
(1973) 01 MAD CK 0029

In the Madras High Court

Case No : Civil Revision Petition No. 2593 of 1972 and C.M.P. 11339 etc. of 1972

K. Karunanidhi and Others

APPELLANT

Vs

R. Renganathan Chettiar

RESPONDENT

Date of Decision : 05-01-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2, 115

Citation : AIR 1973 Mad 443 : (1973) 86 LW 188 : (1973) 1 MLJ 435

Hon'ble Judges : Gokulakrishnan, J

Bench : Single Bench

Judgement

1. The defendants are the petitioners in the above civil revision petition. O. S. No. 76 of 1971 was filed on the file of the Court of the Subordinate Judge, Nagapattinam, by the respondent-plaintiff for granting decree for permanent injunction restraining the petitioners herein and their men and servants from installing and running a new mill in his adjacent western house in T. S. No. 878/1 in the north as indicated in the plaint plan and further carrying on their proposed mill business in the suit place alleging that if the said mill is run apart from nuisance to the respondent herein, it will affect the walls belonging to the respondent. In that suit the respondent herein filed I. A. No. 454 of 1971 for a temporary injunction restraining the petitioners herein and their men and servants from installing and running a new mill with machinery in the suit site as indicated in the plaint plan pending disposal of the suit inter alia alleging that if the powerful motor is run by the petitioners herein, it will not only cause considerable material disturbance and irreparable injury to the living portion of the respondent herein, but also to the walls of his building, that the installation of the machinery is at a distance of two feet from the walls of the premises of the respondent and the vibrations caused to the wall will certainly cause material injury to the wall and bring about cracks thereof, and ultimate collapse, that no compensation of money is possible for the nuisance that will be caused by the petitioners and that the petitioners are likely to cause material and irreparable injury both to the respondent's health and comfort. The respondent has further

alleged in the petition that since the petitioners are hastening to start the mill in the proposed place, it is necessary that ad interim injunction is granted in favor of the respondent.

2. The petition in their counter statement have alleged that they are going to install a motor of 7.5 HP to run a mill (pulses breaking) in a shed erected adjoining the northern end of the respondent's house, that the respondent will not be in any way put to difficulty inasmuch as at a distance of about 25 ft. and 30 ft. from the residential portion of the respondent, there are two mills run with motors of 40 and 25 HP, that the whole area is not wholly a residential one, that the area is in a busy business centre wherein all kinds of mills are run, that all preventive measures against vibrations have been adopted by the petitioners herein and that it will not actually cause injury to the premises of the respondent herein. The petitioners have also alleged in their counter statement that there will be no material discomfort to the respondent and in any case it will not be a nuisance such as would entitle the respondent to an injunction for carrying on his business. It is admitted by the petitioners herein that the motor is fixed up at a distance of four feet from the wall of the premises of the respondent. In the reply affidavit the petitioners have alleged that they have actually started the mill and worked on 6-12-1971 and has consumed certain electricity. But they have stopped running of the mill on the very same day as soon as they received the telegram stating that temporary injunction had been granted in favor of the respondent herein prohibiting the petitioners from running the mill, by the Sub-Court Nagapattinam.

3. The Sub-Court Nagapattinam, after going through the prima facie case of the respective parties held that the evidence and the decisions can be discussed in detail at the final stage, that the object of the respondent will be nullified, if the mill is allowed to run and that the inconvenience that will be caused to the respondent will be greater than to the petitioners herein if the mill is allowed to be run and granted temporary injunction as prayed for. The Sub-Court also found that the petitioners had started the mill on 6-12-1971 and stopped it immediately on the same day in view of the injunction granted by that Court and as such there is no question of any irreparable injury or loss that will be caused to the petitioners if the injunction is granted.

4. On appeal, the learned District Judge. East Tanjore, after referring to Ex. A-2 the Commissioner's report and also that fact that the petitioners could not have run the mill on 6-12-1971, inasmuch as the license was granted to them actually on 7-12-1971 only found that the mill could not be run without the consent of the neighbor, and dismissed the appeal. The learned District Judge also observed that in case the injunction is not granted and the mill is allowed to work, the suit itself will become infructuous and that it is not at all fair and proper that these questions are prejudged without sufficient materials on record.

5. Aggrieved by the decision the petitioners have preferred the above civil revision petition.

6. Mr. M. S. Venkatarama Iyer, the learned counsel appearing for the petitioners submitted that the order of injunction granted by the Courts below is without jurisdiction and is illegal which requires correction by this Court. According to the learned counsel, the petitioners have purchased the machinery and paid the requisite fees for license as early as 23-11-1971. Though the actual license was received by them on 7-12-1971, the working of the mill on 6-12-1971 on which date the license has been signed by the authorities concerned is not illegal. Exhibit B-5 is the permission granted by the Municipality as early as 4-3-1971, to the petitioners herein to install the machinery on an application made by the petitioners as early as 13-11-1970. Exhibits B-8 and B-9 are the receipts by the Electricity Board which proved the permission given by the Board to the petitioners to install 7.5 HP motor in the suit premised and also the permission to the Industrial service connection. Ex. B-10 is the meter card dated 6-12-1971, wherein the consumption of electricity according to the petitioners for running the mill has been written. Mr. M. S. Venkatarama Iyer also contended that in the Commissioner's report it is stated that the respondent himself is having a tobacco cutting machinery in his building which is adjacent to the petitioner's building, that the plaint plan mentions the portion adjoining the petitioner's room wherein they have installed the 7.5 HP motor as business shed that there is "Shanmugha flour mill" within 8 or 9 metres to the east of the respondent's building wherein two flour hullers one paddy huller, one chilly huller and one soap-nut powder huller are working and that there is "Shanmugha Oil Mills" within 9 metres from the respondent premises with 15 HP motor running three oil rotaries. The learned counsel pointed out that there is mention in the Commissioner's report to the effect that the place at which the parties are living is a commercial business locality consisting of residential and non-residential buildings.

7. The learned counsel for the petitioners took me through the judgments of the Courts below and contended that the Courts below have completely prejudged the case by referring to Exhibits A-5 to A-7. According to the learned counsel the main question that has to be decided is as to whether there is any nuisance which is so emergent and vital to stop the work immediately. It is also contended by him that there is absolutely no finding as to whether the running of the mill will be so detrimental to the health and the building of the respondent and his family.

8. Mr. K. Ramaswami, learned counsel for the respondent contended that in the Commissioner's report it has been stated that the portion adjoining the proposed installation of the mill by the petitioners is a resting place that the working of the mill will definitely affect both the building and the rest required by the workers of the respondent who are working in the tobacco factory and that the noise of the mill which will be produced will definitely be a nuisance to the respondent. He further contended that the injunction being a discretionary relief, this Court is precluded from interfering with the findings of the Courts below wherein they have granted an injunction in favor of the respondent herein.

9. I have gone through the judgments of the Courts below and also the documents filed in the case. The Sub-Court has observed that the provisions contained in the appendix to G. O. No. 4054 Public Health, Government of Madras have not been followed in this case while granting the license to the petitioners for running the new mill. It has also referred to in its judgment that this is a strong circumstance in favor of the respondent herein. The Sub-Court has also observed that only after taking necessary oral and documentary evidence, it is possible to conclude whether the contentions of the petitioners are true or whether the allegations of the respondent are true. On the above observations the Sub-Court held that if the petitioners are allowed to run the mill, the object of the respondent in filing the suit will be defeated as the suit is only for a permanent injunction, and that the harm caused to the respondent will be greater if the interim injunction is vacated, compared to the inconvenience caused to the petitioners who have started the mill on 6-12-1971. Thus the Sub-Court granted the injunction prayed for. The lower appellate Court even though it has perused Ex. B-10 which showed the consumption of 7 units of electric energy for running the mill held that the petitioners could not have worked the mill on 6-12-1971 since they got the license only on 7-12-1971. It presumed that the petitioners could not have run the mill on 6-12-1971, and basing its conclusion on Ex. A-5 and also observing that in case injunction is not granted and the mill is allowed to be run, the suit itself would become infructuous, dismissed the appeal. The reasoning of the lower appellate Court in granting the injunction is mainly on the ground that in case the injunction asked for is not granted and the mills allowed to be run, the suit itself would become infructuous. On going through the judgments of the Court below it is clear that there is difference of opinion between the trial Court and the lower appellate Court as regards the actual working of the mills on 6-12-1971. In spite of Ex. B-10 the lower appellate Court has disbelieved the case of working of the mills on 6-12-1971.

But unfortunately I find both the Courts below have completely missed the real points which have to be discussed in the matter of granting or refusing a prayer for injunction. Order XXXIX, Rule 2, Civil P. C. gives power to Court to grant injunction in order to prevent the defendant from committing a breach of the contract or other injury of any kind. No doubt, the grant of temporary injunction is a discretionary order made for the purpose of maintaining the status quo and to protect the interests of the parties pending disposal of the suit. But the balance of convenience and judicial discretion are the key-notes in the matter of disposing of such interlocutory applications. Hence it is necessary to find out whether the Courts below have used their judicial discretion which they were bound to before they passed the order which is being questioned now. Further, for the purpose of granting temporary injunction pending disposal of the suit, is absolutely unnecessary to discuss the evidence on record elaborately. But there must be a prima facie ground for the grant of injunction, prima facie ground has to be made out by the party seeking the injunction and the burden is not upon the person who objects to such grant. It is significant to note that in the

judgments of the Courts below there is absolutely no finding as regards any prima facie injury being caused to the respondent by the petitioners being allowed to work their mill. But on the other hand, there is ample material to prove that the petitioners have got everything ready to run the 7.5 HP motor for the purpose of his business. No doubt the said machinery is very near the business shed of the respondent.

Instead of discussing about the "injury" that will be caused to the respondent by allowing the petitioners to run the mill, the Courts below thought it fit to discuss the rights of the Municipality to grant the license and also about the result of the suit if the interim injunction prayed for is denied. I am of the view that in the present circumstances and facts of the case, both these things are extraneous for a decision whether an injunction should be granted or not, Granting of the license is purely in the hands of the Municipality and any party affected by an illegal grant of license can have ample remedy through Court of law against the Municipality and also against the functioning of such machinery. That question is not germane for the purpose of deciding the question whether an injunction has to be granted or not. It is also unnecessary for me to discuss the various decisions cited for the position that refusal or grant of license will not form the basis for refusal or grant of injunction. No doubt that may be relevant in cases where the damages that will be caused cannot be compensated. As far as the present case is concerned in the absence of any finding as to "injury" to the party concerned. I do not think the observations of the Courts below, while granting the injunction are sustainable. There is absolutely no discussion with regard to "injury" that will be caused to the respondent. Nevertheless, the Courts below seem to think that the balance of convenience is more in favor of the respondent than in favor of the petitioners and that as such the injunction should be granted. This reasoning is arbitrary and without any basis.

There is absolutely no proper consideration of the Commissioner's report and plan. Both the plan and the commissioner's report clearly state that there are already machinery's in the plaintiff's house itself for his tobacco factory. As such, the 7.5 HP motor which is sought to be worked by the petitioners herein cannot be considered as a fresh or surprising nuisance to the respondent. Since the suit itself is on the basis of nuisance and on that basis injunction is prayed for it is premature to grant the injunction as if some nuisance has been perpetrated. The Commissioner's report and plan, Exs. A-1 and A-2, clearly prove that there are machinery's inside the plaintiff's portion itself apart from the fact that there are two 15 HP motors within 9.8 meters to the east of the plaintiff's building, there are five hullers, viz., two flour hullers, one paddy huller, one chilly huller and one soapnut powder huller. The Commissioner's report further states that within a near reach of the respondent's residence there is an oil rotary which goes under the name and style of "Shanmugha Oil Mills" with a motor having 15 HP. Admittedly these motors are much more nearer in distance to the actual residential portion of the respondent than the 7.5 HP motor sought to be worked by the petitioners herein. No doubt the petitioner's motor is just

adjoining the business shed or the resting shed of the respondent. But that itself cannot be taken as the criterion before deciding the suit as amounting to nuisance to the respondent. It is admitted that both the respondent's and the petitioner's places of residence and business are in the busiest locality of Tiruvarur; and the Commissioner's report definitely states that these buildings are situated in the busy thoroughfare, and commercial business is going on in the street and people are also residing.

10. In *N. W. Rly. Administration v. N. W. Rly. Union*, Lahore AIR 1933 Lah 203 it has been definitely held that it is no sufficient reason for the purpose of issuing a temporary injunction that the suit would be infructuous if it did not issue. Both sides cited many decisions for the proposition in relation to granting or not granting injunction as the case may be, in such cases. Sri Ramaswami, learned counsel for the respondent cited decisions to show that the High Court cannot u/s 115, Civil P. C. interfere with the findings of the Courts below. I am quite aware of the fact that the jurisdiction of the High Court u/s 115 is limited, and it has been repeatedly held that such power cannot be used for the purpose of correcting errors of law or of fact except when the matter involves jurisdiction and illegal exercise thereof by the Courts below. It is also clear that the exercise of discretion in awarding temporary injunction cannot be questioned in revision. But the principles of granting injunction and the discretion of Court in doing so have been well laid in various decisions of Courts. In order to obtain an interlocutory injunction, it is not enough for the plaintiff to show that he has a prima facie case; he must further show (i) in the event of withholding the relief of temporary injunction he will suffer an irreparable injury; (ii) in the event of his success in the suit in establishing his alleged legal right the encroachment whereof is complained against, he will not have the proper remedy in being awarded adequate damages; (iii) in taking into consideration the comparative mischief of inconvenience to the parties the balance of convenience is in his favor, or in other words that his inconvenience in the event of withholding the relief of temporary injunction will in all events exceed that of the defendant in case he is restrained. This condition, can under circumstances, be so adjusted as not to deprive either party of the benefits he is entitled to in the event it turns out that the party in whose favor the order is made shall be in the wrong by imposition of terms on one party or the other as condition of either granting or withholding the injunction; (iv) lastly, the plaintiff must show a clear necessity for affording immediate protection to his alleged right or interest which would otherwise be seriously injured or impaired.

11. In granting or refusing to grant a temporary injunction a Court has a wide discretion under O. XXXIX, R. 2. The exercise of that discretion should be in a judicial manner, depending upon the circumstances of each case. No hard and fast rule can be laid down for the guidance of Court as regards exercise of such discretion.

12. The rule that before the issue of a temporary injunction, the Court must

satisfy itself that the plaintiff has a prima facie case, does not mean that the Court should examine the merits of the case closely and come to a conclusion that the plaintiff has a case in which he is likely to succeed. This would amount to prejudging the case on its merits. All that the Court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. The balance of convenience also has to be looked into.

13. Bearing the principles aforesaid it is clear that the finding of the Courts below is arbitrary and the Courts below have exercised their jurisdiction illegally in coming to the conclusion they did as regards the balance of convenience as between the respondent and the petitioners. This is clearly a case of miscarriage of justice which affects the root of the jurisdiction vested with the Courts below in granting such temporary relief. In the present case, the relief claimed in the suit is one of permanent injunction restraining the petitioners herein and their men and servants from installing and running a new mill in their adjacent western house in T. S. No. 878/1 in the north as indicated in the plaint plan, and further carrying on the proposed mill business in the place. This relief is based upon nuisance that will be caused due to the working of the machinery to the respondent. It is alleged in the plaint that the respondent, who is living in his house for over 25 years, will be very much affected in health due to the vibration that would be caused by the machinery that would be installed by the petitioners. It has also been alleged in the plaint that the vibrations from such machinery that is sought to be installed by the petitioners would cause nuisance to the respondent his family and his workers. That apart it would also cause injury to the wall of the premises of the respondent. Thus, it is clear that the respondent has to prove his case before he gets any order of injunction that the injury that will be caused to him by refusal of such injunction will be irreparable.

14. In deciding whether in any particular case this right has been invaded and a nuisance thereby caused, it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions obtaining among the people in that locality. It is also necessary to take into account the circumstances and character of the locality in which the complainant is living, and any similar annoyance which previously existed there. As far as the present case is concerned, the Commissioner's plan and report amply prove that many machinery's are inside the respondent's house and there are also machinery's nearer in point of distance from the respondent's house than the machinery sought to be worked by the petitioners. But no doubt if the machinery which is sought to be worked by the petitioners is so injurious both to the health and property of the respondent, the Court should not hesitate to grant the injunction. But in this case there is absolutely no finding by the Courts below that such injury or damage will be caused to the person and property of the respondent. Courts have no power to grant the relief in the absence of such a

prima facie finding. The Courts below have acted illegally in their jurisdiction to decide a case of this nature. Taking into consideration Ex. A-5 and also the working or non-working of the 7.5 HP motor by the petitioners are extraneous to the point at issue and as such the orders passed by the Courts below are illegal.

15. The opinion which I have just expressed is purely prima facie based upon the findings of the Courts below; and I have not gone in detail and discussed the evidence on record. This I make it clear and plain in order to safeguard the interests of both parties, lest the trial Court may be prejudiced. It is left to the pure discretion of the trial Court to record its findings ultimately in the suit on the evidence on record without in any way being embarrassed by the decision rendered herein on a temporary relief.

16. Taking all the aspect and also the facts and circumstances into consideration. I am of the view that the interim injunction granted by both the Courts below has to be vacated, since in my view, the Courts below have illegally exercised their jurisdiction.

17. In these circumstances, the Civil Revision Petition is allowed, and the interim injunction granted by the Courts below is vacated. I may make it clear that the injunction so vacated is subject to the discretion and powers of the Municipality to grant or refuse license on merits to the petitioners' case. Since the suit itself is for permanent injunction on the basis of nuisance the trial Court is directed to dispose of the suit within eight weeks from this date. There will be no order as to costs in this Civil Revision Petition. In view of the disposal of the Civil Revision Petition no further orders are necessary in the civil miscellaneous petitions and they are dismissed.

18. Revision allowed.