

(1992) 04 KL CK 0018
In the High Court Of Kerala
Case No : C.M.A. 100 of 1992

Kitex Ltd. and Another

APPELLANT

Vs

Miss. D. Surekha and Another

RESPONDENT

Date of Decision : 27-04-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151, 20

Citation : AIR 1992 Ker 333 : (1992) 3 ILR (Ker) 250

Hon'ble Judges : M.M. Pareed Pillay, J; L. Manoharan, J

Bench : Division Bench

Advocate : S. Parameswaran, K.N. Chandrababu and N. Sesha Sayee, for the Appellant; K.N. Narayana Pillai, for the Respondent

Final Decision : Dismissed

Judgement

Pareed Pillay, J.—Appellants are the plaintiffs in Section 204 of 1992 of the II Additional Sub Court, Ernakulam, Plaintiffs filed LA. 1557 of 1992 for interim injunction restraining the respondents (defendants) from releasing telecast or telecasting the serial "Ithiyamala" pending disposal of the suit. Interim injunction was granted. The learned Sub Judge vacated the interim injunction by order dated 25-3-1992 holding that the Court lacks territorial jurisdiction to entertain the suit and so the plaintiffs are not entitled to the interim injunction.

2. The case of the plaintiffs is that the defendants in violation of their agreement with them regarding the telecast of the serial "Ithiyamala" are trying to telecast it with some other co-sponsors and if that is allowed to be done it would cause irreparable hardship to them. According to the plaintiffs, if their commercial advertisements are not advertised along with the serial as agreed to between them and the defendants, it would cause them considerable loss and hardship. Defendants contended inter alia that the Court has no territorial jurisdiction to entertain the suit and so the injunction granted should be vacated.

3. Contention of the plaintiffs is that some discussions did take place at the

Ernakulam Office of the plaintiffs and so defendants" contention that the Sub Court, Ernakulam has no territorial jurisdiction to try the suit is totally untenable. The learned Sub Judge held that the documents produced in the case are not in any way sufficient to hold that any part of the transaction between the parties had taken place within the jurisdiction of the Court.

4. The correspondence produced before the Court show that they were addressed to the plaintiffs" office at Kishakkambalam, Alwaye. There is no documentary evidence to hold that any discussions regarding the transaction took place at the plaintiffs" Office at Ernakulam. The nature of the correspondences and the addresses shown therein do not throw any light to hold that discussions regarding the transaction ever took place at the Ernakulam Office of the plaintiffs. As there is no evidence of even any portion of the cause of action having arisen within the jurisdiction of the Ernakulam court, the Sub Judge"s finding that there is lack of territorial jurisdiction to entertain the suit cannot be assailed.

5. It is trite law that parties cannot confer : jurisdiction on a court which lacks jurisdiction. Parties can, of course, choose any one of the Courts simultaneously having jurisdiction over a matter. But they cannot choose a forum which lacks jurisdiction to try a case. In *Hakam Sing Vs. Gammon (India) Ltd.*, the Supreme Court held thus at page 741:

"It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act."

Contention of the plaintiffs that they and defendants have agreed to confer jurisdiction on the Sub Court, Ernakulam deserves only to be rejected as they cannot legally do so.

6. Counsel for the plaintiffs argued that the Sub Judge was not justified in vacating the injunction already granted when he found that he has no territorial jurisdiction to entertain the suit. The argument is that the Sub Judge should have ordered return of the plaint to the proper Court and should not have dismissed the injunction application. The question that arises for consideration is whether a Court can vacate injunction when it later realised that it has no jurisdiction to try the suit. If the contention of the plaintiffs is accepted, it would result in keeping the injunction order alive even in a case where the Court without jurisdiction erroneously granted injunction. Contention of the plaintiffs that only the proper Court to which the case has to be made out alone can deal with the injunction application on merits and not the Court which granted injunction if accepted would cause irreparable hardship to the defendants. Whenever the Court finds that it is not vested with jurisdiction to entertain the suit its power to vacate the

order of injunction already granted cannot be denied. Merely because injunction has been wrongly issued by a Court without jurisdiction, it cannot be kept alive to be later disposed of by the proper Court.

7. Counsel for the defendants submitted that at any rate there is no evidence of concluded contract between the parties and so the plaintiffs are not entitled to the injunction. We do not consider it necessary to go into that matter in view of the total lack of jurisdiction pleaded by the defendants in the case.

8. There may arise a situation where a Court having granted injunction *ex parte* finds that it has no jurisdiction to entertain the suit. Can it be held then that the Court lacking jurisdiction to try the suit does not have the power to consider the injunction application at the instance of the aggrieved party. The argument that the Court can only return the plaint along with the interlocutory application and orders thereon to the proper Court and cannot consider it any further would lead to highly undesirable results so far as the affected party is concerned. It is too illogical to hold that the injunction order issued by a Court without jurisdiction should be allowed to continue and it can be vacated only by the Court having proper jurisdiction to try the suit. If such a view is adopted, it would have far-reaching consequences against the party served with the injunction order issued by a Court lacking jurisdiction.

9. Right of the defendants to appear before the Court and press for the vacation of the injunction on the ground that the Court which issued the injunction order does not really have the jurisdiction to try suit can never be denied. Merely because the defendants have filed counter statement opposing the injunction application it cannot be held that they have waived objection to the Court's jurisdiction to try the suit. As the defendants have succeeded in establishing that Erna-kulam Sub-Court has no jurisdiction to try the suit, it can certainly return the plaint for presentation before the proper Court. Merely because injunction has already been issued it cannot be held that the Court which granted injunction cannot vacate it when it finds that it has no jurisdiction to try the suit.

10. The contention that the Court has no power to dismiss the injunction application and it could only return the plaint for presentation to the proper Court is not tenable. As already pointed out, acceptance of such a contention would cause serious prejudice and hardship to a party against whom injunction has been granted by a Court without jurisdiction, if he is to suffer from the injunction order till the case is brought before the proper Court and the matter is heard by that Court, it would certainly amount to negation of justice. In such a situation it cannot be denied that the Court has inherent powers to rectify the mistake. In *Mt. Surji Vs. Manki Ram*, the Allahabad High Court held (Para 2) :--

"It would be an abuse of the process of the Court to allow a decree which is a nullity to stand. The inherent powers of the Court should, therefore, be exercised to set aside such decree".

Wherever the Court is apprised of the fact that it lacks jurisdiction to try the suit,

it cannot fail to act promptly in vacating the order of injunction erroneously granted on the ground that it cannot touch the matter as it is a Court without jurisdiction. In such a situation the Court can fall back on its inherent powers to rectify the mistake by vacating the order of injunction even though it is a Court lacking jurisdiction to resolve the dispute between the parties. As the defendants have filed objection to the injunction application, the Court was bound as hear the same and it could not have denied the hearing on the plea that the plaint is only to be returned to the proper Court having jurisdiction. The learned Sub-Judge was justified in hearing the injunction application when the defendants entered appearance and objected to it. No Court of law could have dodged the matter and shelved it to the Court having jurisdiction to try the suit when it found that it lacked jurisdiction to dispose of the suit. Contrary stand would have resulted in incalculable hardship and loss to the parties against whom injunction has been issued.

11. In a case where Court issued injunction in excess of jurisdiction or where there has been complete want of jurisdiction, the Court should in appropriate cases exercise its inherent powers in the interest of justice and remedy the wrong for which Court is responsible. In short, merely because injunction was already granted, it cannot be allowed to be continued on the ground that only the Court having competent jurisdiction to try the suit alone can consider it. It is also not possible to hold that the Sub-Judge's function was only to return the plaint and connected papers including interlocutory applications and orders thereon to the proper Court and the latter Court alone was competent to deal with the matter.

12. What the Sub-Judge has found is that he has no jurisdiction to hear the matter and so the ad interim injunction already granted has to be vacated. Counsel for the plaintiffs could not establish from the evidence on record that any part of the transaction between the parties arose within the jurisdiction of the Sub-Court, Ernakulam. As the plaintiffs could not establish that the cause of action has arisen at least partly within the jurisdiction of the Sub-Court, Ernakulam, the Sub-Judge was justified in passing the impugned order.

We find no reason to interfere. The C.M.A. is dismissed. No costs.