
(1952) 09 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 70 of 1952

K.A. Thomas

APPELLANT

Vs

State of Travancore-Cochin and Others

RESPONDENT

Date of Decision : 25-09-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226

Citation : (1952) 09 KL CK 0005

Hon'ble Judges : Subramania Iyer, J

Bench : Single Bench

Advocate : M.T. Paikeday, for the Appellant; Government Pleader, for the Respondent

Judgement

Subramania Iyer, J.—This is an application presented by the Petitioner under Article 226 of the Constitution of India.

to issue an injunction or other order or direction restraining the cr. Petitioners from releasing, removing or causing to be removed, or tampering in any manner with, the log's of timber which had been sold to the Petitioner at the public auction held on 4-11-50 at the Divisional Forest Office. Malayattoor, and stated to be stocked at Vettikad Government Timber Depot and noted in the communication No. TA. 2295/50 dated 14-11-50 of the said Divisional Forest Office until the statutory period of notice u/s 80, CPC issued to the 1st counter-Petitioner on behalf of the Petitioner, is over and a competent Court of ordinary original jurisdiction has seisin of the dispute and the said logs, its subject, or until further or other orders are made in this matter by this Hon'ble Court as deemed just and proper for effectively protecting the rights and interests of the Petitioner.

2. The application was presented on 4-8-1952 on which date, on, the motion of the Petitioner, an order of interim injunction was issued by this Court and notice was ordered returnable in 10 days. The interim injunction was extended for a

week on 18-8-1952 and it was further extended till 12-9-1952 with a direction to post the Original Petition itself to 9-9-52. This last order was on 27-8-1952. The Respondents are the State of Travancore-Cochin, and the Depot Officer, Government Timber Depot, Vettikad respectively. On behalf of the Respondents, a counter-affidavit was presented on 9-9-52 wherein the claims made by the Petitioner were all repudiated and it was contended that the petition was not maintainable in law.

3. Today when the petition came up for hearing, Mr. Paikeday, learned Counsel for the Petitioner submitted that his client had already filed an original suit in the District Court and obtained an order of injunction and therefore it is not expedient to further continue the injunction issued by this Court and that the O.P. itself may be taken as not pressed provided the Respondents do not press for costs. Mr. Chacko, learned Government Pleader appearing for the Respondents presses for costs. Mr. Paikeday therefore argued as regards the maintainability of the application.

He urged that the purpose of the petition was to preserve the evidence for his client in connection with the original suit which he proposed to file and for which notice had been issue to the State u/s 80, Code of Civil Procedure. He stated further that though the petition refers to the Question of the Petitioner's title to the logs in question and the reliefs that he might claim in the original suit that portion of the petition merely forms a background for the real part which, as already stated, relates to the preservation of the evidence of the Petitioner. On this aspect he referred to the decision of the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, , and contended that far from being against him the decision supports his client. He referred to that portion of the judgment of the Supreme Court wherein their Lordships refer to the fact that when no final adjudication by the Court as to the rights of the parties is contemplated, a direction or order under Article 226 cannot be issued merely to enable the Petitioner to preserve the property for the period of notice u/s 80, Code of Civil Procedure.

In the decision of the High Court of Orissa which led to the appeal in the Supreme Court, the learned Judges of the High Court stated that they did not propose to adjudicate upon the rights of the parties though they were invited to do so in the application with the result that the order passed restraining the Respondents from interfering with the subject matter of the proceedings was a final order though that final order had nothing to do with the rights of the parties but was merely meant to enable the parties to have the possession of the property preserved in its "status quo" until the time that the Petitioner filed the proposed suit and got redress from the Court where the original suit was filed. The point on which the decision of the Supreme Court is sought to be distinguished in the present case is that whereas the property in question here namely the logs are in the possession of the Respondents, the property in question there was immovable property in the possession of the Petitioner.

4. The Petitioner does not invite this Court to adjudicate upon the title. What is required is merely an order to issue in the interim-regnum which is inevitable under the circumstances between the issue of the notice u/s 80, CPC and the filing of the proposed suit. The preservation of the property in "status quo" is the purpose of the petition, that is, preservation of the property without adjudication of the title to it.

If, in the Orissa case, the learned Judges, though invited to adjudicate on title refused to do so, in this case, even the Petitioner does not invite the Court to adjudicate upon title. Mr. Paikeday interrupts me at this stage and states that his client's title does not relate to the logs themselves but his title is only a title to the compensation for breach of contract which title would be proved by the logs in question whose removal is sought to be restrained by this application. The title to compensation for breach of contract is not the subject-matter of this application. This Court is not invited to adjudicate upon that title and the only purpose of the petition is to preserve these logs until the Petitioner is enabled to file a suit on the original side in the District Court and get orders therefrom for the preservation of the same logs for purposes of evidence, in that suit. Mr. Paikeday again interrupts me at this stage to say that the purpose of the petition is not anything in respect of the title to the claim for compensation for breach of contract but only to preserve the evidence supplied by these logs.

5. In my judgment it is not possible to camouflage the situation by calling the application one to preserve evidence. It is, as it purports to be an application for getting an interim relief, independent of any adjudication of the right to that relief as a kind of step-in-aid to enure during the period of notice u/s 80, Code of Civil Procedure. The logs whose removal is sought to be restrained by this application are stated, in the part of the petition read above, to be those sold to the Petitioner at the public auction on 4-11-50. Those logs therefore prima facie constitute the subject-matter of controversy between the parties. Whether in respect of those logs he claims delivery or claims compensation for other reasons, the question as to the sale of those logs is the question round which the dispute between the parties would revolve. That dispute this Court is not invited to adjudicate upon and not being invited to adjudicate, it is beyond the competence of this Court, assuming it has jurisdiction or would have interfered even if it had jurisdiction, had the request been presented before this Court.

In my view the following observations of the Supreme Court in the Orissa case

In our opinion, Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 80, Code of Civil Procedure, and in our opinion that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding.

apply to the facts of this case and this petition is not maintainable in law.

6. The petition is therefore, dismissed with costs, Advocate"s fee Rs. 150/-.