

(1995) 03 KL CK 0013
In the High Court Of Kerala
Case No : C.R.P. 857 of 1993

Raman Nambissan

APPELLANT

Vs

Damodaran Nambissan and Others

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32

Citation : (1995) 1 KLJ 566

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

Bench : Single Bench

Advocate : P. Radhakrishnan, for the Appellant; M.S. Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay C.J.

1. Revision petitioner is the decree holder who filed Execution Petition for enforcement of mandatory decree in O.S. 126 of 1976. He also sought enforcement of the prohibitory injunction against the respondents in terms of the decree. The executing Court dismissed the Execution Petition holding that enforcement of mandatory injunction cannot be granted as it is barred by limitation. The question that arises for consideration is whether decree for mandatory injunction can be enforced by the decree holder disregarding the period of limitation. Article 135 of the Limitation Act provides that for the enforcement of the decree granting mandatory injunction the period of limitation is 3 years from the date of decree or where a date is fixed for performance, of such date. As the decree was passed on 26-5-1988, the prayer in the Execution Petition for enforcement of the decree is barred by limitation.

2. Next question that arises for consideration is whether the learned Munsiff was justified in holding that the revision petitioner is not entitled to the relief regarding of prohibitory injunction. The learned Munsiff held that this is a case

where the revision petitioner has no grievance or case that the prohibitory injunction granted in his favour was ever disobeyed or violated by the respondents and hence he cannot seek the enforcement of the decree of prohibitory injunction. Counsel for the revision petitioner submitted that the Munsiff was not justified in holding so and she overlooked the averments in the Execution Petition.

3. Contention of the revision petitioner is that even if the enforcement of mandatory injunction as per the decree is barred by limitation the prayer for enforcement of the decree for prohibitory injunction should have been allowed by the Executing Court. The Court did not grant it on the ground that there was no sufficient averment in the Execution Petition with regard to the said prayer. Order 21 Rule 32 is concerned with decree for specific performance for restitution of conjugal rights or for injunction. Rule 32 provides that where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree can be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract, or for injunction by his detention in the civil prison, or by the attachment of his property, or by both. When a decree is sought to be enforced under Order 21 Rule 32, there must be specific averments in the execution petition that the party against whom the decree for injunction has been granted despite opportunity of obeying the decree has willfully failed to obey it and hence execution of the decree has become necessary. When execution petition is filed it is elementary to state that the respondents against whom decree for injunction was passed willfully disobeyed it despite opportunity of obeying it. In other words, willful disobedience of the decree by the respondents should have been highlighted in the petition. As there is no specific averment as contemplated under Rule 32 in the petition, revision petitioner cannot successfully proceed with the matter in execution. As the alleged violation of the decree has not been specifically pleaded in the Execution Petition, the Court was justified in holding that sufficient averments are not there for enforcement of the decree for prohibitory injunction. When the statute mandates specific details to be mentioned by the decree holder, he has to state it in express terms and cannot build up a case by implication on indefinite and vague averments.

There is no merit in the Civil Revision Petition and hence the same is dismissed. It is needless to say that it is open to the revision petitioner to file fresh execution petition with necessary pleadings.