
(2014) 12 MAD CK 0115

In the Madras High Court

Case No : Tr. C.M.P. (MD) No. 418 of 2014

Palani Arulmighu Dhandayuthapani Swamy Thirukkcoil

APPELLANT

Vs

G. Ragavan

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

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

Constitution of India, 1950 — Article 227

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 78,
78(1), 79

Citation : (2015) 1 LW 152 : (2015) 1 MLJ 807

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : K. Govindarajan, Advocates for the Appellant

Judgement

S. Vimala, J.—The petitioner herein is the first defendant in O.S. No. 345 of 2014 on the file of the learned Subordinate Judge, Palani, seeking transfer of the suit in O.S. No. 345 of 2014 from the file of the learned Subordinate Judge, Palani, to the file of the any other Subordinate Court at Dindigul. The plaintiffs in O.S. No. 345 of 2014 filed a suit for permanent injunction restraining the petitioner, fourth and fifth respondents herein (D-1 to D-3), from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property, till they are evicted by due process of law, by following the principles of natural justice. The injunction was sought for on the ground that they are the lessees of the property belonging to defendants 1 to 3.

2. The injunction is sought for with reference to property, i.e., Shop Nos. 1 to 3, situate at Palani Taluk, Palani Town, Adivaram, Municipal Ward 20, Block 3 in T.S. Nos. 880 and 881, measuring art extent of 16 ft. x 16 ft., including front vacant site measuring an extent of 41 ft. x 11 ft., belongs to the petitioner/temple. The lease was for the period from 01.07.2009 to 30.06.2012.

3. The petitioner/temple has issued a notice dated 08.08.2014 informing that the

tenancy has come to an end by efflux of time; and thus the plaintiffs had to render back possession and in case of failure, the temple administration may initiate proceedings under Section 78 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959 ("Act" in short). Despite this legal notice, the tenants have rushed to the Court seeking an order of injunction.

4. The Court below, while passing an order in I.A. No. 522 of 2014, has referred to the notice (referred to supra) issued by the first defendant dated 08.08.2014 and despite deriving knowledge that the petitioner herein intended to take action only in accordance with law, has chosen to observe that the plaintiffs are in possession of the suit property and directed that the status-quo to be maintained, i.e., the possession of the suit property should continue to be with the plaintiffs.

5. The defendants 1 to 3 filed a written statement stating that the defendants have no inclination to take possession except following the due process of law. Immediately, on seeing this statement, the Court below should have either dismissed the suit recording the undertaking. But that has not been done.

6. Therefore, the first defendant filed a Civil Revision Petition before this Court in CRP (MD) No. 196 of 2014, seeking a direction to expedite the disposal of the injunction application in I.A. No. 522 of 2014 in O.S. No. 345 of 2014.

6.1. Before this Court also, the first defendant reiterated the stand that the defendants are not inclined to take possession, except by due process of law. Hence, this Court directed the learned Subordinate Judge, Palani to dispose of the suit in O.S. No. 345 of 2014 along with I.A. No. 522 of 2014, within a period of four weeks from the date of receipt of a copy of the order, especially taking into account the averments stated in Paragraph-10 of the written statement.

6.2. It would be appropriate to quote paragraph 10 of the written statement, which reads thus:-

"10. This defendant is a responsible institution and its day to day activities are being governed and carried out as per the provisions of Tamil Nadu Hindu Religious and Charitable Endowments Act 1959. This defendant is hereby categorically states that they have no inclination to take possession over the suit properties except by due process of law. As specially stated in the impugned notice dated 08.08.2014 it has been categorically and in unequal terms has been made very clear that the plaintiffs herein were given an opportunity to vacate the suit properties and render the possession failing which this defendants will resort to the proceedings as contemplated in Sec. 78 and 79 of the Tamil nadu Hindu Religious and Charitable Endowments Act 1959."

6.3. This order passed by this Court has been received by the Trial Court on 06.11.2014. The suit has been adjourned to 17.11.2014, as the Judge was on Medical Leave and again it was adjourned from 17.11.2014 to 01.12.2014. On 01.12.2014, it has been adjourned for filing vakalat and counter of respondents

2 and 3 in the suit by 08.12.2014 and the interim order has been extended till then.

6.4. The order passed by this Court is meant to be executed in letter and spirit. The order passed directing disposal within a period of four weeks is the outer limit. It is not necessary for the Court to wait till the expiry of 30 days. In any event, the Court should have disposed it of, at least on or before 06.12.2014. But it has been adjourned beyond 06.12.2014.

6.5. Frustrated with the functioning of the Court below, the petitioner/first defendant has filed this petition.

6.6. With due respect to the learned Judicial Officer, who passed the order, this Court could not restrain itself from making the following observations with regard to the approach and attitude of the Court. Neither the substantive law nor the procedural law has been considered while passing the order.

6.7. It would be appropriate to consider the reasons alleged by the first defendant/the petitioner herein, for seeking transfer of the suit. This transfer CMP has been filed only on 01.12.2014. In the affidavit, it is alleged that the Presiding Officer is continuously on leave and despite direction from the High Court, the first defendant/petitioner is not able to get the order of interim injunction vacated.

6.8. A perusal of the notes paper reveals that notes have been written as if the Presiding Officer was making the entries, but ultimately an observation has been made that the Judge was on leave.

6.9. Even on the date, when the Presiding Officer has taken up the case, the order passed did not reflect that the Officer concerned has read the order of this Court. If the conditional order passed in the Civil Revision Petition has been read by the Judicial Officer, the Judicial Officer would not have adjourned the matter at all. The indiscriminate adjournment made has propelled the first defendant to file the Transfer Petition. Therefore, even if the period prescribed by this Court did not expire, the defendants have a cause to complain.

7. When the plaint itself makes it clear that the defendants have taken action only in accordance with law and that the future course of action would also be taken only in accordance with law, whether the Court is justified in granting an order of injunction is the first issue.

7.1. Even after the written statement being filed, assuring the Court that the eviction proceedings would not be taken, except by following the due process of law, what made the Court, not to vacate the order of injunction.

7.2. Despite the order of this Court giving directions to dispose of the suit and injunction petition within a limited time frame, what prompted the Court below to adjourn the case to a period which is beyond the time given by this Court.

7.3. These issues raised in the Transfer Petition would certainly make the eye-

brows raised.

8. Under normal circumstances, this Court would have ordered notice to the respondents. But, here is a case where there is a patent illegality which is apparent on the face of the record, which needs correction by this Court by exercising the Supervisory Jurisdiction as contemplated under Article 227 of the Constitution of India.

8.1. As already pointed out and as pointed out below, the violations with regard to substantive law as well as the procedural law would go to show that the plaintiffs have been allowed to misuse the process of law.

8.2. It is appropriate to consider the provisions applicable to evict the tenants where the property of the Temple has been leased out. Before considering the provisions, it is necessary to look into the principles underlying the administration of properties of the Temple.

8.3. The Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959, provides that administration of temples including specific endowments attached to it, and all religious endowments shall be subject to the superintendence and general control of the Commissioner for securing proper administration and to see that their income is duly appropriated for the purpose for which they are founded. Keeping that mind, specific definition has been given for the term "encroachment".

8.4. The "encroached has been defined in Clause (b) of Explanation to Section 78(1) of the Act as under:-

"any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or license granted to him."

8.5. It is not the case of the plaintiffs that the property did not belong to the defendants. It is not the case of the plaintiffs that there is violation of Sections 78 and 79 of the HR & CE Act. Admittedly, the lease period has come to an end by 30.06.2012. Therefore, as per the definition given, the status of the plaintiffs is that of an encroacher.

9. Whether an encroacher can ask for an order of injunction restraining the authorities from exercising their statutory duties prescribed under the HR & CE Act is the next issue.

9.1. As per the provisions contemplated under Section 78 of the Act, the Assistant Commissioner, having jurisdiction either suo motu or upon a complaint made, if has reasons to believe that any person has encroached upon the property belonging to religious institution or endowment, he shall submit a report to the Joint Commissioner.

9.2. The Joint Commissioner, on receipt of the report, if finds that there is a prima facie case of encroachment, he shall issue notice specifying the particulars of encroachment, calling upon the encroacher to show-cause before a certain

date, why an order requiring him to remove the encroachment should not be made. If the encroacher files an objection, after conducting enquiry, if the Joint Commissioner is satisfied that there has been encroachment, he may direct or require the encroacher to remove the encroachment.

9.3. If the encroacher did not remove the encroachment, the Assistant Commissioner, having jurisdiction, may remove the encroachment and obtain possession of the property, taking police assistance, if need be. It is open to the person aggrieved to institute a suit to establish that the religious institution has no title to the property. This is the mode of conviction as prescribed under Sections 78 and 79 of the Act.

9.4. Invoking the provisions of Section 78 of the Act, notice has been issued to the plaintiffs calling upon them to render back possession. Rightly the notice has been issued as contemplated under Section 78 of the Act. On reading that the notice has been issued under Section 78 of the Act, the Court below ought not to have entertained the suit. The Court should have understood that the plaintiffs have no cause of action. Even after the first defendant issuing the notice under Section 78 of the Act, the suit has been filed as if the first defendant wanted to adopt extra legal methods. In other words, pleadings have been camouflaged, only for the purpose of making the suit maintainable and to show as if the plaintiffs have a cause of action.

9.5. Promptly, the defendants have filed the written statement stating all the steps that are likely to be taken for removing the encroachment and also giving an assurance that the defendants have no inclination to take extra legal methods.

9.6. When it is made clear that the defendants have no such inclination to adopt extra legal methods, the Trial Court should have awoken at least at that stage and should have dismissed the suit at least after recording the undertaking. That has not been done.

9.7. That made the first defendant to approach this Court by filing a Civil Revision Petition. Despite the direction from this Court, the Trial Court has not chosen to take it seriously and has given adjournment in a casual way and that has driven the first defendant to file the present Transfer CMP.

9.8. The Court dealing with injunction application is expected to find out:

- (a) whether prima facie case exists or not?
- (b) whether balance of convenience lies in favour of the plaintiffs?
- (c) whether irreparable injury is likely to be caused, if injunction is refused?

9.9. The purpose or function of injunction is to restrain action or interference of some kind to provide preventive relief against irreparable loss or injury. It is aimed at, as a protection for the future. The action on the part of the statutory authority cannot be prevented by using the order of injunction or order of status-quo as a tool. This exactly is sought to be achieved by the plaintiffs by invoking

the provisions of Order 39 Rule 1 of the CPC. The general purpose of injunction is to restrain some wrongful act, i.e., to restrain the exercise of rights, to prevent threatened wrongs, to restore the violated decisions, and to secure permanent enjoyment of rights of properties (Story, Equity Jurisprudence, Section 868).

9.10. When the prima facie case of the plaintiffs itself discloses that the action taken is legal and absolutely there is no scope to show that there is violation of legal process, the Court ought not to have granted an order of status-quo.

9.11. This Court, taking note of the fact that the intention of the defendants was not to use illegal methods, has given a direction not in the sense of exercising its authority, but has given a guidance to the lower Court to dispose of the suit based upon the averments made in Paragraph-10 of the written statement. The Court below refused to understand the real issues involved and it has chosen to adjourn the matter without any necessity. Therefore, the first defendant had been put under compulsion to file this Transfer CMP.

10. Under the stated circumstances, this Court has been driven to the necessity of invoking Article 227 of the Constitution of India, while disposing of this Transfer CMP.

11. This is a case where the maxim *res ipsa loquitur* can be applied. The way in which the Trial Court has handled the suit is a clear indication of non-application of mind by the Court below. Therefore, it is not necessary to order transfer. When the Trial Cert did not obey the orders of this Court, and when the facts clearly show that the suit itself is not maintainable or the suit itself can be disposed of based upon the undertaking given by the defendants, it is not necessary to order transfer.

12. This Court felt that it is a case where the plaint should be ordered to be rejected, but without notice to the respondents it may not be advisable to take such a drastic step. Therefore, the plaint is not ordered to be rejected. But, suit in O.S. No. 345 of 2014 is dismissed with costs of Rs. 10,000/-, while recording the undertaking that the defendants will not evict the plaintiffs without following the due process of law.

13. Injunction is a relief in equity. It is a relief of discretion. Discretion should not be used in favour of a person, who approaches the Court, to enable him to bypass the law, conceal the material facts, to make mockery of the judicial process and thus challenge the entire judicial system.

14. The plaintiffs shall pay the cost of Rs. 10,000/- (Rupees ten thousand only) to the first defendant/petitioner, which should be utilized for the Annathana Scheme of the Temple. With the above directions, the Tr. CMP is disposed of. No costs.