
(2011) 11 KL CK 0007
In the High Court Of Kerala
Case No : O.P. (C) No. 2791 of 2011

Koshy P. Cherian and Another	Vs	APPELLANT
T.R. Ramachandran and Others		RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

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

Citation : (2012) 3 KLJ 386

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : Jacob P. Alex and Joseph P. Alex, for the Appellant; R. Dyana, for the Respondent

Judgement

Thomas P. Joseph, J.—Defendants in O.S. No. 212 of 2005 of the court of learned Munsiff, Pathanamthitta are the petitioners, aggrieved by Ext. P11, judgment in C.M.A. No. 22 of 2009 of the Court of learned District Judge, Pathanamthitta arising from the order of the trial court on I.A. No. 700 of 2007. Respondents/ plaintiffs sued petitioners for a decree for prohibitory injunction against conducting quarrying operations in the suit property, described as a Government quarry. Learned Munsiff passed Ext. P4, order of injunction on 16.06.2005 on I.A. No. 780 of 2005 restraining petitioners from engaging in blasting operations in item No. 5 of the plaint schedule without having valid license for using explosives and jackhammers or doing any operation causing damage to the suit property till disposal of the suit. While so, alleging that petitioners violated Ext. P4, order of injunction by engaging in the prohibited activities, respondents filed I.A. No. 700 of 2007 (Ext. P5) under Rule 2A of Order XXXIX of the Code of Civil Procedure. Petitioners preferred Ext. P5(a), objection. It would appear that the suit was decreed ex parte and along with the suit learned Munsiff allowed Ext. P5, application - I.A. No. 700 of 2007 also by Ext. P8, judgment. The ex parte judgment and decree were set aside by Ext. P10, order. While so, learned Munsiff passed Ext. P9, order to issue warrant of arrest to the petitioners pursuant to the order allowing I.A. No. 700 of 2007 (Ext. P5). Petitioners challenged the order on

I.A. No. 700 of 2007 before the learned District Judge in C.M.A. No. 22 of 2009. That appeal was dismissed and hence this original petition. It is contended by learned counsel for petitioners that in respect of item No. 5 of plaint schedule, petitioners were being granted permit by the Government for short periods, the period of permit expired on 31.05.2005 and Ext. P4, order of injunction was passed on 16.06.2005. It is the contention of petitioners that petitioners did not get opportunity to cross examine the respondents and their witnesses who gave evidence regarding the alleged violation of order of injunction. According to the learned counsel, it was simply based on the proof affidavit of witnesses that the finding regarding violation of order of injunction is arrived at. Learned counsel also argued that learned Munsiff was not correct in deciding I.A. No. 700 of 2007 along with the suit since the manner of appreciation of evidence in the suit and in an application for prosecution are quite different, in the former, it is preponderance of probability while in the latter, there must be proof beyond reasonable doubt as in a criminal proceeding. Reliance is placed on the decision in Gyan Chand Jain and others Vs. XIIIth Addl. District and Sessions Judge, Agra and others, .

2. Learned counsel for respondents contends that as on the date of Ext. P4, order there was no permit in favour of petitioners enabling them to engage in the activities prohibited by the said order. It is also submitted by learned counsel that it was after taking into account the respective contentions raised by the parties and the relevant materials that learned Munsiff has decided I.A. No. 700 of 2007.

3. So far as this original petition is concerned, I am inclined to think that the matter could be disposed of on the short question whether learned Munsiff was right in disposing of I.A. No. 700 of 2007 along with the suit, appreciating the evidence in both the proceedings in the same manner. In the decision relied on by the learned counsel for petitioners it is stated in paragraph 4 that proceeding under Rule 2A of Order XXXIX of the Code initiated, on the ground of disobedience or breach of injunction order is in the nature of a criminal proceeding as the person against whom such proceeding is initiated is liable to be detained in prison if it is found that he had committed breach of injunction order and that since a punishment is imposed and a person is sent to jail, the principle on which such proceeding are decided are entirely different. In such proceedings, principles of criminal law (as to the manner of appreciation of evidence) should apply and plaintiff will have to establish beyond any shadow of doubt that defendants had committed disobedience or breach of the order of injunction. Learned Judge held that hence a common judgment and order deciding the main suit and the application under Rule 2A of Order XXXIX of the Code is not proper. Paragraph 4 of the decision shows that for the said reason alone the impugned order was set aside. As aforesaid, learned Munsiff has decided I.A. No. 700 of 2007 while disposing of the suit, ex parte. The suit and I.A. No. 700 of 2007 should have been decided separately. Moreover, the ex parte judgment and decree were set aside by Ext. P10, order. The impugned

order was passed when petitioners remained ex parte. It is only appropriate that petitioners got an opportunity to contest I.A. No. 700 of 2007 and cross examine the witnesses who stated about alleged violation of the order of injunction. In that view of the matter, the order on I.A. No. 700 of 2007 cannot be sustained and is liable to be set aside. The judgment in C.M.A. No. 22 of 2009 of the Court of learned District Judge is also liable to be set aside. Learned Munsiff has to dispose of I.A. No. 700 of 2007 separately after giving petitioners opportunity to contest the application.

Resultantly this original petition is allowed as follows:

- (i) The order on I.A. No. 700 of 2007 in O.S. No. 212 of 2005 of the Court of learned Munsiff, Pathanamthitta as confirmed by the learned District Judge in C.M.A. No. 22 of 2009 is set aside.
- (ii) I.A. No. 700 of 2007 is remitted to the learned Munsiff for fresh decision. Both sides will get opportunity to adduce evidence.