

(1981) 02 KAR CK 0008
In the Karnataka High Court
Case No : Second Appeal No. 54 of 1981

R.G. Janthakal

APPELLANT

Vs

Bharat Parikh and Co.

RESPONDENT

Date of Decision : 23-02-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 103

Citation : AIR 1981 Kar 208 : (1981) 1 KarLJ 365

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : U.L. Narayana Rao and V.K. Varadachari, for the Appellant; K.S. Hanumantha Rao and H.B. Datar, for the Respondent

Judgement

1. This appeal had appeared on earlier occasions for admission. Respondent had entered caveat. Counsel for parties therefore agreed to argue this case in full so that the appeal could be disposed of one way or the other finally.

2. The facts leading to the appeal may be stated briefly as follows:

3. The plaintiff is a firm of partners owning among other things a leasehold right in Hirekandavadi and Megalahalli villages, Holakere Taluk, Chitradurga District. The plaintiff acquired the mining area measuring in all about 80 acres from the previous lessee of the Government one K. Raghavendra Rao. The plaintiff's mining lease area was described in Schedule B to the plaint. It was plaintiff's case that the defendant, an., other firm, also having right over a mining area measuring about 200 acres adjoining the plaint B schedule property had done various acts, commissions, omissions, threats, incursions and removing of manganese ore from plaintiff's B Schedule area and therefore it was necessary to declare that certain quantities (200 metric tons) of Manganese ore lying at the sidings of Chikkajajur and Sasalu Railway Stations belonged to the plaintiff (no specific prayer as to the nature of declaration) and that the defendant should be restrained by an injunction from interfering with the peaceful possession and mining operations of the plaint schedule B area by the plaintiff.

4. The defendant resisted the suit by stating that there was no confusion as to plaintiff A schedule area and plaintiff B schedule area and that it had not encroached or its men had not encroached or trespassed into schedule B area of the plaintiff. There was no need to do so. The two mining leases were separately demarcated by the Director of Geology and boundaries were mentioned in clear terms and that the defendant-firm had no intention of ever encroaching or trespassing into the area comprised in plaintiff Schedule B area. It, however, asserted that the ore stacked in the sidings of the two railway stations was its own and that the plaintiff was not entitled to any kind of declaration or injunction in respect of the same. In the result, it prayed for dismissal of the suit.

5. The trial Court framed as many as six issues on the above pleadings and they are as follows:

(1) Whether the plaintiffs prove that the manganese ore transported by the defendant in January and February 1972 is removed from the mine-head situated, in plaintiff B schedule property?

(2) Whether the plaintiffs prove that the manganese stacked by the defendant in Chikkajajur railway station yard and Sasalu railway station yard is owned by them and that the defendant has unlawfully stacked the same?

(3) Whether the plaintiffs prove that they are the owners of the manganese ore stacked by the defendant in Sasalu railway station yard?

(4) Has the suit been properly valued, and is the Court-fee paid sufficient?

(5) Whether the defendant proves that the temporary injunction granted in his favour in O. S. No. 51/1972 is binding on, the plaintiffs and that the suit is not maintainable?

(6) Whether the plaintiffs are entitled to the declaration as prayed for?"

6. The plaintiff and the defendant adduced oral and documentary evidence in support of their rival stands. The learned Munsiff at Hosadurga after considering the evidence held issues Nos. 1 to 3 in the negative and issue No. 5 also in the negative against the plaintiff and on issue No. 6 which related to declaration he held that plaintiff was not entitled to any declaration. Aggrieved by the same, the plaintiff filed an appeal to the Civil Judge, Chitradurga, in R. A. No. 1/ 1977. In the light of the submission made by the defendant and respondents, counsel that there was no dispute about the ownership of the respective mining areas of the plaintiff and the defendant as per Exhibit P-4 and Exhibit P-5, the sketches relating to schedule properties and the plaintiff having given up the prayer for declaration, the learned first appellate Judge proceeded to make an order in the following terms:

"Exhibit P-4 is the plan prepared by the Director of Mines and Geology and enclosed along with the Mining Licence No. 1018. Similarly, Exhibit P-5 is the plan prepared by the Director of Mines and Geology along with the mining lease

of M. L. No. 593. These facts are also undisputed, Similarly, the plaintiffs are the owner of the M. L. No. 1018 shown in B Schedule and defendant is the owner of area covered by M. L No. 593.

The learned counsel on behalf of the respondent fairly submitted that the defendant has no right to enter into the area covered by M. L. No. 1018, and he has no such intention to do so also. Both the sides admitted the hand sketch attached to the mining leases prepared by the Director of Mines and Geology marked at Ex. P-4 and Ex. P-5 as the correct sketches and they have no objection to carry out the mining activities in respect of areas

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In my opinion in view of the admitted fact that the B schedule area covered by M. L. No. 1018 shown in the admitted hand sketch, Ex. P-4 is of the exclusive right of the plaintiffs, the defendant has -no manner of right-to interfere with the mining operations in plaint B schedule area

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Therefore, in my opinion to avoid further trouble or inconvenience on the spot, the defendant should be restrained from entering upon or causing entry of his men or workers into any part of the Plaint B schedule area which is covered by Ex. P-4 and also from causing any disturbance or interference to the work of mining operations by the plaintiffs in the B Schedule area. In other respects, the appeal has to be dismissed. Hence the following order."

7. Thus, the appeal came to be partly allowed and dismissed in other respects.

8. Aggrieved by the appellate order, the defendant has presented this second appeal inter alia contending that the appellate order is wholly defective inasmuch as an injunction has been issued without recording a finding that the defendant had entered or in any way encroached or threatened to encroach or had trespassed into plaint schedule area "B". It is further pointed out that there was no issue framed as to whether the defendant at any time had trespassed or interfered with the possession in respect of the plaint B schedule properties. In that circumstance it is urged that the Judgment and decree of the lower appellate Court are liable to be set aside.

9. Shri H. B. Datar, learned counsel for Caveator-respondent plaintiff has strongly urged:

(1) That the lower appellate Court was justified in making that order in the light of the submission made by the appellant defendant as noticed in paragraph 18 of the appellate Court's judgment (which has been extracted above).

(2) That in any event even if no finding was recorded this Court should u/s 103 of the C.P.C. look into the evidence on record and give a finding as to -whether the defendant has or has not interfered with the peaceful possession and

enjoyment of the plaint schedule B properties of the plaintiff.

It is difficult to accede to the second of the submissions made for the Caveator plaintiff. Section 103 of the C.P.C. is attracted only if specific issue is raised and in respect of that issue there is sufficient evidence on record and when that issue has not been determined either by the trial Court or by the lower appellate Court or when that issue has been wrongly decided. In the instant case, there may be evidence as to acts of commissions, omissions, trespass and threats by defendant. But no specific issue was raised in the trial Court nor did the lower appellate Court frame such an issue for the obvious reason that the occasion did not arise on account of the submission made by the defendant that he had no intention to trespass into plaint schedule B properties which distinctly and clearly belonged to the plaintiff. Therefore, question of this Court raising and deciding the issue does not arise in terms of Section 103 of the C.P.C. In so far as it relates to the argument justifying the injunction issued, which, according to Mr. Datar, after all is harmless having regard to the stand taken by the defendant in the written statement and also having regard to the submission made before the lower appellate Court and therefore does not call for interference by this Court.

I am unable to accede to that argument. The proper thing for the lower appellate Court would have been in the light of the submission of the defendant was to dismiss the suit (appeal) with the observation that in the event of the defendant, in any way, interfering with the peaceful possession and enjoyment of the plaintiff, the plaintiff would be at liberty to seek afresh an injunction. Instead of doing that, without discussing either the evidence on record or recording a finding that the defendant at any time had in fact interfered in some manner with the peaceful possession and right to carry on the mining operations in plaint schedule B area by plaintiffs, it was not proper for the lower appellate Court to grant injunction particularly when prayer for declaration did not relate to Immovable property namely, mining area in plaint schedule B area.

10. It is well settled principle of law now that injunction can be issued only on proof of actual interference or threat of interference and not in the absence of it. In any event the trial Court from the pleadings could have but failed to frame an issue on this particular question as to threat and interference by the defendant though it was quite clearly pleaded in the plaint as is evidenced by reading paragraph 8 of the plaint. The lower appellate Court ought to have framed an issue itself and considered the evidence on record and if satisfied could have come to the conclusion one way or the other and then decided the question. This not having been done, the order of the lower appellate Court is liable to be set aside and it is so set aside and the matter is remitted back to the lower appellate Court with a direction that it shall if necessary frame an additional issue as to whether the plaintiff proves interference by the defendant of its right to carry on mining operations in plaint B schedule area peacefully or whether there is threat by the defendant to such carrying on of the operations of the plaintiff. It is for the lower appellate Court if the evidence on record is not sufficient to decide

whether it should record additional evidence after giving opportunity to both sides to lead evidence and decide the case on merits in so far as it pertains to prayer for injunction in the plaint, The lower appellate Court may in accordance with the directions given above dispose of the appeal within three months from the date of receipt of the records from this Court. In all other respects the judgment of the trial Court stands in the circumstances of the case, there will be no order as to costs.

11. In the light of this appeal being dismissed, I.As. do not survive for consideration.

12. Appeal dismissed.