

(1999) 11 MAD CK 0090

In the Madras High Court

Case No : C.R.P. No. 3198 of 1999 and C.M.P. No. 17969 of 1999

Kaliammal and another

APPELLANT

Vs

D.C. Arunachalam and 6 others

RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, 151
Specific Relief Act, 1963 — Section 34, 42, 43

Citation : (2000) 2 CTC 136

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mr. K. Srinivasan, for the Appellant; Mr. C. Chinnaswamy, for Mr. S. Haja Mohindeen Gisti, for the Respondent

Judgement

1. Defendants 3 and 4 in O.S.No.19 of 1969 on the file of District Munsif Court, Coimbatore are the revision petitioners.
2. The matter arises in execution. A decree was obtained by plaintiffs on 23.8.1972 declaring their right to use the cart track and defendants and their men were restrained by means of permanent prohibitory injunction from interfering with the plaintiffs' right in the same.
3. Alleging that the decree has not been obeyed and judgment debtors are causing obstruction to the cart track, execution petition was filed and one of the relief sought for was to appoint Commissioner under Order 21, Rule 32(5) read with Section 151 of CPC to remove all types of obstructions caused in the 10 feet wide suit track and to implement the decree.
4. Petitioners seriously objected the relief sought for, for, according to them they have not caused any obstruction but third party caused some obstruction and it is further contended that being a decree for permanent prohibitory injunction, issue of commission for removal of obstruction cannot be ordered. It is further contended in the objection that such a positive direction can be granted only in a

case where decree is mandatory injunction. If at all decree holder is aggrieved, that can only be by filing a separate suit, and the alleged obstruction will amount to new cause of action. They prayed for dismissal of the execution petition.

5. Executing Court overruled the objection and directed appointment of a Commissioner with a further direction that all obstructions caused within the 10 feet width of cart track is to be removed. It is this order of executing court is challenged in this revision petition.

6. Since caveat was entered by respondents I heard the revision petition at the admission stage itself.

7. Learned counsel for petitioners submitted that the application under Order 21, Rule 32(5) of CPC is not maintainable when the decree is only for declaration and permanent prohibitory injunction. The argument is, the provisions of Rule 32(5) will apply only in case of mandatory decree and in this case, there is no direction of mandatory nature issued to the judgment -debtors. Reliance was also placed by learned counsel on the following decisions:

1. Nari Chinnabba Chetty Vs. E. Chengalroya Chetty and Others, ; 2. Joseph alias Kochu Vs. Makkaru Pillai, and 3. Kariyappa Vs. Haladappa, .

In the last of the decisions, Karnataka High Court has taken into consideration other two decisions and has held that in a decree for prohibitory injunction sub-rule (5) cannot be invoked and the remedy of the part is only to file a separate suit.

8. As against the said argument, learned Senior Counsel for respondents submitted that when a decree for declaration is granted, it necessarily follows that the decree holder is entitled to all the benefits flowing from that declaration and one such consequence is that the decree holder is entitled to make use of the cart track free from any obstruction. If Judgment debtors are not obeying or violating the decree, decree holder will be entitled to remove the same through issue of commission and directing decree holder again to file a separate suit will make the decree a mockery.

9. It is further argued by learned counsel that even if second suit is filed and decree is obtained, the same results will follow and the very purpose of the decree will be defeated and judgment - debtor also gets immunity from being proceeded with. It is farther argued that the provisions of Order 21, Rule 32(1) read along with sub-rule (5) is only for the purpose of enforcing the decree, for which relief a decree has been granted. It is submitted that a Court of law cannot sit still with folded hands and countenance its injunction being treated with indifference or scant courtesy by the party against whom it was directed and who is bound to obey its terms. The Court should not think that it is powerless in enforcing the decree. Reliance was also placed by learned counsel in the decisions reported in Ondipudur Weavers co-operative Production and Sales Society Ltd. and Others Vs. Velumani and Others, , V.S. Alwar Ayyangar Vs.

Gurusamy Thevar, , Bagicha Singh Vs. Suba Singh and Others, . Reliance was also placed on the decisions reported in Ram Charan Sikdar Vs. Sm. Jogamaya Basu and Another, and Harihar Pandey Vs. Mangala Prasad Singh and Others, .

10. Before going into the rival contentions, it is better to extract the decree passed by trial court.

"(1) That the plaintiff's right be and is hereby declared to use the cart track

(2) that the defendants and their men be and are hereby restrained by means of a permanent injunction from interfering with the plaintiff's right to the same.

(3) That the defendants do pay to plaintiffs the sum of Rs.81.00 being the costs of this suit."

11. The decree for permanent prohibitory injunction is granted consequent to the declaration that plaintiffs are entitled to make use of the cart track without any obstruction from defendants and thereafter court passes the permanent prohibitory injunction restraining defendants from interfering with the right of plaintiffs in using the cart track.

12. What is the effect of granting a declaration. In Razia Begum Vs. Sahebzadi Anwar Begum and Others, of the judgment their Lordships have held thus.

"... In India, the law has been codified in the Specific Relief Act, in Chapter VI, and has in a sense, extended the scope of the rule by providing for declarations not only in respect of claims to property but also in respect of disputes as regards status. From the terms of Section 42 of the Act, it would appear that the Indian Courts have not been empowered to grant every form of declaration which may be available in America. In its very nature, a declaratory decree does not confer any new right, but only clears up mists which may have gathered round the title to property or to status of a legal character. When a court makes a declaration in respect of a disputed status important right flow from such a judicial declaration. Hence, a declaration granted in respect of a legal character or status in favour of a person is meant to bind not only persons actually parties to the litigation, but also persons claiming through them, as laid down in Section 43 of the Act....." (Italics supplied)

13. The said principle was reiterated though under different context in the decision reported in N. Ammad Vs. The Manager, Emjay High School and Others, wherein in para 13 of the judgment, their Lordships have held that the "declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration". In the earlier portion of the judgment in para .12 it is held that the declaration is a recognition of existing fact.

14. When is a declaration given. The same is provided u/s 34 of the Specific Relief Act. Relevant Section reads thus.

"Any person entitled to any legal character, or to any right as to any property,

may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion made therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

15. S.C. Banerjee on Law of Specific Relief, Tenth Edition, 1996, at page 510 has said thus.

"Rights arise under law, or under contract, or under the law relating to tort. They may relate to property or to person. The expression "legal character" denotes a personal right not arising out of contract of tort, but conferred by law and arising out of legal recognition. It involves a peculiarity of the personality, arising from anything unconnected with the nature of the act itself, which the person of inherence can enforce against the person of incidence. Upon the settlement of the question regarding a person's legal character, important rights may depend." (Italics supplied)

16. When court declares that plaintiff is entitled to make use of the cart track, various rights flow from that. It recognises plaintiffs' right to make use of the same and also recognises that plaintiffs can use the same without any obstruction from any source and when defendants cause obstruction, prohibitory injunction is also given directing them not to disturb the right of plaintiffs in making use of the same. If that is the effect of the decree, can it be said that plaintiffs while asking for issue of commission to remove obstruction are not entitled to apply for the same since there is no mandatory direction against defendants. I do not think that the interpretation given by learned counsel for petitioners is correct. Plaintiffs are only making use of the cart track as they were using and are entitled to use it without any obstruction. It is that part of the decree they are enforcing against the defendants. Along with the same, there is also a decree for injunction. When both these reliefs are granted to plaintiffs, argument of learned counsel for petitioners that so long as there is no mandatory injunction against defendants, application under Rule 32(5) is not maintainable cannot be accepted.

17. The decisions relied on by learned counsel for petitioners have not considered the effect of declaration granted. All those cases were only for a decree for permanent prohibitory injunction. I feel that makes a vast difference. In a case where there is declaration and consequential injunction, a learned Judge of this Court has held that sub-rule (5) of Rule 32 can be invoked and the same is reported in Ondipudur Weavers co-operative Production and Sales Society Ltd. and Others Vs. Velumani and Others, . In paragraph 5 of the judgment it is held thus.

"5. In this case, there is a decree declaring the respondents' right to use the pathway and an injunction restraining the appellate from interfering with such

right. When the respondents, decree- holders found that the pathway is so covered with thorny lushes that the right of pathway declared in their favour could not be properly exercised, normally they are entitled to clear the thorny shrubs for facilitating their use of the pathway. But when it was found that the appellants, Judgment- debtors, resisted that attempt of the respondents, decree holders, in clearing the thorny shrubs found on the pathway, naturally they have to approach the executing court, complaining that the judgment-debtors who have been restrained from interfering with the user of the pathway by the decree-holder are obstructing the clearance of the thorny shrubs and therefore they have virtually disobeyed the orders of preventive or prohibitory injunction. Order 21, Rule 32(5) of the Code is not invoked by the decree-holders on the ground that the appellants as judgment- debtors have not performed any positive act directed by the Court but that they are preventing the clearance of the shrubs of the pathway. Such interference with the clearance of the thorny shrubs will amount to an indirect attempt on the part of the judgment -debtors to interfere with the plaintiffs' user of the pathway. If, in fact, the judgment-debtors, have not obstructed or prevented the clearance of the shrubs by the decree-holders, they would not have approached the executing Court for the appointment of a Commissioner to clear the thorny shrubs. I am not, therefore, inclined to agree with the learned counsel for the appellants that the application filed under Order 21, Rule 32(1) and (5) by the respondents in this case is not maintainable." (Italics supplied)

18. The above decision was followed in the decision reported in Ram Charan Sikdar Vs. Sm. Jogamaya Basu and Another, .

19. Bagicha Singh Vs. Suba Singh and Others, relied on by learned counsel for respondents also supports the view taken by me. In para 6 of the judgment, their Lordships said that "Courts do not grant decrees either for the fun of it or for being violated in the manner it has been violated in this case. In that case, possession was directed to be delivered even though decree was only for permanent prohibitory injunction. While considering the same, in para 9 of the judgment, it is held thus.

"9. A reading of the aforesaid leaves no manner of doubt that even in a declaratory decree, direction can be given for compliance of all matters which are necessary consequences of the declaratory decree. Even those directions have been held to be executable up to the higher Court I fail to understand how a decree for permanent injunction restraining the defendants not to interfere in plaintiff's possession, cannot be executed by having possession delivered back to the decree-holder, which in turn flows from sub-rule (5). Here again if the Executing Court cannot have the possession restored, it means the remedy for getting back possession is by filing another suit for possession which practice has to be avoided by Courts under the rule laid down by Full Bench as quoted above. Accordingly, I am of the opinion that the three cases referred to on behalf of the judgment-debtors are no longer good law and I do not find any impediment in

my way to order restriction of possession in the interest of justice even apart from sub-rule (5). The Supreme Court in Krishan Murari Lal Sehgal Vs. State of Punjab, ordered the compliance of declaratory decree without reference to any rule but on the larger principles of justice and compliance of a decree. Similarly, even if sub-rule (5), does not come to the aid of the decree-holder, on general principles, I am of the firm opinion that the executing Court or this Court was the jurisdiction to order that the possession of the land in dispute be restored to the decree-holder."

In that case, their Lordships followed the earlier decisions of Honourable Supreme Court and Full Bench decision of that Court which are reported in Krishan Murari Lal Sehgal Vs. State of Punjab, , Radharam v. Municipal Committee, Barnal, 1982 Lab.I.C. 1857.

19. In Krishan Murari Lal Sehgal Vs. State of Punjab, , a decree was granted declaring that appellant before court deemed to be in service with effect from the suit. Their Lordships said, "as a logical consequence of this declaration, it is manifest that the petitioner would be entitled to back-salary right from 1st June, 1952 till 9th February, 1974. The only way in which the judgment of this Court can be implemented is to pay the aforesaid amount of salary to the petitioner. With these observations, this application is disposed of. The amount of the salary must be said within two months from today."

20. In Radha Ram's case, 1982 Lab.I.C. 1857. the Full Bench of Punjab and Haryana High Court held that the hallowed rule that the law disfavors multiplicity of proceedings would again require that the consequential relief should be recorded in the original proceedings itself. This seems to be the more so in view of the recent judgments of the final Court adverted to above holdings that in essence the cause of action for the claim to salary and emoluments is conterminous with the decree setting aside the wrongful termination.

21. Even if it is accepted that Rule 32(5) applies only for a decree of mandatory nature, that does not follow that the principles therein cannot be followed in cases where there had been utter violation of a decree for declaration and injunction when interest of justice so requires. As I said earlier, what plaintiffs want is only to make use of the pathway as it existed before obstruction and they want that obstruction to be cleared by taking out commission at their expense. Eventhough defendants are not asked to remove the obstruction by mandatory decree, there is no prohibition in plaintiffs getting the same removed when the decree declares their right to make use of the cart track without any obstruction. The execution petition is filed only to see that while clearing the obstruction, the defendants do not cause any further obstruction.

22. The argument by learned counsel for petitioners that if there is any obstruction, only a separate suit will lie, cannot be accepted. Every Court will see that the litigation comes to an end and not multiply it by asking parties to file separate suit. After having caused obstruction, defendants are also not entitled

to be heard saying that plaintiff must go for separate suit.

23. An argument was taken by learned counsel for petitioners that various objections raised by petitioners have not been considered. I do not find any merit in the said submission. I find from the order that lower court has considered all the objections and has held that the objections have no merit.

24. A further argument was also put forward by learned counsel that there is no finding regarding wilful disobedience of decree. It is true that there is no such finding. But I feel, taking into consideration the facts and circumstances of the case and also in view of my finding in the earlier paragraphs of this order as to the effect of declaration decree, such a finding may not be absolutely necessary especially when plaintiffs say that they may be allowed to remove the obstruction and permit them to make use of the cart track. Again the properties of the defendants are not sought to be attached nor they are being arrested. Hence there is no necessity for such a finding.

25. Plaintiffs have obtained decree in 1972 and it is more than 17 years. Asking plaintiffs to file a separate suit will be unjust and Court also will be pleading its helplessness to plaintiffs when they come to court with genuine grievance. To shorten the litigation and also considering the interest of justice, I feel that the impugned order is only to be confirmed and I do so.

26. In the result, the revision petition is dismissed. No costs. Consequently, C.M.P.No.17969 of 1999 is also dismissed.