the Constitution of India. In other words, in a case where it is apparent that the Civil Court alone can decide the factual controversy between the parties and especially when there is no prima facie material regarding the truth or falsity of the pleadings police protection cannot be granted to party to the disadvantage of the opposite party.

7. We are not satisfied that this is a case where the learned Single Judge Was justified in granting police protection in favour of the Respondent. The judgment in O.P. 8185 of 1993 is set aside and the Original Petition is dismissed.

The writ appeal stands allowed. No costs.