

(1985) 12 KL CK 0004
In the High Court Of Kerala
Case No : C.R.P. No. 2216 of 1985

Pulikkalath Mohammed

APPELLANT

Vs

C. Mohammed Haji and Another

RESPONDENT

Date of Decision : 05-12-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A, 151

Citation : (1986) 23 KLJ 61

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : V.P. Mohan Kumar, K.P. Sreekumar, V. Ramkumar and P. Santhosh Kumar, for the Appellant; M.C. Sen, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—The revision petitioner is the 1st defendant in O. S. 157/81. He is the present President of Udumbra Pazhaya Jumayath Palliparipalana Committee. Plaintiff filed the suit for permanent injunction restraining defendants 1 and 2 from trespassing in the plaint schedule property and using the same as a burial ground. Defendants contended inter-alia that the plaint schedule property is the ancient burial ground of the mahal and the plaintiffs cannot restrain the defendants and the members of the mahal from using the same as burial ground. They also contended that the plaint schedule property is not identifiable. Plaintiffs filed I. A. 2252/85 for police protection against the defendants to enforce the order made by the court in I. A. 1275/81. T. A. 1275/81 was filed by the plaintiff for an interim injunction restraining the defendants or their men from entering upon the plaint A schedule property or committing any loss or damage to the same. Injunction was granted by the court below. The grievance of the plaintiffs is that despite the order in their favour defendants continued to trespass upon the property and attempted to use it as a grave-yard unauthorisedly. Plaintiffs contended that the respondents have no manner of right to enter into the plaint schedule property or use it for burying

dead bodies. According to the plaintiffs, though they approached the police authorities to enforce the injunction order they did not show even any lukewarm response. The court below allowed the petition holding that as the injunction order is in force it is the duty of the court to see that it is enforced.

2. Admittedly, the injunction order granted by the court below is in force. The contention of the revision petitioner is that the court below went wrong in passing the impugned order. It is also contended that the plaint schedule property is not identifiable and on that ground also the order of the court below is not sustainable. Counsel for the plaintiffs submitted that the contention that the suit property is not identifiable is without any merit and in view of the commission report specifying the boundaries of the property it is indeed futile to contend that the suit property is not identifiable. Counsel for the plaintiffs contended that the court below was perfectly justified in passing the impugned order as it is the bounden duty of the court to see that its order is enforced and not flouted wantonly. In view of the commission report contention of the defendants that the property is not identifiable is not tenable.

3. The important point to be considered is as to whether the court is entitled to enforce the order in I. A. 1275/81 by affording police protection. Though action can be taken by the court for violation of injunction under Order 39 Rule 2A C. P. C., that does not end there as it is open to the court to implement its order by exercising its inherent powers under Sec. 151 C. P. C. In this context it is useful to refer to the decision in *Hari Nandan Agrawal and Another Vs. S.N. Pandita and Others*, wherein it has been held as follows:

Where the plaintiff has been dispossessed by the defendants by wilfully disobeying the interim injunction order restraining them from dispossessing the plaintiff the Court which issued the order can in exercise of its inherent power after considering the circumstances of the case and the conduct of the parties pass such order in the ends of justice as would undo the wrong done to the plaintiff in whose favour the injunction order had been issued.

As injunction order granted by the trial court is in force it cannot be allowed to be meddled with and to prevent any flagrant acts of violation of the order the court can issue suitable orders by exercising its inherent powers under Sec. 151 C P. C. In the decision in *K.R. Mallesha Vs. Ramnath Gajanand*, it is held that in order to do justice or to prevent abuse of the process of court, the civil courts have ample jurisdiction to give directions to the police authorities to render aid to the aggrieved parties with regard to the implementation of the orders of the court or the exercise of the rights created under orders of court.

4. In a case where manifest injustice would result if immediate action is not resorted to the court should definitely exercise its powers under Sec. 151 CPC. Sec. 151 preserves the power of the court to pass orders ex-debito justice. By virtue of the duty of the court to do justice to the parties the court can definitely exercise powers under Sec. 151 C. P. C. It is true that inherent powers cannot

over-ride the provisions of the Code For violation of the injunction order action can be taken under Order 39 Rule 2A. But, that may hardly be the answer in a situation like the present case. Violation of the injunction order by burying dead bodies in the suit property has to be prevented as the plaintiffs have obtained order of injunction against the defendants. The injunction order cannot be allowed to remain as a worthless piece of paper. Injunction order granted by the court cannot be allowed to be flouted with impunity. By the exercise of power under Sec. 151 C, P. C. it cannot be said that it will conflict with the action to be taken under Order 39 Rule 2A C. P. C. In *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, it is held as follows:

Section 151 itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it.

In some cases violation of injunction order will have to be effectively met by taking immediate preventive action. If this could be done by exercising powers of the court under Sec. 151 C. P. C. the court should not feel diffident to exercise that power. In many cases action taken under Order 39 Rule 2A may altogether be found wanting. In such cases it is always open to the court to render necessary assistance to the aggrieved party by invoking powers Sec. 151 C. P. C. Whenever interests of justice require compelling attention of the court to do justice to the party who is faced with violation of his legal rights the court should definitely prevent such transgressions or violation. For that court can fall back in its powers under Sec. 151 C. P. C.

5. In *Hurro v. Shoorodhonee Debia* (9W. R. 402) the following remarks found in *Domats' Civil Law*, Chapter 12 at page 88 has been stated:

Since laws are general rules, they cannot regulate for all time to come so as to make express provisions against all the cases that may possibly happen. It is the duty of the judges to apply the laws not only to what appears to be regulated by their express dispositions but to all the cases to which a just application of them may be made, and which appear to be comprehended either within the express sense of the law, or within the consequences that may be gathered from it.

The provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. When action has to be taken under Sec. 151 C. P. C. may depend upon the facts and circumstances of each case. To say that, the court below has no power to pass the impugned order is difficult to be accepted. In *Raj Narain Saxena Vs. Bhim Sen and Others*, the following statement of Mahmood J, in ILR 5 All 163

has been adopted.

Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law.

As a matter of general principle prohibition cannot be presumed. To say that the remedy open to the plaintiffs is only to take action under Order 39 Rule 2A of the C. P. C. will be no effective answer to the threatened violations of the injunction order. If the injunction order is allowed to be violated there is every possibility of the suit property being converted into a burial ground much to the annoyance and discomfiture of the plaintiff who have obtained the order of injunction against the defendants.

The order of the court below does not warrant interference. The C. R. P. is dismissed. There is no order as to costs.