

(1958) 12 AP CK 0011

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 94 of 1956

Datla China Appalanarasimha Raju

APPELLANT

Vs

Nadimpalli Seethayamma Garu and Others

RESPONDENT

Date of Decision : 05-12-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : AIR 1959 AP 310

Hon'ble Judges : P. Chandra Reddy, C.J;Srinivasachari, J;Satyanarayana Raju, J

Bench : Full Bench

Advocate : S.C. Venkatapathiraju, for the Appellant; K. Venkataramaraju, for the Respondent

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—The following question has been referred to the Full Bench: "What is the scope of Sub-rule (c) of Order XXXIX, Rule 1, of the CPC ?" The facts which have given me to this reference may be briefly stated. In execution of the decree obtained by him in O.S. No. 28 of 1933, on the file of the Court of the subordinate Judge of Visakhapatnam, the appellant purchased two items of property subject to the rights of the Rani of Jaipur. The appellant applied for delivery of possession of those items.

When notice of this application was given to the Rani, she stated that she had made a gift of them to the respondents and that therefore, she had no longer any subsisting interest in them. The Court directed delivery of the aforesaid items to the appellant. Thereupon the respondents" filed O.S. No. 9 of 1955 on the file of the District Court, Visakha-patnam, for a declaration of their title in respect of the said items and for a permanent injunction restraining the appellant from taking delivery of those items.

This suit was eventually dismissed and against the decree of dismissal, the plaintiffs have preferred an appeal in this Court. Pending the appeal, they filed

CMP. No. 3885 of 1956 for a temporary injunction restraining the appellant from taking delivery of the items. Our learned brother Mr. Justice Bhima-sankaram, granted a temporary injunction restraining the appellant from obtaining delivery of items I and 3," subject to certain conditions. Against this order the appellant preferred the above Letters Patent Appeal.

2. When this appeal came on for hearing before the Referring Bench, it was contended by the appellant that the application for a temporary injunction to restrain Mm from taking delivery of possession of the items in question, was not maintainable in view of the Division Bench decision in Venkanna v. Venkata Rao, 1957 A LT 90 (AIR 1957 A P 453), which held that the words "cause injury or loss to the plaintiff in Clause (c) of Order 39, Rule 1, introduced by the Andhra High Court, would not take in the case of a decree-holder who seeks to execute the decree obtained by him.

3. Now, an "injunction" is defined in Halsbury's Laws as "a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing". The law relating to injunctions is contained in Sections. 52 to 57 of the Specific Relief Act and Order 39, Rule. 1 to 5 of the Code of Civil Procedure. The provisions of the Specific Relief Act deal with permanent injunctions and those of the CPC regulate the grant of temporary injunctions.

4. It will be convenient to commence the examination of the question by a reference to Order 39, B. 1 of the Code of Civil Procedure. Before clause (c) was added by the Andhra High Court, Order 39, Rule 1 ran thus :

"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 defraud his creditors.

The Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale; removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders."

5. Apart from this Rule, the Court has power to grant a temporary injunction under Rule 2, which reads:

"(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of or any breach of contract or injury of a like kind arising out of the

same contract or relating to the same property or right. (2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or Otherwise as tho Court thinks fit.

In a recent decision in "Gopulacharyulu v. Vee-ranna 1955, A. L.T. (Civ) 1 : AIR 1955 AP 1421 a Division Bench of this Court has considered the scope of Order 39, Rule. 1 and 2. The facts there were: An Archaka filed a suit against the trustees of a temple for a declaration of his occupancy rights in the lands in a suit. On his suit being dismissed, he preferred an appeal to the High Court, and pending appeal, applied for a temporary injunction to restrain the trustees from taking proceedings to recover possession of the lands u/s 87 of the Madras Hindu Religious and Chart" table Endowments Act (XIX of 1951).

The Division Bench, consisting of Subba Rao, C. J., and Bhimasankaram, J., held that a suit fora declaration that the plaintiff had a right of occupancy in the suit lands was not a suit for restraining the defendants from committing an "injury of any kind" within the meaning of Order 39, Rule 2 of the Code. The appellant then submitted that the High Court could exercise its inherent jurisdiction and grant the relief.

This contention was negated on the ground that in the exercise of the appellate jurisdiction of . the High Court over mofussil proceedings, this court has no inherent jurisdiction to issue an injunction, apart from tho provisions of Order 39 of the CPC and that such an order could not be passed merely because it was in accordance with equity and good conscience when Order 39 did not apply to the facts of the case. The learned Judges then made tho following observations :

"Before parting with these cases, however, we would like, to state that, in our opinion, it would be desirable that the provisions of Order 59 of the CPC should he enlarged so as to empower the Courts to grant injunctions in cases "Like The Present" (*italics (hero in" ") are ours*)."

Pursuant to the above suggestion, the Andhra High Court on 26th July, 1.956, added the following clause (c) in Order 39, R. 1. C. P. C. :

"that the defendant threatens to dispossess the plaintiff or otherwise cause injury or loss to the plaintiff, the Court may by order grant a temporary injunction to restrain such act (omitting what is already contained in the main Code) "or dispossessing or otherwise causing injury or loss.""

In 1957 A. L.T. 90 : (AIR 1957 A. P. 453) the question whether clause (c), above set out, was meant to take in the case of a decree -holder seeking to execute a decree obtained by him, came up for consideration. It was there held that Clause (e) was not meant to cover such a case. The facts of the case were as follows :

The respondent obtained a decree against tho father of the appellants on foot of a promissory note and was seeking to execute the decree by bringing to sale the properties of the father. The sons filed a suit for a declaration that the suit promissory note was not binding on them for the reason that it was tainted with

immorality and illegality and for a permanent injunction restraining the defendant from executing the decree against the shares of the minors.

It was contended that the amended rule enabled the Court to grant an injunction because the shares of the minors, if sold and purchased by third parties, would result in injury and loss to the plaintiff. The Division Bench negated that contention and held that the injury or loss contemplated by the amended rule, would not cover cases of injury or loss by a person pursuing his legitimate remedies.

6. It has been contended before us that the rule, so interpreted, makes the amendment practically nugatory, and that "injury" in Sub-rule (c) should be interpreted to take in even cases of decree-holders seeking to execute their decrees.

7. The original Rule 1 of Order 39 enables the Court to grant a temporary injunction in the cases specified in Clauses (a) and (b). Rule 2 of Order 39 enables the Court to grant a temporary injunction to restrain the defendant from committing the breach of a contract or other injury of any kind. Rule 3 is restrictive and only applies to cases where the suit itself is for an injunction, while there is no such limitation in Rule 1. The amendment introduced by the Andhra High Court enlarges the scope of Rule 1 by empowering the Court to grant a temporary injunction in cases where it is proved that the defendant threatens to dispossess the plaintiff or otherwise cause loss or injury to the plaintiff.

8. It is not disputed that under Order 39, Rule 1 and 2, the Court has no power to grant temporary injunction prayed for by the respondents, but it is contended that Clause (c), added by the Andhra High Court, enables it to do so.

9. Now, it is to be noted that Order 39, Rule 2 empowers the Court to issue a temporary injunction to restrain the defendant from committing "other injury of any kind. The true meaning and scope of the word "injury, occurring in Rule 2, has been the subject-matter of consideration by several High Courts,

10. In an early decision, in *Vadapalli Varadacharlu Vs. Khandavilli Narasimha Charlu, Phillips, J.*, held that Order 39, Rule 1 and 2 or any other provision in the Civil Procedure Code, does not enable the Court to issue an injunction restraining the execution of a decree lawfully obtained by a defendant. The learned Judge observed ;

"The alleged injury is the execution of a decree lawfully obtained. In order to hold that that does constitute an injury, it is necessary to hold that that decree is illegal, for, if the decree is legal, the defendant has every right to execute it and in doing so, he cannot be said to commit any injury."

11. This decision was approved by a Division Bench of the Madras High Court, consisting of Beasley C. J., and Stodart, J. in *T.S. Sankara Aiyar Vs. Muhammad Gani Rowther and Others*,

12. In *Ayyamperumal v. Muthuswami*, AIR 1927; Mad 687 Curgenven, J., has held that the Court is not competent to grant a temporary injunction restraining the execution of a decree passed by a competent Court either under Order 39 or Section 151 C. P. C.

13. In *Subramanian v. Sectarama Aiyar*, ILR 1949 Mad 316: (AIR 1949 Mad 104) a Division Bench of the Madras High Court, consisting of Rajamannar, C. J., and Rajagopalan, J., has held that proceedings in execution of a decree, which has not been set aside and is in force, against persons bound by the decree, do not amount to committing "injury" within the meaning of Order 39, Rule 2, and an injunction cannot be issued under that provision to restrain such execution.

14. In *Manoharlal v. Jaj Narain*, AIR 1920 Lah 436 a Division Bench of the Lahore High Court, consisting of Shadilal and Martineau, JJ., has held that the word "injury" means an act contrary to law.

15. In *Mahanth Ramkeshwar Das Vs. Baldeo Singh*, Wort, J., observed:

"I take a very strong view of this matter, because it always seems to me that it is impossible to contend that the person who has got a decree and is entitled to execute it. can be said to be wrongfully selling in execution because some other person has brought an action through which he hopes to succeed in getting possession of the property which is being sold."

In *Parbhu Dayal v. Laldas Maganlal*, AIR 1939 All 643 it has been laid down that the lawful exercise of a right vested in a person cannot be legally restrained under Order 39, Rule 2.

Parbhu Dayal Vs. Laldas Maganlal and Others, 16. In *Nasarvanji v. Shahajadi Begam*, AIR 1922 Bom 385 Macleod, C. J., and Coyajee, J., have held that the Court has no jurisdiction to restrain the defendant from seeking to get the benefit of the decree he has obtained. The same view was taken by the Assam High Court in three decisions: *Abdul Hamid v. Tridip Kumar*, AIR 1953 Assam 104, *Kripa Nath v. Rup Chand*, (S) AIR 1955 GAU.S6 and *Mt. Ladi v. Keolraj* AIR 1955 GAU 74.

17. In *Hariram v. Mohanlal*, ILR 1954 Mad. 284 it has been held that the execution of a decree-lawfully obtained would not constitute an injury and so long as the decree stands and is not set aside, an injury of any kind cannot be said to have been committed within the meaning of Order 39, Rule 2. The same view was taken in a later decision of that Court in *Ramnarain v. Shrikrishna* AIR 1956 Mad. 75.

18. The learned counsel for the respondents has relied upon a decision of the Calcutta High Court in *Umapati Choudhuri and Others Vs. Subodh Chandra Choudhuri and Others*, . There it has been held by a Division Bench, consisting of Das" Gupta and Lahiri, JJ., that the Court should give the widest interpretation to the word, "injury" appearing in Order 39 Rule 2, for doing justice even if the injury which the plaintiffs may complain is not "injury" within the meaning of

Rule 2.

They observed:

"Supposing however that the injury which the plaintiffs may suffer in this case is not injury within the meaning of Rule 2, Order 39, it by no means follows that the Court's hands are tied Order 39 does not exhaustively deal with the matter of granting temporary injunction and so on the authority of the Full Bench decision in Abdul Karim Abu Ahmed Khan v. The Allahabad Bank Ltd., AIR 1917 Cal 44 it should be held that apart from the provisions of Order 39 the Court can grant temporary injunction-in the exercise of its inherent jurisdiction."

This decision is in conformity with the view taken by the Calcutta High Court that the powers of Chartered High Court in the matter of issuing injunctions are not circumscribed by the provision of Order 39, Rule 1. But the Madras High Court has held that it has no inherent power to grant an injunction in cases not governed, by Order 39, vide Karuppayya Nadar through his authorised agent Ratnasami Nadar Vs. Ponnuswami Nadar and Another, .

19. There is considerable unanimity of opinion among the High Courts that the execution of a decree lawfully obtained would not constitute, so long as the decree stands and is not set aside, "an injury of any kind" within the meaning of Rule 2. These decisions were, no doubt, rendered in construing the words "injury of any kind" found in Order 39, Rule 2. Clause (c), added by the Andhra amendment, adopts identical language.

On the well-settled principle of interpretation., that where in a subsequent legislation the same language is used, there is an implication that the Legislature has adopted the interpretation put upon the earlier section by the judiciary, the expression "or otherwise cause injury" in Clause (c) must be understood in the light of the above decisions.

20. It is argued by the learned counsel for the respondents that Clause (c) was added pursuant to the suggestion made by the Division Bench in Peddinti Gopalacharyulu Vs. Rudraveeranna and Others, for the purpose of enlarging the provisions of Order 39, so as to empower Courts to grant injunctions in cases like the present and that, therefore, the restricted interpretation of the words occurring in Clause (c), would render the amendment nugatory.

It is worthy of note that the Division Bench which decided Peddinti Gopalacharyulu Vs. Rudraveeranna and Others, made the suggestion that the provisions of Order 39 should be enlarged so as to empower Courts to grant injunctions in cases like the one before them. Order 39, Rule 2 enables the Court to grant a temporary injunction in any suit for restraining the defendant from committing a breach of contract or other injury of any kind, and deals with the grant of injunctions in a particular class of cases not covered by the provisions of R. 1, viz., cases of apprehended breach of contract or other injury of any kind.

The prerequisite for the applicability of the rule is that the suit must be one for

injunction whereas Rule 1 covers all classes of suits. It may be that Clause (c) has been added with a view to enlarge the provisions of Order 39, Rule 1 so as to empower the Court to grant injunctions in all categories of suits where the applicant is able to satisfy the Court that he would suffer irreparable injury. That may be plausible reason for adopting the word "injury" in Clause (c).

21. While it may be agreed that the object of the amendment is to enlarge the provisions of Order 39, Rule 1 that object is not necessarily defeated if it is held that the respondents cannot seek temporary injunction to restrain the appellant from seeking delivery of possession in execution of the decree obtained by him. In any case, the question being one of jurisdiction of the Court, it must be decided with reference to the language employed in Clause (c) and not with reference to the purpose sought to be achieved by the amendment. It may be that in appropriate cases, the party can ask for the appointment of a receiver so that the Court might take charge of the property through its receiver pending the settlement of the dispute.

22. For the above reasons, we hold that Order 39, R. 1(c) comprehends only the acts of a party which are wrongful and not the legitimate acts of persons who pursue the remedies allowed to them by law, and the decision in 1957 A LT 90: (AIR 1957 A P 453) has rightly interpreted the scope of that clause. It is not possible to give an exhaustive enumeration of the cases which can be brought within the ambit of Clause (c) but illustrative of such cases is the one covered by *Peddinti Gopalacharyulu Vs. Rudraveeranna and Others*, . We answer the reference accordingly.

(In pursuance of the aforesaid order of the Full Bench the L. P. Appeal coming on for final hearing before the Division Bench (P. Chandra Reddy C. J. and Srinivasachari J.) the Court made the following Order) :

P. Chandra Reddy, C.J.

23. This appeal is not covered by the Full Bench Judgment. This case comes directly under Order 39 of the Code of Civil Procedure. The question that is involved in the main appeal out of which the letters patent appeal arises is as to who has got better title to the properties. The respondents claim title from the Maharani of Jeypore under a gift who had certain rights in the properties. The stand taken by the appellant is that by reason of a memo filed by the Maharani, she was estopped from contending that she still had a subsisting interest in those properties and that being the position, the present respondents are equally estopped.

This is a matter which has to be agitated in the appeal. This is not a case in which the rights of the appellant to the properties have been established. They only purchased these properties on the assumption that the judgment-debtor had an interest therein. The nature of the interest possessed by the judgment-debtor has to be determined finally in the suit. In these circumstances, we do not think that the learned Judge was wrong in granting interim injunction pending

disposal of the appeal.

24. The letters patent appeal is dismissed with costs; Advocate's fee is fixed at Rs. 50/-.