
(2015) 04 KL CK 0105

In the High Court Of Kerala

Case No : O.P.(C) Nos. 870 (O) and 982 of 2015

Padichery Moyyarikkandy Subaida

APPELLANT

Vs

Aryakkul Suhara and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 04 KL CK 0105

Hon'ble Judges : P. Bhavadasan, J

Bench : Single Bench

Advocate : Cibi Thomas, for the Appellant; K.R. Avinash and Abdul Raoof Pallipath, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P. Bhavadasan, J—For the purpose of disposal of these petitions, the facts in O.P. (C) 870/2015 are being referred to.

2. It is interesting to note that both the petitioner as well as the respondents challenge the very same order as affecting their rights. The order that is challenged is the order dated 16.03.2015 whereby the plaintiff in the suit who is the petitioner in O.P.(C) No. 870/2015 was given police protection for the implementation of an injunction order in her favour.

3. The facts absolutely necessary for the disposal of these petitions are as follows:

The petitioner in O.P.(C) No. 870/2015 instituted a suit against the defendants who are the petitioners in O.P.(C) No. 982/2015 for permanent prohibitory injunction. Along with the suit, they moved an interlocutory application for temporary injunction. It is not in dispute now before this Court that as per Ext. P9 in O.P.(C) No. 870/2015, an interim injunction was granted in favour of the plaintiff after hearing both sides. It is also not in dispute before this Court that

against that order, the aggrieved party has filed a C.M.A. before the appropriate court and it is still pending. It is also not disputed before this Court that there is no interim order staying the operation of the order passed by the trial court granting injunction in favour of the plaintiff in the suit.

4. The grievance of the petitioner in O.P.(C) 982/2015 who is the defendant in the suit and who was suffered an order of injunction is that the court below ought not to have ordered police protection for implementation of the order and relies on a decision of the Madras High Court in C.R.P. (PD) No. 3833 of 2000 disposed of by order dated 25.06.2005. It is very vehemently contended on behalf of the petitioner in O.P.(C) No. 982/2015 that the court below was not justified in granting an order of injunction in favour of the plaintiff without verifying the records and also solely based on decree obtained by the plaintiff in the suit with a total stranger who had nothing to do with the property. It is further contended that a Commissioner ought to have been directed to visit the property again and the court below should have waited for the Commissioner to file his subsequent report before interim injunction was passed. Whatever that be, according to the petitioner, police protection could not have been ordered for implementation of the injunction order.

5. The learned counsel appearing for the respondents on the other hand contended that it was after hearing both sides that the interim order of injunction was passed in favour of the plaintiff in the suit and she had approached this Court by way of an original petition seeking Police protection for implementation of the order. This Court refused to entertain the petition but observed that the petitioner is free to move the lower court for appropriate orders including an order for Police protection. Thereafter, the petitioner approached the court below and obtained the impugned order. As far as the plaintiff is concerned, she is aggrieved by that portion of the order which reads as follows:

"(1) Permitting the petitioner to get Police aid for specific activities for maintaining the petition schedule property. The improvements therein or for taking income from the improvements in the property by moving specific application pre-scheduling the date, time and nature of the work to be earned out in the property on which court can issue intimation to the police concerned to give protection to the petitioner for the work specified in the application."

6. According to the petitioner, this is an unworkable order for the simple reason that on each occasion, if she wants to implement the order, she has to approach the court and obtain orders. It becomes extremely difficult and the order now passed is practically of no use to her at all. What the petitioner wanted in the petition for Police Protection was that she may be allowed to have the order effectively implemented which has gone in her favour and on each occasion, if she is to approach the court below with the complaint, it becomes extremely difficult.

7. The court below has passed an interim order of injunction in favour of the

plaintiff in the suit after hearing both sides as could be evidenced by Ext. P9 produced in O.P.(C) No. 870/2015. The court below has relied on three circumstances to come to the conclusion that the plaintiff has a prima facie case. The first ground is that the plaintiff in the suit summoned certain documents from the Cooperative Bank where they claimed that they had mortgaged the property and that the title deeds produced by the Bank show the very same property when compared with the plaint schedule property. The second ground relied on by the court below is a decree which was on the basis of a compromise in which it was conceded that the plaintiff is in possession of the property; and the third ground was the Commissioner's report which also prima facie showed that the property had well defined boundaries and that it was a rubber plantation.

8. As far as the first ground is concerned, the learned counsel for the respondents in O.P.(C) 870/2015 contended that, that cannot be given much credence for the reason that, that is only a paper work and there is no evidence to show that the officers have visited the property. As far as the second ground is concerned, it is contended that the respondents were not a party to the suit and therefore the decree cannot bind them. As far as third ground is concerned, it is contended that the Commissioner ought to have been directed to visit the property once again and note the true state of affairs before passing the order.

9. As regards the merits of the order of injunction passed by the court below, it is not necessary to spend much time on that aspect for the simple reason that it is an admitted fact that an appeal has been filed before the appropriate court against the order granting injunction. It is for that court to consider the merits and demerits of the order passed by the trial court.

10. It is not disputed before this Court that no order of stay has been obtained from the appellate court against the operation of the interim order of injunction passed in favour of the plaintiff in the suit.

11. From Ext. P5 produced by the petitioner in O.P.(C) No. 870/2015, it is seen that she had approached this Court for Police protection for implementation of the order of injunction. This Court declined to exercise its jurisdiction under Article 226 and 227 of the Constitution of India and observed that the petitioner before this Court had adequate remedies before the court concerned including filing of an application for Police protection. Presumably in pursuance thereof, I.A. No. 2301/2014 was moved by petitioner before the court below for Police protection.

12. The decision relied on by the learned counsel for the respondents in O.P.(C) No. 870/2015 can have no application to the facts of this case for the simple reason that was a case where the interim order of injunction was passed in the absence of the defendants or in other words, it was an ex-parte order of injunction. It was an ex-parte order of injunction that was sought to be implemented through Police protection and in that context it was observed that it was not proper for the court below to award police protection. On the other

hand, a Division Bench of the very same High Court, in a decision reported in S.N.J. Abdul Hakeem, K. Shahul Hameed and A. Alla Pitchai Vs. Assisrathul Musthakeem Etheemkhana Trust, AIR 2006 Mad 67 : (2005) 2 LW 621 : (2005) 2 MLJ 533 has observed that in order to effectively implement the order of injunction, recourse can be taken to Section 151 of the C.P.C. seeking reliefs including police protection also.

13. It has never been doubted that for the effective implementation of interim order of injunction which was passed after hearing both sides, effective steps could be taken by the aggrieved party for the implementation of the same including seeking of police protection. Therefore in the case on hand, the grievance voiced by the petitioner in O.P.(C) 982/2015 is without any merits at all.

14. As far as O.P.(C) No. 870/2015 is concerned, there is considerable force in the submission made by the learned counsel for petitioner that the order now passed is unworkable. It does not enable the petitioner therein to enjoy the order of injunction granted in her favour.

15. The order passed by the court below in favour of the petitioner in O.P.(C) 870/2015 needs to be modified.

16. While dismissing O.P.(C) 982/2015, the order passed by the court below on I.A. No. 2301/2014 in O.S. No. 16/2014 shall be modified as the petitioner in that petition will be entitled to seek police protection for the implementation of the order of injunction and the Police shall bound to give police protection for effective implementation of the same.

These petitions are disposed of accordingly.

It is also made clear that none of the observations made by this Court will stand in the way of lower appellate court in disposing of the appeal and the interlocutory application on merits and in accordance with law.