

(1965) 01 KAR CK 0012

In the Karnataka High Court

Case No : Civil Revision Petition No. 463 of 1964

Lakshminarasimhiah and Others

APPELLANT

Vs

Yalakki Gowda

RESPONDENT

Date of Decision : 05-01-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2
Mysore Tenants (Temporary Protection from Eviction) Act, 1961 — Section 4

Citation : AIR 1965 Kar 310 : (1965) 1 MysLJ 370

Hon'ble Judges : G.K. Govinda Bhat, J

Bench : Single Bench

Judgement

(1) This revision petition arises out of an interlocutory application by the respondent made under Rule 2 of order 39 to the Code of Civil Procedure, in a suit for a permanent injunction brought by him to restrain the deferring with the plaintiff's possession of the suit lands. The trial court issued an ex parte order of ad interim injunction; but when the defendants entered appearance and moved for vacating the said order, it was dissolved. Against the said order, the plaintiff preferred an appeal to the court of the Civil Judge at Bangalore, who allowed the appeal and granted the temporary injunction as prayed for. Aggrieved by the said order, the defendants have preferred the above said Civil Revision Petition.

(2) In order to appreciate the contention raised in this petition, it is necessary to set out the material facts which are not in dispute. The petitioners were the tenants of the suit lands which belonged to one Ramachandra Rao, who, on 24-4-1959 conveyed the said lands to the plaintiff. Thereafter, the plaintiff filed T.C. No. 10 of 1960-61 before the Tahsildar of Magadi, for eviction of the defendants, under the Mysore Tenancy Act. In the said proceedings the case of the plaintiff was that the defendants were tenants on the land, and that he was entitled to seek their eviction. The defendant did not dispute the plaintiff's case that they were the tenants.

When the said proceedings for eviction of the defendants were pending before

the Tahasildar, the Mysore Tenants (Temporary Protection from Eviction), Act, 1961 (Mysore Act 37 of 1961), hereinafter called the Act, came into force on December 31, 1961. The Act, by Section 4, provided for stay of all suits, proceedings in execution of decrees or orders and other proceedings for the eviction of tenants from the lands held by them as tenants or in which a claim for such eviction is involved in any Civil or Revenue Courts during the period the Act remains in force. Section 3 imposed a total prohibition against the eviction of tenants during the period the Act remains in force from the land held by a tenant. Thus, there is an absolute bar imposed by the Act against the eviction of tenants during the pendency of the Act.

(3) By virtue of Section 4 of the Act, T.C. No. 10 of 1960-61 referred to above was stayed and the Tahasildar had no jurisdiction to proceed with the enquiry and make any order. The Tahasildar of Magadi, however, in open defiance of the Act, proceeded with the enquiry and made an order on April 21, 1962, directing the eviction of the defendants. It must be mentioned that the Tahasildar gave a finding that the defendants were not the tenants, though that was not the case of either party. The Tahasildar had no jurisdiction to order eviction even on his finding that the defendants were not the tenants. On April 27, 1962, within a week of the making of the order of eviction, the Tahasildar purported to execute his order through his Revenue Inspector. A Mahazar was prepared by the Revenue Inspector to the effect that possession has been given to the plaintiff. Against the said order of eviction, the defendants preferred an appeal before the Assistant Commissioner, Ramanagar Sub-Division, who allowed the appeal and set aside the order made by the Tahasildar, holding that the defendants were the tenants and that the proceeding before the Tahasildar had been stayed by the Act before the order of eviction was made.

(4) When the appeal preferred by the defendants was pending before the Assistant Commissioner, the plaintiff brought the suit on June 12, 1962 for a permanent injunction against the defendants, alleging that he had secured possession of the suit lands pursuant to the order of eviction made by the Tahasildar and that the defendants were interfering with his lawful possession. The defendants, after entering appearance, filed their written statement contending, inter alia, that their possession had not been disturbed by the alleged delivery effected by the Revenue Inspector, that the alleged delivery was a sham or paper delivery, and that in fact, the defendants were in actual possession cultivating the suit lands as tenants. By the time the Munsiff had heard and disposed of the application for temporary injunction, the Assistant Commissioner had set aside the order of eviction made by the Tahasildar, in execution of which the plaintiff purported to obtain delivery.

The Munsiff was not satisfied that there was a prima facie case made out in favour of the plaintiff for grant of the injunction and, therefore, he dissolved the ex parte order of interim injunction. The Additional Civil Judge, who heard the appeal, did not disagree with the conclusion of the Munsiff that the defendants

were the tenants of the suit lands, that the order of eviction made by the Tahasildar was one made without jurisdiction, and that the said order had been set aside on appeal, but from certain observations made by the Assistant Commissioner in his order, the Civil Judge came to the conclusion that there was prima facie evidence that the plaintiff had obtained delivery of possession pursuant to the order of eviction passed by the Tahasildar, and therefore, entitled to a temporary injunction to protect his possession.

(5) It was urged by the learned counsel for the petitioners, that the Additional Civil Judge was not right in interfering with the discretion exercised by the Munsiff when there was no error calling for interference, and this is a case where the appellate court has exercised its jurisdiction with material irregularity, calling for interference in revision. But it was contended by the learned counsel for the plaintiff-respondent, that the delivery Mahazar prepared by the Revenue Inspector is prima facie evidence of the factum of possession having been given to the plaintiff; although the proceedings before the Tahasildar were without jurisdiction and that order had been set aside on appeal, until possession is restored to the defendants by due process of law, the plaintiff is entitled to have his possession protected.

(6) An appeal lies from the order of a trial Judge granting or refusing to grant an interim injunction, but what the court of appeal has to consider is simply whether or not the Judge who dealt with the matter has properly exercised the discretion which he undoubtedly possesses. The question for the decision of the Civil Judge, who heard the appeal, was whether the Munsiff did not properly exercise his judicial discretion. The appellate Judge is not to approach the case as if he were the trial Judge. A good percentage of suits in this State are for the relief of permanent injunction, and in every one of such suits, there is an application for interim injunction; trial Judges in the majority of the cases, as a matter of course, grant orders of temporary injunctions and cases of refusal are rare. Those orders granting or refusing the interim relief are taken up in appeals and the appellate courts go into the merits of the contentions in the suit as if they are trying the issue as to which of the parties is in possession. The question which they consider is not whether or not the trial Judge has properly exercised his judicial discretion.

(7) The granting or refusing of injunctions is a matter resting in the sound discretion with the trial court and consequently no injunction will be granted whenever it will operate oppressively, or inequitably, or contrary to the real justice of the case. In exercising the discretionary power, the courts should be guided by the following guiding principles.

There is no power which is more delicate, which requires greater caution, deliberation, and sound discretion, or is more dangerous in a doubtful case, than the issuing an injunction. It is the strong arm of equity, that never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the

injury impending or threatened, so as to be averted only by the protecting preventive process of injunction. But that will not be awarded in doubtful cases, or new ones not coming within well-established principles; for if it issues erroneously, an irreparable injury is inflicted for which there can be no redress, it being the act of a court, not of the party who prays for it. It will be refused till the courts are satisfied that the case before them is of a right about to be destroyed, irreparably injured or great and lasting injury about to be done by an illegal act. In such a case the court owes it to its suitors and its own principles to administer the only remedy which the law allows to prevent the commission of such act. The discretionary power must be exercised with extreme caution and applied only in very clear cases; otherwise, instead of becoming an instrument to promote the public as well as private welfare, it may become a means of an extensive and perhaps an irreparable injustice." (1) Story's Equity Jurisprudence (14th Edn.) Vol. II, pages 639-640.

The rule regarding the caution to be observed by courts and the necessarily for a clear cause for granting the relief of injunction has been succinctly stated in the American Jurisprudence as follows:--

"Caution in Granting; Necessity of Clear Case: The extraordinary character of the Injunctive remedy and the danger that its use in improper cases may result in serious loss or inconvenience to an innocent party require that the power to issue it should not be lightly indulged in, but should be exercised sparingly and cautiously only after thoughtful deliberation, and with a full conviction on the part of the court of its urgent necessity. In other words, the relief should be awarded only in clear cases, reasonably free from doubt, and, when necessary, to prevent great and irreparable injury. The Court should therefore be guided by the fact that the burden of proof rests upon the complaint to establish the material allegations entitling him to relief." (2) 28 American Jurisprudence page 217.

Besides the above, there are certain equitable principles also which govern the Courts in granting or withholding of the relief of injunction. One of the main considerations is the fairness of good conduct of the party invoking the aid of the Court. The Court denies the relief to a suitor who is himself guilty of misconduct in respect of the matter in controversy. It is well-known maxim of equity that "He who comes into equity must come with clean hands," or as otherwise expressed, "He that hath committed inequity shall not have equity". The wrong conduct of the plaintiff in the particular matter or transaction with respect to which he seeks injunctive relief precludes him from obtaining such relief. Injunction will not be granted in aid of a possession secured by stratagem or trick.

(8) The question for determination is whether the trial court did not properly exercise its discretion in accordance with the above principles so as to merit interference by the appellate court. The undisputed facts, as started above, are that the defendants are the tenants of the land, that the proceedings before the Tahasildar instituted by the plaintiff for their eviction was stayed by the Act long

before the eviction order came to be passed, that the Tahasildar had no jurisdiction to order eviction even on his finding that the defendants were not the tenants, that the Revenue Inspector who executed the order also had no jurisdiction to give delivery by reason of the prohibition imposed by the Act and further, the order of eviction had been set aside by the Assistant Commissioner on appeal. The foundation of the plaintiff's case is the delivery mahazar prepared by the Revenue Inspector; that mahazar was prepared without notice to the defendants and behind their back.

At the time of the alleged delivery, which was in April, there could not be any standing crops on the land; disputes concerning possession started only at the commencement of the cultivation season, when the defendants proceeded to cultivate the lands. The contention of defendants in the suit was that the delivery mahazar was a sham delivery and that they were not dispossessed. The trial judge was not satisfied that the defendants had been dispossessed. On these facts, he refused to grant the temporary injunction prayed for. The Civil Judge, who heard the appeal, did not differ from the fact found by the trial judge, except that he inferred that the defendants had admitted delivery of possession to the plaintiff by the Revenue Inspector. That inference was not justified, in my opinion, from a perusal of the order of the Assistant Commissioner. It is clearly stated in the said order that the Assistant Commissioner was not concerned with the facts of the execution; having so stated, he made the certain irrelevant observation in answer to certain arguments apparently advanced before him.

When the Assistant Commissioner was not concerned with the facts of the execution, there was no question of his giving any finding on the question of his giving any finding there was no question of his giving any finding on the question whether the defendants had been dispossessed or not. Even assuming that the plaintiff had managed to dispossess the defendants, since the means by which he is alleged to have obtained possession is by illegal means, he is not entitled to the aid of the court to protect his possession. By granting the injunction, what the Civil Judge did was to lend the aid to the court to proceed possession secured in proceedings continued without jurisdiction. The plaintiff is not a person who has come to court with clean hands, and no court of equity shall aid such a person. Therefore, I am clearly of the view that the Civil Judge was not justified in interfering with the order of the Munsiff, who has exercised his discretion properly.

(9) The conduct of the Tahasildar of Magadi calls for serious comment; I am rather surprised that the Assistant Commissioner who had occasion to hear the appeal against his order did not deem it fit to take against the said Tahasildar. The Tahasildar cannot pretend that he was ignorant of the provisions of the Act when it had been published in the official Gazette about four months prior to the making of the order of eviction. When it was not the case of either party, the Tahasildar gave a finding that the defendants were not the tenants thinking that he could thereby circumvent the Act; but even on the assumption that the

defendants were not the tenants, he had no jurisdiction under the Mysore Tenancy Act to order eviction of persons who are not tenants. To forestall any order to stay that may be obtained by preferring an appeal, he saw that his order was executed with undue haste before the order of stay was communicated.

From the facts and circumstances of the case, it is not unreasonable to infer that the Tahasildar has misused his official position to help the plaintiff to evict the defendants which could not have been done under the law in force. What was the consideration which made the Tahasildar to go out of his way to help the plaintiff? That is a matter for enquiry by the appropriate authorities. If officials of the Government entrusted with the duty of enforcement of laws defy the laws with a view to help individuals out of dishonest with a view to help individuals out of dishonest motives and the higher authorities do not take any action against them, there will be no rule of law and the administration will forfeit the confidence of the public. It is for the Government to enquire into the conduct of the concerned Tahasildar and decide what is the appropriate action to take.

(10) For the above reasons, this revision petition is allowed, the order of the Civil Judge is set aside, and the order of the Munsiff is restored. The respondent will pay the costs of the petitioners in this court as also in the courts below.

(11) Let a copy of this order be communicated to the Chief Secretary to the Government of Mysore, for the information of the Government.

HI/VSB/D.V.C.

(12) Revision allowed.