

(1936) 08 CAL CK 0032
In the Calcutta High Court

Herbert Carberry

APPELLANT

Vs

Clark and Greig Ltd. and Others

RESPONDENT

Date of Decision : 11-08-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 136

Citation : AIR 1937 Cal 172

Hon'ble Judges : McNair, J

Bench : Division Bench

Judgement

McNair, J.—The plaintiff sold to the Thaton Sugar Works, Ltd., machinery and plant required for their factory, and a letter, dated 5th February 1934 from the managing agents of the Sugar Works to the plaintiff, contains a confirmation of the agreement that the machinery was to remain the property of the vendor until paid for in full. In the middle of March 1934 the Sugar Works, although they had only paid a part of the purchase price to the plaintiff, purported to mortgage the machinery and plant to Clark and Greig, Ltd., who in the following year sued on their security in the District Court of Thaton in Burmah and got a receiver appointed. The Sugar Works went into voluntary liquidation and the mortgagees had the machinery and plant sold in the mortgage suit, with the consent of the liquidators for Rs. 95,000.

2. The plaintiff alleges that this price was grossly inadequate and he has brought a suit in this Court for, among other reliefs, recovery of the balance of the purchase money due to him and for a declaration that his rights over the sale proceeds have priority over the rights of the mortgagees. The plaintiff's claim is for Rs. 57,000 odd while the mortgagees are seeking to withdraw over Rs. 71,000. The Sugar Works and the mortgagees are defendants to the suit. The plaintiff in this application seeks an injunction restraining the mortgagee-defendants from withdrawing the sale proceeds from the District Court, Thaton, in Burma.

3. The mortgagees oppose the application on two main grounds. First, that the

suit will not lie for want of jurisdiction, and no injunction will be granted in an invalid suit. It is true that Clark and Greig, Ltd., carry on business in Burma, and, even if the original contract to purchase the machinery gives this Court jurisdiction to entertain the suit, they were not parties to that contract; but that does not of necessity prevent them from being proper parties to this suit. Leave to sue has been granted under Clause 12 of the Charter and until that leave is revoked I am of opinion that the suit lies. The objection is based on the invalidity of the suit, and if the suit is valid the objection goes. However there is authority that the grant of an interlocutory injunction does not depend on the validity of the suit in which the application is made. Secondly it is urged that the Court will not grant an injunction against a person outside its jurisdiction.

4. To this it is replied that the mortgagees have by appearing and contesting this application submitted to the jurisdiction. Assuming that this contention is unsound, I am still of opinion that this Court can in a proper case issue an injunction against a person in British India (which at present includes Burma) although that person is not within the jurisdiction. The objectors rely on two cases in this Court. In *Vulcan Iron Works v. Bishumbar Prosad* (1909) 36 Cal 233 the plaintiff applied for an injunction to restrain the defendant from proceeding with a suit at Farruckabad in the United Provinces. Fletcher, J. held that a Court in the United Provinces was a "Foreign Court" and this Court should follow the equitable principles laid down by Lord Cranworth in *Carron Iron Co. v. Mac Laren* (1855) 5 H L C 416 at p. 436 as governing Courts of Equity in England. That case was followed by Stephen, J. in *Jumna Das v. Har Charan Dass* (1911) 38 Cal 405 and both the learned Judges refused to accept a contrary view taken by Sale, J. in *Mungle Chand v. Gopal Ram* (1907) 34 Cal 101. In the recent case in *A. Milton and Co. Vs. Ojha Automobile Engineering Co.*, Lort-Williams, J. expressed the opinion that the decisions in *Vulcan Iron Works v. Bishumbar Prosad* (1909) 36 Cal 233 and *Jumna Das v. Har Charan Dass* (1911) 38 Cal 405 proceeded on a wrong interpretation of the case in *Carron Iron Co. v. Mac Laren* (1855) 5 H L C 416 at p. 436, and he pointed out that the relation of the Courts in India inter se was entirely different from the relationship of an English to a Foreign Court. With the greatest respect I entirely agree with this view and with the opinion expressed by Sale, J. in *Mungle Chand v. Gopal Ram* (1907) 34 Cal 101 which is referred to with approval by Lort-Williams, J. The fact that for administrative purposes the various Courts in British India are given separate territorial jurisdiction does not appear to me to justify the view that they bear the same relationship to one another as an English Court does to a Foreign Court, and as Lort-Williams, J. points out:

The order of one Indian Court may be effective against a person within the jurisdiction of another Indian Court when a similar order by an English Court would be of no avail against a person within a foreign jurisdiction.

5. The inclusion of the Courts in British India within the expression "Foreign Courts" not only disregards the definition of "Foreign Courts" which is laid down

in the CPC but fails to take into consideration the provisions of Section 136 of the Code which lay down the procedure to be adopted for enforcement of the Court's order by arrest of a person outside the local limits of the Court's jurisdiction. The view which I take that the Court has power to grant an interlocutory injunction against a person outside the local limits of the Court's jurisdiction and that a machinery exists for its enforcement, is supported by the judgment of Rankin, C.J. in *Salam Chand Kannayaram Vs. Joogul Kissore Ramdeo*, .

6. There the defendant had been committed to gaol for contempt of Court in failing to comply with an order to hand over books to the receiver. The defendant after the committal order moved outside the jurisdiction, and the plaintiff applied for an order that the writ of warrant might be transmitted to the District Court. The Judge of first instance held that he had no power to transmit the order of committal and on appeal the learned Chief Justice in the course of his judgment said that instead of appealing the applicants would have been better advised to apply for an injunction and in case of breach of that injunction to obtain an order under Order 39, Rule 2 directing that arrest and detention of the offender are enforceable by means of Section 136 of the Code. The applicant here is asking for an interlocutory injunction pending the hearing of this suit and I am satisfied that such an injunction can be issued, and that it should be issued; for there is a substantial question to be investigated and it is undesirable that the opposing defendant should in the meantime withdraw the whole or a large portion of the funds in the District Court. The plaintiff's claim however is for a sum of Rs. 57,049-7-3 and the fund in Court is Rs. 95,000. The plaintiff's rights will be sufficiently safeguarded if the injunction is confined to a sum of Rs. 60,000 to cover his claim and costs. With this limitation there will be an injunction as prayed in Clause (a) of the summons. The costs of this application will be costs in the cause.