

(1986) 02 MAD CK 0030
In the Madras High Court

Abbas Bhai and Others

APPELLANT

Vs

T. Deivayani Ammal and Others

RESPONDENT

Date of Decision : 04-02-1986

Acts Referred:

Citation : (1986) 99 LW 170 : (1986) 1 MLJ 288

Hon'ble Judges : K. Shanmugham, J

Bench : Division Bench

Judgement

K. Shanmugham, J.—I am thoroughly satisfied that this is a vexatious proceeding to which the petitioners have resorted in assailing an

interim order made by the Court below in I.A. No. 19379 of 1985 in O.S.No. 8117 of 1985. The suit itself was brought by the first respondent

herein against the present petitioners for a declaration that she is entitled to the easementary right of light and air passing through the 4 ventilators

and one window from east to west on the northern wall of the first floor of her property and for a permanent injunction restraining the present

petitioners from digging foundation for their southern wall in flush with her northern wall in any manner whatsoever and from constructing their

building in any way which will affect the free flow of light and air to the plaintiff's building through the four ventilators and one window referred to.

Pending suit, the first respondent herein came forward with I.A. No. 19379 of 1985 for an interim injunction restraining the present petitioners

from digging foundation for their southern wall in premises No. 81, Lingi Chetty Street, Madras-1 in flush with the first respondent's northern wall

in premises No. 82, Lingi Chetty Street, Madras-1 in any manner whatsoever and from constructing their building in any way to affect the free flow

of light and air. The said application was moved almost immediately on the presentation of the plaint and the Court below passed an ex parte order

as follows:-""Heard. Interim injunction and notice 14th November, 1985."" It is this order that is sought to be revised in this revision.

2. It must immediately be noticed that the order was not passed on merits, but is an ex parte order and that the present petitioners have ample

opportunity of contesting the said application as also the interim order passed by the Court below. Yet, the petitioners have rushed to this Court

with this revision. According to the learned Counsel for the petitioners, by virtue of Order 39, Rule 3 proviso, the Court shall record the reasons

while granting interim injunction without notice to the opposite party and as in this case no reason was given by the Court below, the order is void

and should be summarily set aside. In this context, learned Counsel for the petitioners relied upon the decisions reported in Sri Patil Shivayya v. Sri

Kavishetti Shankarappa Sugurappa M.L.A. ILR (1980) 1 Kar 295, Bacharaj Singhvi v. Hastimal Kothari (1980) 2 A.L.T. 472, Balaiah v.

Aravindanagar Co-operative Housing Society (1980) 1 A.L.T. 90, Amiya Prosad Vs. Bejoy Krishna Chakraborty and Others, , R. Satyanarayan

Murty Vs. V. Raghu Ramarao and Others, and Achamma v. Dominic Paul (1980) K.L.T. 484.

3. When it was brought to the notice of the learned Counsel for the petitioners that u/s 151, C.P.C the Court below had inherent jurisdiction to

grant interim injunction, the learned Counsel brought to my notice the following decisions reported in Manohar Lal Chopra Vs. Rai Bahadur Rao

Raja Seth Hiralal, , Arjun Singh Vs. Mohindra Kumar and Others, , Ramkarandas Radhavallabh Vs. Bhagwandas Dwarkadas, , Nain Singh Vs.

Koonwarjee and Others, and Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others, . In the first decision, the

Supreme Court overruled the view held by this Court that in the teeth of the specific provision of Order 39, Rule 1, C.P.C. the Court did not

possess any power, much less inherent power enshrined u/s 151, C.P.C. to grant interim injunction. In other words, the then view was unless the

application is brought within the four corners of Order 39, Rules 1 and 2, C.P.C no injunction can be granted in that matter. This is now overruled

specifically by the Supreme Court in the first decision referred to supra. Thus the principle well settled is that Section 151, C.P.C. can be resorted

to by way of supplementing the power inhered in the Court. In other words, even though the matter cannot be brought within any of the specific

provisions contained in the Code in the instant case Order 39, Rules 1 and 2, C.P.C. yet Section 151, C.P.C can be resorted to by a civil court to

render justice. Thus Section 151, C.P.C. can be used as a supplemental power notwithstanding specific provisions in the Code. Indeed, in *Nain*

Singh Vs. Koonwarjee and Others, and Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others, it is clearly pointed

out that by exercising the inherent jurisdiction u/s 151, C.P.C. the Court shall not override the express provision. In this case, there is no overriding

of the express provision, but it is mere supplementing the power conferred under Order 39, Rules 1 and 2, C.P.C.

4. According to the learned Counsel for the petitioners, if a case can be brought within the ambit of Order 39, Rules 1 and 2, C.P.C. the Court

shall not resort to Section 151, C.P.C. and according to the learned Counsel, this is a case which can be brought within the ambit of Order 39,

Rules 1 and 2, C.P.C. I am unable to agree. Order 39, Rule 1, C.P.C. provides:

Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution

of a decree, or

(b) that the defendant threatens or intends, to remove or dispose of his property with a view to defrauding his creditors, or

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit the

Court may by order grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting,

damaging, alienation, sale, removal or disposition of the property, or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in

relation to any property in dispute in the suit as the Court thinks fit until the disposal of the suit or until further orders.

In this case, the property in dispute is not in danger of being wasted, damaged, or alienated; nor in this case the defendants threaten or intend to

remove or dispose of their property with a vie to defrauding their creditors; nor is this a case where the defendants threaten to dispossess the

plaintiff or otherwise cause injury to the plaintiff in relation to the property in dispute in this suit. On the other hand, the relief sought for is that the

defendants shall not make any construction in their property so as to interfere with the plaintiff's easementary right in respect of free flow of light

and air. Thus, the case cannot be brought within the four corners of Order 39, Rule 1, C.P.C.

5. Order 39, Rule 2, C.P.C. will not apply on the facts in this case because this is not a case where the suit is laid for restraining the defendants

from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not. I have already referred to the

relief claimed in the plaint. Therefore, it is patent that the interlocutory application filed by the respondent herein, though quoted Order 39, Rules 1

and 2, C.P.C. will not fall within those provisions. Then the Court has ample jurisdiction to resort to Section 151, CP.C. and to grant injunction.

6. I must also add that by granting interim relief, bare justice was rendered, for, if interim injunction was not granted, there is every possibility of the

present petitioners proceeding with their construction with undue haste and blocking the openings in the first respondent's wall in respect of which

easementary right is claimed in this action. It is worthwhile to quote from Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, .

Section 151 it self says that, nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders

necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent

power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by

virtue of its duty to do justice between the parties before it. Further, when the Code itself recognises the existence of the inherent power of the

Court, there is no question of implying any powers outside the limits of the Code.

The above ratio is not doubted by the later decisions rendered by the Supreme Court. All that was pointed out by the substantial decisions is, by

exercising the inherent jurisdiction u/s 151, C.P.C. the Court shall not override any express provision in the Code. I have already pointed out that

in this case while the trial Court granted interim injunction, it did not override any express provision in the Code, but only exercised its inherent

jurisdiction u/s 151, C.P.C. to render bare justice and that too as a temporary measure.

7. As regards the several decisions, namely, Sri Patdl Shivayya v. Sri. Kavishetti. Shankarappa Sugurappa M.L.A. ILR (1980)) 1 Kar 295,

Bacharaj Singhvi v. Has timal Kothari (1980) 2 A.L.T. 472, Balaiah v. Aravindanagar Co-operative Housing Society (1980) 1 A.L.T. 90, Amiya

Prosad Vs. Bejoy Krishna Chakraborty and Others, , R. Satyanarayan Murty Vs. V. Raghu Ramarao and Others, , and Achamma v. Dominic

Paul (1980) K.L.T. 484, I must immediately point out that these decisions render no assistance to me, in that they did not consider the importance

of the inherent power vested in the Court u/s 151, C.P.C. I have to point out that even though a wrong provision is quoted and relied on by the

litigant, it is the duty of the Court to take note of the correct provision and apply it on the facts in that case. No doubt, it is true in this case, Section

151, C.P.C. is not referred to in the petition. But as long as this Court has inherent jurisdiction and also a duty to apply the correct provision, I find

the Court below has not erred, while it granted interim injunction. I am to reiterate that it is an interim order passed ex parte and the petitioners

have enough opportunity to challenge that order.

8. In the result, this civil revision petition fails and is dismissed with costs.