
(1974) 04 BOM CK 0004

In the Bombay High Court

Case No : Civil Revision Application No. 135 of 1974

Narayanrao Marotirao Pimpalkar

APPELLANT

Vs

Waman Nathuji Wankhade and Another

RESPONDENT

Date of Decision : 23-04-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2, 151
Evidence Act, 1872 — Section 44

Citation : AIR 1974 Bom 319 : (1974) MhLj 620

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Advocate : R.N. Deshpande, for the Appellant;

Final Decision : Allowed

Judgement

Masodkar, J.—The present revision arises out of the refusal by the courts below to grant the prayer for temporary injunction. That prayer has been refused only because the courts thought that the present applicant-plaintiff cannot be assisted because of the terms of Order 39, Rule 2 of the CPC as the plaintiff cannot be said to have any prima facie case and said to be covered by the words "any other injury" occurring in Rule 2 of Order 39 of the Code.

2. This approach is clearly unsustainable. The application itself was under Order 39, Rules 1 and 2, as well u/s 151 of the Code of Civil Procedure. The facts under which the aid of the court was sought clearly establish that the defendants 1 and 2 had got a decree for joint possession along with the present applicant-plaintiff. The plaintiff was, therefore, driven to file the present suit for general partition. He was, therefore, in lawful possession along with the other defendants. Only because a decree existed for joint possession, that could not have been treated as an absolute right ousting the jurisdiction to grant relief of an injunction. The power to protect the interest of the litigant and its necessity may arise in several ways and under varied circumstances. The Courts are not left powerless when faced with a clear need to supply the remedy and relief. That is the basic concept

of inherent jurisdiction which can be invoked and efficiently exercised, though under clear and exceptional cases.

3. However, it has to be observed that in every case where the Court is called upon to interdict a person having a decree in his favour, the rights arising out of that decree of all the parties concerned must be taken into account so as to find out the balance of convenience as well the existence of prima facie case. That would also involve considerations of the legal obligations of the parties inter se with respect to the property in suit and the decree set up as the basis for competing right.

4. The interpretation put on Order 39, Rule 2 of the Code of Civil Procedure, by the Courts below so as to disentitle the applicant with this prayer need not be finally examined for it is ample to observe that the Courts have full and eminent jurisdiction to grant relief of injunctions upon proper case being made but though terms of Order 39 might not be directly answered *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, However, I may proceed to observe that the judgment relied on by the learned District Judge, Amravati, i.e. *Upendra Chandra v. Nabin Chandra* AIR 1971 Ass & Nag 95, to hold that under Order 39, Rule 2, the Court would lose the jurisdiction once it is shown that defendant had obtained an earlier decree and was proceeding with execution, does not appeal to me with all due respect to the learned Judge who decided that case to be the complete and adequate answer as to the terms of Rule 2 of Order 39 of the CPC. The word "injury" used by Rule 2 is to be understood with respect to the right and remedy sought by the plaintiff. Only because a defendant is a decree-holder, it does not follow that the plaintiff is not entitled to complain about an injury which calls for protection from the Court in a suit. Cases can be conceived where the defendant is armed with decrees which are nullities or obtained upon fraud or mischief or which are not binding on the rights or interests of the plaintiff for any reason. It is not necessary to make an exhaustive detail on the topic, for suffice it to say that even under the provisions of Section 44 of the Evidence Act, a party has been expressly permitted to set up the invalidities of certain judgments and decrees under specified circumstances. It is, therefore, not an adequate reason to hold that only by the fact that a defendant happens to be a decree-holder and further by the fact that he seeks to execute the same the Courts are left without authority contemplated by Order 39, Rule 2 of the Code which, I may say so, is not exhaustive provision in the matters of grant of injunction. Without proposing to examine the correctness of the observation in *Upendra's* case (supra), I would go by the express words of Rule 2. The word "injury" is of a very wide import and means, a wrong, damage or harm. So wherever the complaint is that the defendant either at the foot of a decree or otherwise is trying to cause damage or wrong to the right under adjudication of the plaintiff, the matter requires to be examined on its own merit. (See also *Nasarvanji v. Shahajadi Begum* AIR 1922 Bom 385.

5. The only course open in this revision therefore would be to set aside both the

impugned orders and remit back the proceedings for fresh consideration of the matter in accordance with law. The revision thus succeeds. The trial Court is directed to hear the parties afresh and decide the matter of injunction as early as possible. There would be no orders as to costs in this revision.