

(2008) 04 MAD CK 0106
In the Madras High Court
Case No : C.M.A. No. 3518 of 2006

K.V. Natarajan and N. Lakshmi

APPELLANT

Vs

K.V. Anantharaj, Dr. A. Prabhavathi and Rajas Educational Trust

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2008) 4 LW 548 : (2008) 5 MLJ 94

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : T.V. Ramanujam for R. Saravana Kumar, for the Appellant; P.S. Raman for M. Rajasekaran, for R1 and R. Gandhi for K. Ravichandra Babu, for R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—This Civil Miscellaneous Appeal has been preferred against the Order, dated 11.09.2006 made in I.A. No. 273 of 2005 in O.S. No. 72 of 2005 on the file of the Principal District Judge, Villupuram.

2. The appellants herein, as plaintiffs filed the suit in O.S. No. 72 of 2005 before the trial court, against the respondents, seeking decree of mandatory injunction 1) directing the respondents herein to hand over the possession of the suit property, namely, P.V. Polytechnic College, Tindivanam every alternate year as provided under the compromise deed, dated 11.06.2001. 2) directing the second respondent herein to hand over the Chairmanship of Rajas Educational Trust to the first appellant or his family members every alternate three years, as provided under the compromise deed, dated 11.06.2001 and 3) declaring the resolutions passed by the respondents on 28.03.2004 are null and void.

3. The Interlocutory Application in I.A. No. 273 of 2004 had been filed under Order XXXIX Rule 2 r/w Section 151 CPC, seeking to issue mandatory injunction, directing the respondents to hand over the management of P.V. Polytechnic

College, Tindivanam and directing the second respondent herein to hand over the Chairmanship of Rajas Educational Trust to the first appellant herein forthwith. Though the petitioners have not specifically asked for interim mandatory injunction, in the Interlocutory Application before the trial court, learned Senior Counsel appearing for the appellants submitted that the appellants herein as petitioners filed the Interlocutory Application in the suit only for interim mandatory injunction, pending disposal of the suit.

4. The trial court, considering the documents marked on both sides and the arguments advanced by both the learned Counsel has held that the appellants herein are not entitled to interim mandatory injunction, as prayed for and accordingly, dismissed the petition. Aggrieved by which, this Civil Miscellaneous Appeal has been preferred by the petitioners / plaintiffs therein.

5. Mr. T.V. Ramanujam, learned Senior Counsel appearing for the appellants strenuously submitted that the court below has failed to appreciate the compromise deed, dated 11.06.2001, entered into between the parties to the Civil Miscellaneous Appeal. According to the learned Senior Counsel, the first respondent took over the administration of P.V. Polytechnic College and similarly, the second respondent herein took over the Chairmanship of Rajas Educational Trust only by virtue of the compromise deed, dated 11.06.2001 and that the court below has completely ignored the categorical finding of the Division Bench of this Court made in C.M.A. No. 564 of 2003. The respondents, who got the benefit out of the compromise deed by taking over the management, cannot subsequently challenge the validity of the compromise deed and file the suit. It was further contended by the learned Senior Counsel appearing for the appellants that the appellants herein were entitled to the interim relief of mandatory injunction as sought for in the Interlocutory Application.

6. Mr. P.S. Raman, learned Senior Counsel appearing for the first respondent herein drew the attention of this Court to the order, dated 07.10.2004 passed by Hon"ble Mr. Justice S. Ashok Kumar in A. No. 3712 of 2004, A. Nos. 3191 and 3192 of 2004 and O.A. No. 725 of 2004 in C.S. No. 697 of 2004 between the very same parties, confirmed by the Division Bench of this Court in O.S.A. Nos. 46 and 47 of 2005, dated 29.03.2005 and submitted that the appellants herein are not entitled to interim mandatory injunction. It is not in dispute that A. No. 3192 of 2004 had been filed by the appellants herein as petitioners 2 and 3 along with the first petitioner Rajas Educational Trust represented by its Life Chairman-cum-Trustee, Professor K.V. Natarajan, the first appellant herein, seeking an order of interim injunction restraining the respondents herein, their men and agents from interfering with the management of the first appellant herein and also in the Management of the day today affairs of the trust and P.V. Polytechnic college till the completion of the tenure, on 04.01.2005 and for further extended period of 1 year 6 months and 25 days.

7. In O.A. No. 725 of 2004, similar interim injunction was sought for by the appellants herein. The learned single Judge, by a common order held that the

appellants herein are not entitled to the relief sought for, since admittedly, they were not in the possession of the property, namely, the Trust and also not in the administration of P.V. Polytechnic College, Tindivanam, on the date of the application. The order at paragraph number 8 reads as follows:

Admittedly, the plaintiffs are not in possession of the property, i.e., Trust and not in the administration of P.V. Polytechnic College at Pelakuppam village, Tindivanam as seen from the affidavit of the Principal of the said College (page 136 of the typed set). It is the settled position of law that the party who is not in possession is not entitled for an injunction. However, rights of the parties in pursuance of an earlier agreement to have administration on rotation basis shall be decided in the respective suits filed by the parties which are pending before the Fast Track Court-I and the Principal District Munsif Court at Tindivanam.

8. With the findings, the learned single Judge dismissed the application filed by the appellants, seeking interim injunction. Aggrieved by which, the appellants herein preferred appeal in O.S.A. Nos. 46 and 47 of 2005. A Division Bench of this Court by its common judgment, dated 29.03.2005 delivered by Hon''ble Mr. Justice P. Sathasivam has confirmed the order passed by the learned single Judge and dismissed the Original Side Appeals and the connected civil miscellaneous petitions, holding that there was no merit in the Original Side Appeals. In the common judgment, at paragraph number 4, the Division Bench has held as follows:

Coming to the finding that the plaintiffs are not in possession of the property i.e., the Trust and not in administration of P.V. Polytechnic College at Tindivanam, the learned Single Judge heavily relied on the affidavit of the Principal of the College. The said affidavit is available in the additional typed set of papers. A perusal of the same would clearly support the conclusion arrived at by the learned Single Judge. Though, learned Counsel appearing for the appellants vehemently contended that the person who sworn to an affidavit namely, the Principal, has already been suspended and in such an event, it is but natural for the Principal to support the case of other side, it is the case of the respondents that even now the said Principal continues as the Principal of the educational institution. Unless and until the order of suspension is settled one way or other, as rightly pointed out by the learned Single Judge, the solemn statement made by the Principal cannot be ignored. In such circumstances, we agree with the conclusion arrived at by the learned Single Judge and reject the contra argument made by learned Counsel for the appellants.

9. Then, the appellants herein preferred SLP before the Hon''ble Supreme Court, which was also dismissed by the order, dated 11.05.2005 by the Hon''ble Apex Court. There is no dispute on the factual aspects.

10. Mr.R.Gandhi, learned Senior Counsel appearing for the respondents 2 and 3 submitted that there are several cases pending before the trial court between the same parties on the subject matter and therefore, the appellants should have co-

operated only for the early disposal of the suits, after the trial, instead the appellants have preferred this Civil Miscellaneous Appeal, seeking mandatory injunction, the main relief sought for in the suit. The learned Senior Counsel further contended that pursuant to the resolution passed on 28.03.2004, new trustees have been appointed. Though notice was sent to the appellants herein, they did not attend the Board Meeting and the resolutions were passed on 28.03.2004. In such circumstances, according to him, without adducing oral and documentary evidence with regard to the factual aspects, relating to the suits, the validity of the same cannot be decided and the suits are ripe for trial, hence, the trial court may be directed to dispose the suits on merits within the time frame fixed by this Court.

11. According to Mr. R. Gandhi, learned Senior Counsel in view of the common judgment, dated 28.05.2007 rendered by the Division Bench of this Court and the dismissal of the Special Leave Petition, the appellants herein are not entitled to the relief sought for.

12. Mr. P.S. Raman, learned Senior Counsel appearing for the first respondent contended that as per Order XXXIX Rules 1 and 2, for seeking interim mandatory injunction, apart from prima facie case and balance of convenience, there should be irreparable loss or injury to the person seeking the relief. However, in this case, the appellants have not established any prima facie case, balance of convenience in their favour and also any irreparable loss or injury to be incurred by them. According to him, the trial court has rightly dismissed the Interlocutory Application.

13. Order XXXIX Rules 1 and 2 of C.P.C reads as follows:

1. Cases in which temporary injunction may be granted - Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors.

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach - (1) In any suit for restraining the defendant from committing a breach of contract or other injury of

any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

14. The Hon"ble Supreme Court in Gurswarup Joshi Vs. Beena Sharma and Others, has held that in an appeal interim order in mandatory nature should not be granted, when the relief sought for is similar to that of the main prayer, since such order would render the appeal itself infructuous. As per the ruling of the Apex Court, grant of mandatory injunction in such cases suffers from manifest error.

15. In the suit pending before the trial court, the prayer sought for by the appellants herein is to direct the respondents to hand over the possession of the suit property, namely, P.V. Polytechnic College and to direct the second respondent herein to hand over the Chairmanship of Rajas Educational Trust, Tindivanam to the first appellant herein. In the Interlocutory Application, in I.A. No. 273 of 2005 filed therein, the appellants herein have sought for the prayer, under Order XXXIX Rule 2 as follows:

In the light of the facts and circumstances described in the accompanying affidavit, it is humbly prayed that the Hon"ble Court may be pleased to issue mandatory injunction to direct the respondents to hand over the management of P.V. Polytechnic, Tindivanam and directing the second respondent to hand over the Chairmanship of Rajas Educational Trust to the first petitioner herein forthwith for the same period as the respondents were in office reckoned from 11.06.2001.

16. As contended by the learned Senior Counsel appearing for the respondents, the prayers in the suit and in the Interlocutory Application are similar, seeking mandatory injunction. Therefore, the decision referred to above is applicable to the facts and circumstances of the case on hand.

17. Mr. T.V. Ramanujam, learned Senior Counsel appearing for the appellants would contend that the respondents herein took over the administration of the Polytechnic and the Chairmanship of the educational trust, as per the compromise deed, dated 11.06.2002, which was duly registered in the Sub-Registrar's Office, the term of the first respondent came to an end on 10.06.2002, the first appellant was hoping to take over the administration on that day from the second respondent, however, compromise deed, dated 11.06.2001 was executed with the consent of both the parties, strangely, the respondents 1 and 2 herein instituted the suit in O.S. No. 121 of 2002 before the

Sub-Court, Tindivanam, just three days prior to the date of handing over the charges to the first appellant and also obtained interim injunction against the appellants herein in I.A. No. 250 of 2002 restraining the appellants herein from interfering with the management of Rajas Educational Trust and P.V. Polytechnic College, Tindivanam. Aggrieved by which, the appellants preferred C.M.A. No. 564 of 2003 against the order passed in the said Interlocutory Application. It is not in dispute that as per the Judgment of the Division Bench, dated 23.12.2003, delivered by Hon''ble Mr. Justice K. Govindarajan, this Court, allowed the C.M.A. No. 564 of 2003 and set aside the order passed by the trial court. It is not in dispute that the respondents herein filed a suit in O.S. No. 121 of 2002 and obtained interim injunction restraining the appellants herein from interfering with the management of the Polytechnic. However, the C.M.A. No. 564 of 2003 preferred by the appellants was allowed, whereby, the order of injunction granted in favour of the respondents herein was set aside. Admittedly, there was no direction by the Division Bench of this Court to the respondents herein to hand over the administration of the Polytechnic to the appellants in the Civil Miscellaneous Appeal.

18. In A. No. 3192 of 2004 and O.A. No. 725 of 2004 in C.S. No. 687 of 2004, the appellants herein had sought for injunction restraining the respondents herein from in any manner interfering with the management of the first appellant herein, in the day today affairs of the trust and the Polytechnic. Admittedly, the prayer sought for by the appellants herein was negated by the learned single Judge, by order, dated 07.10.2004, since the administration of the Polytechnic and the Trust, on the date of application was not with the appellants. It is not in dispute that the appellants were not in possession of the property, namely, Rajas Educational Trust and also not in the administration of the P.V. Polytechnic College, Tindivanam on the date of filing the application. Considering the settled proposition of law, the learned single Judge, Hon''ble Mr. Justice S. Ashok Kumar was pleased to dismiss the applications.

19. Aggrieved by which, O.S.A. Nos. 46 and 47 of 2005 were preferred by the appellants. By common judgment, dated 29.03.2005, passed in O.S.S. Nos. 46 and 47 of 2005, the Division Bench of this Court has confirmed the order passed by the learned single Judge and dismissed the Appeals preferred by the appellants. Admittedly, the SLP preferred by the appellants was also dismissed on 11.05.2005 by the Hon''ble Apex Court, which is not in dispute.

20. It is seen that a Division Bench of this Court, in Sakthi Durga Builders and Developers Vs. P.S. Raman, has held that under Order XXXIX Rules 1 and 2, interim mandatory injunction can be granted only when there is a very strong prima facie case, apart from other aspects regarding irreparable loss and the balance of convenience and the tests to be satisfied are far from stringent in case of an interim mandatory injunction and can be granted only in exceptional cases.

21. In Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, , considering the scope of issuing Ad-interim Mandatory Injunction, the Hon''ble Apex Court,

after referring to several authorities, has held as follows:

The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, Courts have evolved certain guidelines. Generally stated these guidelines are:

1. The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
2. It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
3. The balance of convenience is in favour of the one seeking such relief.

22. In the light of the various decision of the Hon"ble Apex Court and the Division Bench of this Court, it is clear that for issuance of prohibitory injunction, under Order XXXIX Rules 1 and 2 CPC prima facie case and balance of convenience is a basic requirement. However, in case of interim mandatory injunction, there should be a strong case for trial in favour of the person seeking injunction, the balance of convenience should also be in favour of the person or persons seeking such relief and there should be a circumstance that if mandatory injunction is not granted there would be irreparable loss or injury to the person seeking the relief, otherwise interim mandatory injunction cannot be granted.

23. In the instant case, it is not in dispute that the suit filed by the respondents seeking prohibitory injunction and other relief in O.S. No. 121 of 2002 and the suit filed by the appellants in O.S. No. 72 of 2005 against the respondents seeking mandatory injunction and other relief are pending before the trial court. It is also not in dispute that both the cases are ripe for trial. Admittedly, the appellants herein were not in possession and management of the Polytechnic and trust on the date of filing of the suits. As contended by the learned Senior Counsel appearing for the respondents, there are triable issues in both the suits based on oral and documentary evidence to be adduced by both the parties.

24. As per the Judgment of the Division Bench of this Court, dated 23.12.2003 in C.M.A. No. 564 of 2003, delivered by Hon"ble Mr.Justice K. Govindarajan, the interim injunction granted by the trial court in favour of the respondents herein in I.A. No. 250 of 2002 in O.S. No. 121 of 2002 on the file of the Sub-Court, Tindivanam was set aside and the subsequent SLP preferred by the respondents was also dismissed. Similarly, another Division Bench of this Court in O.S.A. Nos.

46 and 47 of 2005, by common judgment, dated 29.03.2005, delivered by Hon"ble Mr.Justice P. Sathasivam, has negated the claim of the appellants herein, by confirming the order of the learned single Judge. The SLP preferred by the appellants herein was also dismissed by the Hon"ble Apex Court on 11.05.2005. In such circumstances, the only remedy available for both the parties to the Civil Miscellaneous Appeal is to seek their remedy in the suits pending before the trial court, within a reasonable time frame.

25. Mr. T.V. Ramanujam, learned Senior Counsel appearing for the appellants argued that "status quo ante" be restored in the interest of justice, since the respondents herein filed the suit in O.S. No. 121 of 2002 and obtained interim injunction just three days prior to the proposed date of handing over of the Chairmanship of the Trust and the administration of the Polytechnic.

26. The relief sought for by the appellants has to be considered as per Order XXXIX Rules 1 and 2 of the CPC. Admittedly, on the date of filing of both the suits, the appellants were not in the administration of the Polytechnic and the first appellant was not the Chairman of the Trust. Normally, in case if there is any illegal encroachment or taking over of possession of a property forceably violating the orders of the court, one can seek status quo ante or based on the facts and circumstances only in rarest cases, the Court can grant interim mandatory injunction, for which the following requirements are to be satisfied under Order XXXIX Rules 1 and 2. 1) There should be a strong prima face case, which shall be more than the requirement for seeking a prohibitory injunction. 2) Balance of convenience should be in favour of the person or persons, seeking the relief and 3) There should be irreparable loss or injury, in case if the relief is not granted. In the instant case, there is no such circumstances available and therefore, I am of the view that the appellants cannot claim status quo ante, in the name of interim mandatory injunction.

27. It is not in dispute that two different Benches of this Court have negated the interim relief sought for, separately by both the parties. Hence, there is no strong prima facie case, apart from balance of convenience and irreparable loss or injury in favour of the appellants to grant interim mandatory injunction. As contended by the learned Senior Counsel appearing for the respondents, the prayer in the suit and prayer in the Interlocutory Application before the trial courts are similar.

28. In such circumstances, I am of the view that the appellants are not entitled to interim mandatory injunction as prayed for in the Interlocutory Application and as such I could find no illegality or infirmity in the impugned order passed by the court below. Hence, the Civil Miscellaneous Appeal is liable to be dismissed. However, to meet the ends of justice, I am of the view to direct the court below to dispose the Suits independently on merits, on or before 31st October 2008.

29. In the result, the Civil Miscellaneous Appeal is dismissed with the direction to the court below to dispose the suits in O.S. No. 121 of 2002, which was

renumbered as O.S. No. 15 of 2006 and O.S. No. 72 of 2005 on merits on or before 31.10.2008, after providing reasonable opportunity to both the parties. However, there is no order as to costs.