
(2005) 09 GAU CK 0064
In the Gauhati High Court
Case No : FAQ No. 4 of 2005

Bibhu Charan Barua

APPELLANT

Vs

Nani Gopal Deva Goswami

RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1, 115, 151
Specific Relief Act, 1963 — Section 6
Transfer of Property Act, 1882 — Section 52

Citation : (2006) 2 GLR 413 : (2005) 4 GLT 159 : (2004) 4 GLT 159

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : K.N. Choudhury, for the Appellant; A. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—Heard Mr. K.N. Choudhury, learned senior counsel for the appellant and Mr. A. Sarma, learned Counsel for the sole respondent.

2. In this appeal, the impugned order dated 31.5.2005 passed in Misc. Case No. 22/2005 arising out of Title Suit No. 43/2004 by the learned Civil Judge (Sr. Division), Jorhat refusing to grant temporary injunction as prayed for by the appellant is challenged.

3. The appellant as plaintiff has filed the TS No. 43/2004 for recovery of possession of the suit property which is a Tea Garden, namely, Jogibhela T.E. in the district of Jorhat u/s 6 of the Specific Relief Act, 1963 alleging his dispossession by the respondent without taking recourse to law. The said suit was filed on 19.8.2005 and is pending for adjudication before the learned trial court. During the course of the proceeding, the appellant noticing certain subsequent developments, filed an application under Order 39, Rules 1 and 2, read with Section 151 of the CPC praying for granting temporary injunction restraining the respondent/defendant from entering into any agreement relating

to the suit property or from taking any financial assistance or to deliver the possession of the said garden to any third party and from entering into any agreement with any party for sale of the garden leaves and take financial assistance thereon till disposal of the suit.

4. The learned trial court, considered the prayer for temporary injunction and refused to grant temporary injunction as prayed for by the impugned order as aforesaid. The main ground for refusal of the temporary injunction is that the appellant-plaintiff has not prayed for a decree of injunction in the suit and accordingly the interlocutory prayer for temporary injunction could not be granted and relied upon a decision rendered in *Gadhdhar Burman v. Ranendra Mohan Paul* reported in (1998) 1 GLR 383.

5. Assailing the impugned order, it is submitted by Mr. K.N. Choudhury, learned senior counsel for the appellant that the ratio of the decision in *Gadhdhar Burman* (supra) is not applicable on the facts of the instant case and it is an inflexible rule that an injunction cannot be granted without any such prayer in the main suit itself. It is further submitted that the court has also jurisdiction u/s 151 CPC to pass an order of injunction, and in this context the ratio of *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, was recalled. The decision reported in (2001) 1 GLR 195 (*Ram Kumar v. J.M. Agarwal Tobacco Co. Ltd.*), has also been pressed into service.

6. Referring to the averments made in the injunction petition, it is submitted that the learned trial court ought to have granted temporary injunction as prayed for in order to avoid multiplicity of proceeding or causing other injuries that may be caused to the appellant due to withholding of injunction.

7. Mr. A. Sarma, learned Counsel for the respondent, on the other hand, has submitted that the impugned order is just and proper and it requires no interference by this Court. The learned trial court having exercised judicial discretion has passed the impugned order in the instant case and this Court should not disturb the same. It is further submitted by Mr. A. Sarma that since no prayer for temporary injunction has been made in the suit by the appellant an interlocutory prayer made by filing an application for injunction cannot be granted and in this connection Mr. Sarma has referred to a decision of the Apex Court rendered in *Vareed Jacob Vs. Sosamma Geevarghese and Others*, apart from supporting the ratio of *Gadhdhar* (supra).

8. I have considered the rival submissions made by the parties and perused the connected materials available on record. Admittedly, the suit filed by the appellant u/s 6 of the Specific Relief Act is for recovery of possession of the suit property. The suit property is a Tea Garden situated in the district of Jorhat. In the said suit the plaintiff/ appellant prayed for the following reliefs:

- (a) Decree for recovery of possession.
- (b) Decree for cost of the suit.

(c) Decree for any other relief or reliefs as the plaintiff may be entitled to under the equity and law.

9. In a suit u/s 6 of the Specific Reliefs Act dispossession from suit property is the sine qua non for granting the decree by the court trying the suit. Apprehension of the appellant stretching the need for temporary injunction as disclosed in the injunction petition is that the appellant has come to know that the respondent/O.P. has been trying to Lease Out the said Tea Estate and may enter into agreement with any other party/parties or may take financial help to deliver possession of the garden to any other person/persons during the pendency of the suit. On the basis of the aforesaid allegation the appellant has prayed for temporary injunction in the following manner:

It is, therefore prayed that your honour may be pleased to grant temporary injunction restraining his agents, workers, representatives from entering into any agreement and delivery of possession of the property mentioned in the schedule given below with any other party/ parties or from taking any financial assistance with the intention to deliver possession of the garden to any third party/parties or from entering into any agreement with any party for sale of green leaf and take financial assistance thereof till disposal of the suit.

10. Mr. K.N. Choudhury confines his prayer only to the effect that during the course of the proceeding respondent should be restrained from parting with the possession of the suit property in favour of any third party or making any agreement to that effect. In the objection against the prayer for injunction filed by the respondent, it is denied that the owner of the tea garden is trying to Lease Out the property in favour of any third party. In fact the respondent has denied the averments made in paragraphs 5, 6, and 7 of the injunction petition filed in this appeal.

11. In the aforesaid background of the dispute involved in the appeal it is evident that in the event of passing any decree by allowing the suit, appellant will be able to recover possession of the suit property on the strength of the said decree which is the resultant relief that can be granted u/s 6 of the Specific Relief Act. Assuming the apprehension of the appellant to be correct during the pendency if any agreement is arrived at or possession of the suit property is parted with by the respondent, the principle doctrine of *in rem* as incorporated u/s 52 of the Transfer of Property Act will apply and any such third party would also be equally bound like the defendant/ respondent to abide by the terms of the decree.

12. Learned trial court not having granted the injunction in the absence of not praying for such relief in the main suit, submission has been made that the court is empowered to grant an injunction u/s 94(c) of the CPC, Section 94 is a supplemental proceeding and as per Section 94(c) of the CPC, court, is empowered to grant injunction to prevent the ends of justice if it is so prescribed, which expression is defined as "prescribed under rules" vide Section 2(16). Such rules relating to the grant or refusal of injunction are to be found in

Rules 1 and 2 of Order 39 CPC. Hence a court is empowered, to grant temporary injunction u/s 94(c) only if it is satisfied that the requirement of Order 39, Rules 1 and 2 is made out. The court has no two source of power, one u/s 94(c) and the other under Order 39, Rules 1 and 2, nor the court can resort to one on the other to be clear, temporary injunction is granted only u/s 94(c) read with Order 39, Rules 1 and 2 of CPC. The court can also grant temporary injunction in exercise of its inherent power u/s 151 and in such an event it does not grant under any power conferred by CPC, but under the powers inhering in its very constitution which is saved by and u/s 151 CPC when an injunction is granted under the inherent power of the court, no appeal under Order 43, Rule 1 lies against it, and the remedy is by way of a revision u/s 115 provide such a case for revision is made out (Ref. Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, In the instant case the learned trial court has exercised the power u/s 94(c) read with Order 39, Rules 1 and 2 CPC and not under the inherent power. Further the petitioner having sought for the remedy u/s 39, Rules 1 and 2 CPC, the inherent power u/s 151, CPC cannot be invoked. Accordingly, the submission of Mr. Choudhury that although the learned trial court did not found it to be a fit case for granting injunction under Order 39, Rules 1 and 2 but it could have exercised the power u/s 94(c) of CPC has no force.

13. A civil suit and proceeding is regulated and guided by the provisions of the CPC and for that purpose necessary averments are to be made in the plaint/ application as per rules of pleading. Pleadings are the foundation for granting relief. In the injunction petition the appellant has stated that the respondents are trying to Lease Out the Tea Estate and may enter into agreement with any other party or may take financial help to deliver the possession of the garden to any other person during the pendency of the suit. The said statement is a general omnibus statement and no specific case has been made out by the appellant for exercising the power to grant temporary injunction such statements are also not pleaded in the plaint.

14. Injunction is a discretionary relief. In order to confer jurisdiction upon a court to pass an order of injunction the petitioner must make out a case granting such discretionary relief. From the averments made in the injunction petition it cannot be said that the petitioner has been able to make out such a case. A Tea Garden is a human labour oriented industry and it requires finance not only for purchasing raw materials, but also for making labour payment and to meet other statutory payments. Accordingly, making of arrangement for such finance by the person running suit a tea garden cannot public interest inherent in it. Such arrangement will no way effect the execution of the decree, in the event of successful termination of the suit in favour of the plaintiff/ petitioner. Reasons and decisions given by the learned trial court for not granting the injunction as prayed for, in my considered opinion cannot be said to be illegal or without any basis. Moreover, there will be no change of relief in the event of decreeing the suit and even if the apprehension of the appellant is found to be correct the plaintiff/ petitioner would be required to put the decree into execution to get

khas possession and any person deriving such possession from the defendant/respondent would also be bound by the decree. In the decision rendered in Ram Kumar (supra), referred to by Mr. K.N. Choudhury also speaks that "in the plaint there appears justification to grant or issue an order which is different from the relief claimed in the suit or in the injunction application, then the court would be within its power to issue or pass such order" (para 18). But in the instant case there is no pleading in the plaint nor any prayer made for a decree the pleadings are the foundation for granting of injunction. Only an omnibus statement is made in the injunction petition subsequently and subsequent events are not brought on record by amending the plaint.

15. In view of the aforesaid facts situation, I do not consider it to be a fit case for reversing the impugned decision of the learned trial court and accordingly the appeal stands dismissed, subject, however, to the observations made hereinabove.

16. No costs.