
(1992) 02 MAD CK 0061
In the Madras High Court

S. Rajalakshmi and Others

APPELLANT

Vs

Saradamani Kandappan and Another

RESPONDENT

Date of Decision : 05-02-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1992) 2 MLJ 206

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Division Bench

Judgement

K.S. Bakthavatsalam, J.—The civil revision petition is filed against an order of the learned District Judge, Chingleput, passed in I.A.No.30 of 1992 dated 14.1.1992 exercising his powers u/s 151 of CPC and ordering police protection in favour of the first respondent herein.

2. The first respondent has filed three suits against the petitioners on the file of the original side of this Court and by a common judgment dated 29.11.1991 in C.S. Nos. 95 and 170 of 1984 and 302 of 1989, they were disposed of by Arumugham, J. All the suits filed by the first respondent were dismissed. Subsequent to the said dismissal of the suits, appeals were filed by the first respondent and they are pending on the Appellate side of this Court. The petitioners instituted a suit in O.S.No.2291 of 1991 on the file of the District Munsif, Poonamallee and also filed I.A.No.3163 of 1991 praying for interim injunction restraining the first respondent from interfering with the petitioners' peaceful possession of the suit lands bearing S.Nos.13-16, 18-20 in Saidapet Taluk, Chingleput District. On 18.12.1991, the application praying for interim injunction was dismissed by the learned District Munsif, Poonamallee. Against the said order of the learned District Munsif, the petitioners preferred C.M.A.No.5 of 1992 before the Subordinate Judge at Poonamallee. Originally C.M.P.No.17240 of 1991 was preferred by the petitioners before this Court during Christmas vacation, and by an order dated 26.12.1991 the learned vacation Judge A.R.

Lakshmanan, J. after hearing the learned Counsel on both sides ordered that status quo as on date to be maintained till either or both parties obtain orders from the appellate court against the impugned judgment. The learned Judge has further directed that the standing crops shall not be harvested by both the parties till orders are obtained from the appropriate court and no new crops also shall be raised by the first respondent till then. Clarification was sought for by the first respondent herein by filing C.M.P.No.494 of 1991 and by order dated 14.1.1992, the learned Judge has made it clear that he has not decided about the possession of the property and observed that it is for the appellant in the proposed appeal to move the appellate court for necessary and appropriate order and further directed the Sub Court, Poonamallee to number the appeal filed by the petitioners without insisting upon the production of a certified copy of the decree and number the same, if it is otherwise in order. While matter stood thus, the first respondent herein filed I.A.No.30 of 1992 and made a sworn statement on 13.1.1992 before the District Court, Chingleput as if it is a petition u/s 151, C.P.C. praying to deploy a minimum of 50 police personnel to give protection to her life and property more fully described in the schedule to the petition. It has been alleged before the learned District Judge, Chengalpattu by the first respondent herein that in view of Pongal holidays the petitioners herein will dispossess her and as such there is some urgency in the matter. It is contended by the first respondent before the learned District Judge, Chengalpattu that the petitioners will use force and expel the first respondent herein from the property. The learned District Judge, Chengalpattu passed an order on 14.1.1992, styling to be an interim order, till the appellate Forum hears the appeal filed by the first respondent herein. By the said order, the learned District Judge, Chengalpattu has granted police protection to the first respondent herein. This order is challenged before me.

3. Mr. Dadamirasi, the learned Senior Counsel appearing for the petitioners contends that the learned District Judge has no jurisdiction to pass such an order which is impugned herein. He further argues that even assuming for a moment, the learned Judge has jurisdiction the order passed by him is not valid since it has been passed without serving notice on the petitioners. It is contended by the learned Senior Counsel for the petitioners that the learned District Judge, Chengalpattu ought not to have entertained the petition without serving notice on petitioners. It is also pointed out by the learned senior Counsel that the petitioners/having failed in their attempt to obtain an interim injunction, have preferred an appeal and as such the learned District Judge ought not to have entertained a petition praying for an interim injunction filed by the defendant in the suit. It is further pointed out that police is not a party either in the suit or in any of the proceedings. Apart from these contentions, the learned Senior counsel for the petitioners raised the question regarding the possession of the property and traced out the entire history of the earlier litigations between the parties.

4. Mr. R.Krishnamurthy the learned Senior Counsel appearing for the first respondent contends that under the Civil Court Act, a reading of Sections 12 and

13 confer powers on the learned District Judge to pass interim orders and that considering the facts and circumstances of the case on hand, the order passed by the learned District Judge dated 14.1.1992 is reasonable and the learned District Judge has rendered justice to both the parties. It is also pointed out by the learned Senior Counsel that a learned Judge of this Court in 1939 M.L.J. 419, has decided that an injunction can be obtained by defendants in the suit under Order 39, Rule 1 and as such it cannot be contended that no injunction can be obtained by defendants in the suit. According to the learned Senior Counsel, the orders of Lakshmanan, J. as well as the judgment passed by Arumugham, J. will clearly show that the first respondent is in possession of the property and as such the learned District Judge is right in granting police protection to the first respondent for a limited period.

5. I have considered the arguments of Mr. Dadamirasi, the learned Senior Counsel for the petitioners and of Mr. R. Krishnamurthy, the learned Senior Counsel appearing for the first respondent. The short question to be decided in this petition is whether the learned District Judge has got jurisdiction to pass orders granting police protection, exercising the power u/s 151 of the CPC on the facts of the case on hand. Here is a case where the first respondent has lost her litigation before the original side of this Court and appeals preferred against the said common judgment are pending. While so, the petitioners herein have filed an original suit before the District Munsif, Poonamallee along with an interim application for interim injunction and the interim injunction petition was dismissed and against the same an appeal was filed and it is pending. While it is so, it seems Christmas and Pongal holidays intervened. That is why the petitioners herein have approached this Court during Christmas vacation, and obtained an order from Lakshmanan, J., who was the Vacation Judge at that period. It is also seen that on 13.1.1992 the first respondent herein has sworn to an affidavit and filed before Lakshmanan, J. praying for a clarification of the order of the learned Judge passed on 26.12.1991. On the same day an affidavit was sworn to by the first respondent before the District Judge, Chengalpattu praying for police protection. I am not able to see that any reference is made in the affidavit filed before the learned District Judge, Chengalpattu stating that an application for clarification has been filed before this Court. So apparently when both these proceedings were taken, one before the learned District Judge, Chengalpattu and another before this Court, nothing prevented the first respondent herein from stating before the learned District Judge, Chengalpattu about the filing of a petition before this Court praying for a clarification of the order passed by Lakshmanan, J. dated 26.12.1991. Unfortunately, this has not been done. At the same time, an order giving police protection to the first respondent has been passed by the learned District Judge as mentioned hereinabove, even without giving notice to the petitioners before me, on the basis of a mere endorsement made by the learned Counsel for the first respondent herein that the "notice could not be given to the other side as the counsel could not be seen or searched for service". An order passed behind the

back of the petitioners, in my view, is in violation of principles of the natural justice. The apex court of the land has observed that the principles of natural justice will apply equally to the proceedings in the Civil Courts also. In Charan Lal Sahu Vs. Union of India, , the Supreme Court: has observed as follows: [at p. 1541]

...In this connection, reference may be made to the decision of this Court in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, . The Representation of the People Act, 1951 contains Section 90 and the procedure of Election Tribunals under the Act was governed by the said provision. Sub-section (2) of Section 90 provides that "subject to the provisions of this Act and of any rule made thereunder, every election petition shall be tried by the tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits". Justice Bose speaking for the court said that it is procedure, something designed to facilitate justice and further its ends, and cannot be considered as a penal enactment for punishment or penalties; nor a thing designed to trip people up rather than help them. It was reiterated that our laws of procedure are grounded on the principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that effect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there may be exceptions and where they are clearly defined these must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle. At page 9 of the report, Justice Bose observed as under: "But that a law of natural justice exists in the sense that a party must be heard in a court of law, or at any rate be afforded an opportunity to appear and defend himself, unless there is express provision to the contrary, is, we think, beyond dispute. See the observations of the Privy Council in Balakrishna Udayar v. Vasudeva Ayyar AIR 1917 P.C. 71 and especially in T.B.Barret v. African Products Limited AIR 1928 P.C. 261, where Lord Buckmaster said "no forms or procedure should ever be permitted to exclude the presentation of a litigant's defence." Also Hari Visnu's Case, which have just quoted.

In our opinion, Wallace, J. was right in Venkatasubbiah v. Lakshminarasimham AIR 1925 Mad. 1274, holding that "One cardinal principle to be observed in trials by a court obviously is that a party has a right to appear and plead his cause on all occasions when that cause comes on for hearing", and that "it follows that a party should not be deprived of that right and in fact the Court has no option to refuse that right, unless the CPC deprives him of it.

All civilised countries accept the right to be heard as part of the due process of law where questions affecting their rights, privileges or claims are considered or adjudicated....

So this is a case where the impugned order has been passed without giving

notice to the petitioners herein and on this ground, following the principle laid down in the abovementioned case, the impugned order has to be set aside."

6. That apart, Srinivasan, J. has dealt with the question of the power of the civil court u/s 151, C.P.C. in *G. Krishnan v. Smt. Thulasi Ammal* (1991) 1 L. W. 513, to give police protection. In that case, the learned Judge has exhaustively dealt with the question as to whether a civil court, in exercise of its inherent powers u/s 151 of the Code of Civil Procedure, can issue directions to Police. The learned Judge has held that a direction to a police official though purporting to be one u/s 151 of the Code of Civil Procedure, is really one for a mandatory injunction against the police official directing him to do a particular act and that such a direction cannot be issued by a civil court when the police official is not a party to the suit or proceeding and when he is not claiming under any of the parties to the suit. The learned Judge has further held that if it is only a question of protecting the possession of the party concerned, it is for him to apply to the police officials for necessary safeguards and if they fail to do their duties, he shall approach this Court under Article 226 of the Constitution of India. With respect, I agree with the views of Srinivasan, J. in the abovementioned case and if those principles are applied, I am of the view that the order passed by the learned District Judge, Chengalpattu in I.A.No.30 of 1992 in O.S.No.2291 of 1991 dated 14.1.1992 is erroneous in law and has to be set aside. At the same time, two decisions of Ratnam, J., which are reported in *K.G.Gopal v. K.R.Lilybai* (1991)1 L. W. 558 and in *Sri Sambu Films v. Vijaya Pictures* (1991)1 L.W. 604, are referred to me to contend there is a difference in the views expressed by Srinivasan, J. in the abovementioned case. A reading of the decisions of Ratnam, J. and Srinivasan, J. mentioned hereinabove will clearly show that there is no difference of opinion or no contrary views have been expressed. In both the cases decided by Ratnam, J. there was an order of injunction in favour of the petitioners therein and in such circumstances the learned Judge has held that the order of injunction can be enforced with the aid of police as follow up action. As I am deciding the issue mainly on the" question of jurisdiction and on a question of law, I am not inclined to enter into the merits of the case and it is not necessary for me to enter into the merits of the case at this stage. So, for the reasons stated above, on the grounds that the learned District Judge has passed the impugned order behind the back of the petitioners and also on the ground that he has no jurisdiction to pass orders u/s 151, C.P.C. the impugned order is set aside and the civil revision petition will stand allowed. However, it is open to the first respondent to seek police protection, if advised u/s 145 of the Crl. P.C. However, there will be no order as to costs.