

(1988) 08 KL CK 0004
In the High Court Of Kerala
Case No : C. R P. No, 1229 of 1988

K. Sreedharan

APPELLANT

Vs

Iyyakandy Seethali and Others

RESPONDENT

Date of Decision : 31-08-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9
Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1973 (CrPC) — Section 151

Citation : (1988) 2 KLJ 398

Hon'ble Judges : K.P. Radhakrishna Mbon, J

Bench : Single Bench

Advocate : M.C. Sen, for the Appellant; P.N.K. Actum and C.P. Chandrasekharan, for the Respondent

Final Decision : Allowed

Judgement

K.P. Radhakrishna Mbon, J.—In the nature of the order I propose to pass, it is unnecessary to serve notice on respondents 4 to 7."

The petitioner filed R. C. P. No. 56/80 under Sections 11(2), 11(3) and 11(4) (iii) of the Rent Control Act for recovery of the premises, against respondents 4 to 7 herein, who are the legal representatives of one Gopalan, who had executed the Koolikychit Document No.880/1939 in favour of the petitioner-landlord. The Rent Control Court allowed the petition on the ground of a rears of rent only. The Appellate Authority confirmed the order. However, the District Court in revision allowed the petition on the ground of bonafide need also. Respondents 4 to 7 challenged the order of the revisional court in C R. P. 3532/83 before this court. The C. R. P. was dismissed on 17-7-1985. Against the said order, respondents 4 to 7 filed Special Leave Petition, (C) No, 12529 of 1985 in the Supreme Court. The Supreme Court while dismissing the SLP passed the following order:-

After hearing counsel appearing on both sides we are not satisfied that this is a fit case for interference by this Court-under Article 136 of the Constitution.

However, we feel that having regard to the facts and circumstances of the case the petitioners tenants should be given a fairly long period of time, to vacate and surrender possession of the premises from which they have been ordered to be evicted. We accordingly direct that the order for eviction passed against the petitioners shall not be enforced against them for a period of two years from today subject to the condition that the petitioners shall file an under taking in this Court on or before 9th of May, 1986 on usual terms solemnly undertaking to deliver peaceful possession of Use premises to the respondent on or before the expiry of the aforesaid period of two years. It is brought to our notice that some persons coming to be the successors in interest of Gopal deceased father of the petitioners have instituted certain independent proceeding in respect of the petitioner's property. Whatever may be the result of these proceedings any order passed therein or in any appeal, or revision there from shall not stand in the way of the order for eviction passed against the petitioners being enforced against them after the aforesaid period of two years nor absolve the petitioners from their responsibilities and obligations arising under the undertaking to be given by them to this Court. The SLP is- disposed of in terms of this order

Since respondents 4 to 7 failed to give the undertaking highlighted in the above order, the Supreme Court passed another order dated 4-11-1986. It reads:-

Since the undertaking as contemplated by the order of this court dated April 15, 1986 has not been filed by ail the petitioners and is also not in the proper form, the direction contained in the order that the petitioner shall not be evicted from the premises for a, period-of two years from its date; the order dated April 15, 1986 hereby stands vacated and the decree shall be executed forthwith

The petitioner in the meantime had Med E.P 246/S5 for execution of the order. As per the direction of the execution court, the premises was. taken delivery of by the petitioner on 10-8-1987.

2. This was the state of affairs when some strangers to the Rent Control proceedings filed petitions for redelivery of the premises: and some for injunction restraining, the petitioner from enforcing the order and if premises had already delivered, not to transfer the same during the pendency of the petitioners. The case of these strangers is; that the premises, the subject-matter of the koolikychit mentioned affective (Document No 880 of" 1939 ensure by Gopalan in favour of the petitioner landlord) we held by the joint finery, of which Gopalan and these strangers are members as treated according to the petitioner. I shall in this connection extract the following" passage from the petition filed by respondents 1 to 3 harem under Order 21 Rule 99,

Respondents 1 to 3 thus concede that "the premises which was the subject matter of the Rent Control Petition is the same as the one described in the schedule attached to the koolikychit. That means, the premises which was directed to be put in the possession of the landlord-petitioner is the same premises which is now claimed by the respondents and other strangers

(according to the petitioner) who have initiated some other civil proceedings like the one on hand, as members of the joint family which as per them, was the tenant of the premises in dispute.

3. There could not therefore be any doubt that premises claimed by the respondents as in the possession of the joint family was" the same as the one which was the subject matter of" the rent control" petition.

4. The above position notwithstanding, the members of the so called joint family have initiated proceedings numberless, to see that the decree-holder is deprived of the fruits of the decree, he has obtained after a prolonged fight, right from the Rent Control Court till the last Court, in the country namely, the Supreme Court. A word about the conduct of the respondents in this context is unavoidable. The Supreme Court had" given two years" time to respondents 4 to 7 who, on their own showing, are members of the joint family, to put the petitioner landlord in possession of the premises. The order of the Supreme Court therefore is binding on all the members of the joint family, assuming the tenancy was in favour of the joint family. If it the other way about the other members of the joint family have absolutely no manner of right over this premises. Their claim that they are in possession of the premises is not supported by any material, other than the document Under which Gopalan admittedly was holding the same

5. To complete the statements of facts, it is necessary to refer to the civil proceedings, the other members of the joint family have initiated to nullify the effect of the decree. O. S. 506/88 is instituted by Sreenivasan, one of the legal representatives of deceased Appu (this suit was transferred to Sub Court, Kozhikode and renumbered as O. S. 59/85) brother of Gopalan; O. S. 57/87 Sub Court, Kozhikode, by yet another, legal representative of Appu and O. S. 671/86 Munsiff's Court by the widow of Appu. The main prayer in all these suits, the learned counsel for the petitioner argues, is the same namely, for a declaration that the decree, in execution of which the petitioner has taken delivery of the premises, is not binding on them. Similarly some other members of the joint family have filed the following applications before the execution court, E. A, Nos. 361, 425, 313, 332, 358, 359 and 360/1987. Of these applications, E. A. 425/87 is by respondents 4 to 7 who after the death of Gopalan, were in possession of the premises and from whom the petitioner took delivery in execution of the decree.

6. All these civil proceedings, is the E. As also the Original Suits are vexatious proceedings; or," in any event, it should be held that by initiating these proceedings the members of the joint family must be held to have committed an abuse of the process of court and hence these proceedings are liable to be held as not maintainable, the learned counsel for the petitioner argues. These proceedings accordingly are liable to be dismissed with heavy costs, the counsel submits.

7. I shall now state the law governing these matters The power of the court to

make such orders as are necessary to or event abuse of the process of court is inherent in every court. (See Section 151 C. P. C.) The term abuse of the process of the court has not been defined. What then this term means. Its meaning therefore has to be gathered from other sources. A malicious abuse of legal process occurs where the party employs it for some unlawful object, not the purpose which it is intended by law to effect; in other words a perversion of it"- Blacks Dictionary. Yet another shade of meaning is this: "Abuse of process is the malicious and improper use of some regular legal proceeding to obtain some advantage over an opponent" Mozley & Whittleley's Law Dictionary. This is a term generally used to proceeding which is wanting in bonafides and is frivolous, vexatious or oppressive. An abuse of the process of court can be committed by the court or by a party.. An instance of the abuse of the process of the court committed by the court is highlighted in the decision of the Privy Council in *Debt. Baksh v. Habib Shah* ((1913) 35 A11.331 at 337(PC))... This was an appeal from a decision of the Oudh Judicial Commissioner. The Judicial Commissioner in revision reversed the order of the trial court restoring the suit which had been dismissed for default. From the facts stated in the ruling it is clear that at the time when the suit was dismissed the plaintiff was dead. The application of his son, the legal representative under Order 9 Rule 9 was restored and it was that order that was reversed by the Judicial Commissioner. Lord Shaw speaking for the Privy Council observed that the rules and the orders applicable to a defaulter could not be applied to a dead man and RS such in their Lordship's opinion

As abuse of the process of the court within the meaning of Section 151 C. P. C. had occurred by the ensure adopted in the: Court of the Judicial Commissioner.

(Emphasis supplied).

It is therefore clear that where a court employed a procedure in doing something which it never intended to do, but resulted if miscarriage of justice, there is what is called an abuse of the process of the court.

8. If a subordinate court commits an abuse of the process of the court, it is clear from the above Privy Council ruling. a superior court has the power, nay the duty to prevent the said, abuse becoming perpetual by interfering with the proceeding.

9. What then is an abuse of the process of the court committed by a party to the proceedings Instituting vexatious, obstructive or dilatory action in court of law is one instance, where a party should be held to, be guilty of an abuse of the process of court: Similarly resorting to and encouraging multiplicity of proceedings for one's own aggrandisement is yet another instance where a party could be said to have committed an abuse of die process of the court.

10. Instances of abuse of the process of court, (whether committed by the court or the party) mentioned in the preceding paragraphs are meant to be only illustrative and not exhaustive. The question whether a court or a party has committed an abuse of the process of the court, depends on the facts of each case.

11. Applying these principles to the facts disclosed above and made available by the counsel for the petitioner, so far as they relate to the proceedings instituted by strangers to the decree and revealed by the records insofar as they relate to respondents 4 to 7, I am of opinion that the strangers to the decree, and respondents 4 to 7, who being parties to the proceedings which resulted in the passing of the decree, in instituting the various proceedings made mention of supra are guilty of abuse of the process of court. Even at the risk of repetition I shall in this context refer to the fact that all the civil proceedings mentioned above are initiated by persons claiming right over the premises in dispute under the same document namely the koolikychit document No. 880/1939 executed by Gopalaan whose legal representatives are respondents 4 to 7, in favour of the petitioner-landlord. These proceedings disclose only one case and it is this: The alleged tenancy right of the joint family is traced to the document aforesaid. The recitals in this document do not support the above case of these persons; on the other hand, they do establish that Gopalan and Gopalan alone was the tenant of the premises under the petitioner-landlord. From the facts of the case it could safely be inferred, without the fear of being contradicted that these persons were aware of the rent control proceedings for eviction of Gopalan, which went up to the "Supreme Court; and as such, they have acquiesced in the said proceedings.

12. Without taking these aspects into account the court below has allowed the application for the issue of the commission from which this revision arises. Having found that the premises has properly been identified by the Amin before delivery, the court below should not have issued the commission. The court below has also not bothered to take into account that it was only after a prolonged fight the petitioner could get delivery of the premises, before it passed the order under challenge. The court below at least should have taken into account the order of this court in C. R. P. 1321/8 (this order would positively show that the proceedings initiated by some of the strangers to the decree to set at naught the effect of the decree is vexatious) which I am told was shown to the court below in support of the argument of the petitioner that respondents have absolutely no manner of right over the property in dispute, before the impugned order was passed. May be that the court when it passed the order did not intend to perpetrate the abuse of the process of the court. Whatever that be, in issuing the order under challenge, in my judgment, an abuse of the process, of the court within the meaning of Section 151 C.P.C. has occurred. The various civil proceedings mentioned elsewhere in this order initiated by the members of the joint family-if the facts stated by the petitioner are in disputable to say the least are vexatious in nature; or, in any event, can be called obstructive or dilatory actions and hence it could safely be held that, these, members of joint family have committed an abuse of the process of the court. The said proceedings including the suits mentioned above are therefore liable to be dismissed with exemplary costs I am emboldened to hold so because, as observed by this court in 1985 K.L.J. 309, the High Court has got the right, nay the duty to check the

subordinate courts from abusing their powers to defeat the course of justice or process of law. See also *Hart Kishan Gupta v. Mool Chand and others*, (1982) 1 SCC 481 . Since these proceedings are not presently before me it is not desirable to pass any, positive order regarding the disposal of those proceedings,. It is all the more so because those parties are not before me. It-is for. the cruets below where these proceedings are pending to deal with there in he light of the observations contained in this order and pass appropriate decrees or orders, as the case, may be disposing of the said civil proceedings. In the light of what is stated above, the order under challenged is liable to be set aside. I accordingly set aside the same.. As already noted this proceeding, as also the other proceedings mentioned above provided the fact stated by the petitioner are indisputable, increasing the one from Which this revision arises are nothing but abuse of the process of the court. The petitioner Who has suffered incalculable damage on account of the proceedings require to be compensated at least to some extend it not to the full extend. I therefore allow this C. R. P. with costs. Each of, the respondent is. the respondents 1 to 3 shall accordingly pay the petitioner cost at the rate of Rs. 3,000/- each.