

(1954) 11 AP CK 0007

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No's. 1 and 2 of 1954

Peddinti Gopalacharyulu

APPELLANT

Vs

Rudraveeranna and Others

RESPONDENT

Date of Decision : 19-11-1954

Acts Referred:

Andhra State Act, 1953 — Section 30
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Specific Relief Act, 1877 — Section 42

Citation : AIR 1955 AP 142

Hon'ble Judges : Subba Rao, C.J; Bhimasankaram, J

Bench : Division Bench

Advocate : V. Vedanthachari, T. Rangaswamy Iyengar and G. Venkatarama Sastry, for the Appellant; M. Seshachalapathy and Addl. Govt. Pleader, for the Respondent

Judgement

Bhimasankaram, J.

(1) These two appeals under the Letters Patent are against the Order of a single Judge of the Madras High Court declining to grant a temporary injunction against the respondents restraining them from taking possession of the lands in dispute pending the disposal of A. S. Nos. 1013 and 1015 of 1953.

(2) The learned Judge took the view that, in the circumstances of these cases, no injunction could be asked for. Before we go into the question of law, it is desirable to state briefly the facts leading up to the present appeals.

(3) A. S. Nos. 1013 and 1015 of 1953 are appeals against the common judgment in O. S. Nos 97 and 99 of 1952 on the file of the Subordinate Judge's Court of Elurn. The suits were instituted by the appellant in these appeals for a declaration of his right of occupancy in the lands in dispute in each of the suits. The appellant is the arechaka of three temples, Sri Venugopalaswamy Varu, Sri Sitharamaswamy Vary and Sri Kesavaswami Varu in the village of Duvva in the West Godavari District. The suit lands admittedly belong to the deities. The

appellant claims, however, that he is entitled to remain in possession of the properties as long as he performs archakathwam service and that he cannot during that time be evicted from the lands.

The respondents in the appeals, who were defendants in the Original Suits, are trustees of the temples. Their contention is that both the Melwaram and the Kudiwaram belong to the deities and that the plaintiff has no interest in the lands, but is entitled only to wages for services rendered. The suits were dismissed by the Sub-Court. A. S. Nos. 1013 and 1015 of 1953 are appeals against that decision. Pending those appeals, the present appellant filed C. M. P. Nos. 10551 and 10552 of 1953 in the High Court at Madras seeking in each case, an injunction to restrain the respondents from taking proceedings to recover possession of the lands in dispute under S. 87 of the Madras Act (19 of 51) pursuant to a certificate already obtained by them under S. 78 of Madras Act (2 of 1927).

(4) It is objected on behalf of the respondents by the learned Additional Government Pleader that this Court has no jurisdiction to issue any such injunction. The argument is that the power of the High Court to issue an injunction, like that of any court, in the moffusil, is limited by the provisions of O. 39, Rr. 1 and 2 and that those provisions are inapplicable to a case like the present.

It is necessary to extract the relevant portions of these rules in order that the argument may be appreciated :

"Rule 1 : 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 defraud his creditors, the Court may by order grant a temporary injunction to restrain such act.

Rule 2 (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."

It has been conceded by Mr. Vedanthachari for the appellant that he cannot bring these cases under R. 1, but he argues that the case comes under R. 2. Alternatively, he says that this Court has inherent jurisdiction to issue an injunction in circumstances like the present, even though the case does not come within the scope of O. 39, Civil P. C.

We propose to deal in the first place with his contention that the suits in question are in substance, suits for restraining the defendants from committing injury of any kind. We are unable to accede to this argument. In our opinion, it is impossible to hold that a suit for a declaration that the plaintiff has a right of occupancy in the suit lands and that he cannot be disturbed from his possession as long as he renders Archakathwam service can by any stretch of language be considered to be one for restraining the defendants from committing injury of any kind.

It is true that the language of R. 2, O. 39 is not very artistic. We apprehend that the rule when it speaks of suits for restraining the defendants from committing a breach of contract or other injury of any kind, speak of suits for injunction restraining the defendant from doing any such act. But it is perfectly clear to us that where the relief asked for in a suit is only a declaration, it would be altogether inappropriate to described the suit as one for restraining the defendant in any manner whatsoever. That being so, we are unhesitatingly of the view that the petitions under appeal are not maintainable under either R. 1 or R. 2 of O. 39, Civil P. C.

(5) The question still remains as to whether this Court has inherent jurisdiction to issue an injunction in the circumstances. We may premise the discussion by stating that it has been firmly settled that inherent power vested in courts under S. 151, Civil P. C. cannot be invoked where the procedure to be adopted in a particular case or class of cases is expressly provided for by the Code. In such matters, the Court cannot, act except under the conditions specified by the express provisions. In other words, a Court cannot, under the guise of inherent power extend the scope of a provision which imposes specific limitations.

(6) It is argued, however, that the powers of the High Court are not circumscribed by the CPC and that, under the Letters Patent of the High Court, the Madras High Court has an inherent power to issue an injunction in cases not covered by O. 39, Civil P. C. and that under S. 30, Andhra State Act)30 of 1953) this Court can also exercise that power. The Section referred to runs thus :

"The High Court of Andhra shall have, in respect of the territories for the time being included in the State of Andhra, all such original appellate and other jurisdiction as, under the law, in force, immediately before the prescribed day, is exercisable in respect of the said territories or any part thereof by the High Court at Madras."

It is true that under this provision this Court has all such original appellate and other jurisdiction as is exercisable by the High Court at Madras under the law in force immediately before the prescribed date. We must, therefore, see whether the power now invoked comes under the original, appellate or other jurisdiction conferred on the Madras High Court under its Letters Patent. Clause 19 therein refers to the law or equity to be applied to cases coming before the High Court in the exercise of its ordinary original civil jurisdiction. Ordinary original civil

jurisdiction is exercisable only as provided for by clause 11 :

"within such limits as may from time to time be declared and prescribed by any law made by the Governor in Council and until such local limits shall be so declared and prescribed, within the limits of the local jurisdiction of the said High Court of Madras at the date of the publication of these presents and the ordinary original civil jurisdiction of the said High Court shall not exceed beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction."

Clearly the High Court of Andhra has not derived any original jurisdiction of this nature from the Madras High Court apart from the fact that in a case of this kind, there is no question of the exercise of ordinary original jurisdiction. Clause 20 deals with the exercise of extraordinary original civil jurisdiction, which is defined by cl. 13 as

"Power to remove and try and determine any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Madras, subject to its superintendence, when the said High Court shall think proper to do so."

Clause 20 provides that the High Court of Judicature at Madras in the exercise of the extraordinary original civil jurisdiction, shall apply in each case

"such law or equity and rule of good conscience which would have been applied to such case by any local court having jurisdiction therein."

It is thus manifest that, even in the exercise of extraordinary original civil jurisdiction, the High Court cannot have powers beyond those of the local Court from whose file the case might have been removed. Clause 21 which deals with the exercise of the High Court's appellate jurisdiction states that the High Court shall apply, in the course of such exercise, to each case coming before it such law or enquiry and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case. This again limits the jurisdiction of the High Court to that of the Subordinate Court from which an appeal is taken. The foregoing discussion leaves no doubt in our minds, that this Court has no inherent jurisdiction to issue an injunction apart from the provisions of O. 39, Rr. 1 and 2, Civil P. C.

(7) Reference may be made in this connection to some decisions of the Madras High Court bearing on the point. The leading case on the subject is the decision of a single Judge of the Madras High Court in -- "Karuppayya v. Ponnuswami", AIR 1953 Mad 500 (2) (A). In that case, a decree was passed against the petitioner therein ex parte. He then applied for the setting aside of that decree and an order was passed that it should be set aside if he gave security for the suit amount and costs within a specified time. As that order was not complied with, the application was eventually dismissed.

A Civil Revision Petition was filed against the dismissal and, pending the revision petition, the petitioner filed a Civil Miscellaneous Petition seeking an injunction

restraining the respondents--plaintiffs from executing the ex parte order. Objection was taken that the High Court had no power to grant the injunction unless the case fell either under R. 1 or R. 2 of O. 39, Civil P. C., and that the case not being one such, the petition was not maintainable. The learned Judge discusses cls. 19, 20 and 21 of the Letters Patent and says :

"It is only under Cl. 19 of the Letters Patent that a Chartered High Court can administer the law and equity that would have been applied by such High Court if the Letters Patent had not been issued, and the cases in which it can apply such law or equity are cases arising in the exercise of its ordinary original civil jurisdiction."

The learned Judge points out that the decisions on which reliance was placed before him in support of the proposition that there was an inherent power, were all decisions dealing with cases in which the High Court was acting in the exercise of its ordinary original civil jurisdiction. As regards the decision in -- N. Govindarajulu Nayudu Vs. Imperial Bank of India, B) an earlier decision of a single Judge of the same court, he pointed out that the attention of the learned Judge who decided that case, had not been drawn to the provisions of the Letters Patent. It seems to us that the view taken by the learned Judge is in accordance with the language of the Letters Patent and is right.

(8) Mr. Vedanthachari, however, drew my attention to the decision in -- "Subramaniam v. Seetharama Ayyar", AIR 1949 Mad 104 (C). Even that case says that the subordinate Courts and the High Court and the High Court sitting as an appellate court against the orders of the subordinate courts have no inherent jurisdiction to issue an injunction apart from the provisions of O. 39, Civil P. C.

It is true that their Lordships say, referring to the decisions in -- Kn. Pr. Periakaruppan Chettiar Vs. R.M.S.R.M. Ramaswami Chettiar and Another, (D) and "Govindarajulu Naidu v. Imperial Bank of India, Vellore (B)" that it was clearly laid down therein that the extraordinary jurisdiction possessed by the High Court is not possessed by any of the subordinate Courts. In saying so, their Lordships were simply distinguishing those two cases as not being in point for the purpose of their discussion and not ruling that there was any such extraordinary jurisdiction. In any case, it is clear that the proposition which they accepted is a proposition against the present appellant as what this court is now called upon to exercise is only appellate jurisdiction.

(9) Mr. Sechachalapathy, on the other hand, drew our attention to the decision in -- K. Nagabhushana Reddy by guardian K.V. Srinivasa Reddy Vs. Reddivari Narasamma, (E). This decision affirms the view taken by Bardswell J. in Karuppayya Nadar through his authorised agent Ratnasami Nadar Vs. Ponnuswami Nadar and Another, (2) (A). The head-note of this case runs thus :

"In the exercise of the appellate jurisdiction of the High Court over moffusil proceedings, the High Court has no inherent power to pass an order of injunction

outside the scope of O. 39 of the Civil Procedure Code. Such an order cannot be passed merely because it is in accordance with equity and good conscience, when O. 39 of the Code does not apply to the facts of the case."

(10) We are inclined to accept and follow the above decisions of the Madras High Court. We, therefore, do not propose to refer to the decisions of the other High Courts some of which, it seems to us, can be explained on the basis of the exercise of ordinary original civil jurisdiction while most of the others do not contain any discussion of the relevant provisions of the Letters Patent. Before parting with these cases, however, we would like to state that, in our opinion, it would be desirable that the provisions of O. 39, Civil P. C. should be enlarged so as to empower the Courts to grant injunctions in cases like the present.

If the trustees in these cases should take over possession of the lands in dispute pending the appeals and if ultimately this Court holds that the plaintiff is entitled to the declaration asked for, the present appellant will have to launch fresh litigation for recovery of possession of the suit lands, because the declaratory decrees which he may get not being executable would not be of any avail to enable him to get back possession. The Rules Committee of the High Court may deal with this suggestion.

(11) In the result, the appeals fail and are dismissed with costs. One set.

(12) Appeal dismissed.