

**(1987) 12 KAR CK 0001**  
**In the Karnataka High Court**  
**Case No : C.R.P. No. 5104 of 1987**

Sampkh and Mandal Panchayat

APPELLANT

Vs

Kusumakara Vishnu Kodiya

RESPONDENT

**Date of Decision :** 09-12-1987

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115, 151, 80, 94

**Citation :** (1988) ILR (Kar) 2378 : (1988) 2 KarLJ 174

**Hon'ble Judges :** K.A. Swami, J

**Bench :** Single Bench

**Advocate :** R.V. Jayaprakash, for the Appellant; V.K. Kulkarni, for R-1, for the Respondent

**Final Decision :** Allowed

## **Judgement**

K.A. Swami, J.—Though, this Civil Revision Petition is posted for orders, it is taken up for final hearing, having regard to the fact that the trial Court has passed the order under Revision without there being any cause instituted before it.

2. This Civil Revision Petition is preferred against the order dated 5-11-1987, passed by the learned Principal Munsiff, Sirsi in Civil Misc. Case No. 23/1987, granting an order of temporary injunction against the petitioners and respondents 2 and 3, restraining them from entering and forming a road in S.No. 9A measuring 3 acres 23 guntas of Devinmane Village, Sirsi Taluk, in an application filed u/s 151 of the C.P. Code.

3. There is no original suit filed by the 1st respondent seeking a decree for permanent injunction restraining the petitioners and respondents 2 and 3 from interfering with the possession of the plaintiff of the aforesaid land bearing Sy.No. 9A of Devinmane and forming a road therein or for any other relief.

4. The 1st respondent filed only an application dated 21-9-1987, u/s 151 of the C.P. Code, for grant of permanent injunction restraining the petitioners and

respondents 2 & 3 from entering the land bearing Sy.No. 9A of Devinmane and from constructing any road in the said land. This application was registered by the Lower Court as Civil Miscellaneous Case No. 23/87. In that case, the 1st respondent filed an interlocutory application No. 1. under Order 39 Rules 1 and 2 of the C.P. Code, for a temporary injunction restraining the petitioners and respondents 2 & 3, from interfering with the possession of the 1st respondent of the land bearing Sy.No. 9A of Devinmane and from forming any road in the said land. The reason furnished for filing an application u/s 151 of the C.P. Code, was that the 1st respondent was required to give a notice u/s 80 of the C.P. Code, before filing a suit and by the time, the notice period would be over, the petitioners and respondents 2 and 3, would interfere with the possession and enjoyment of the 1st respondent of the aforesaid land would cause damage to the land by forming a road. Curiously enough, the learned Munsiff entertained the proceeding initiated u/s 151 of the C.P.C. and also the interlocutory application filed therein and granted temporary injunction against the petitioners and respondents 2 & 3 in the aforesaid terms till the expiry of the period of notice issued u/s 80 of the C.P. Code and accordingly, disposed of the Miscellaneous Case No. 23/1987, filed u/s 151 of the C.P. Code.

5. No suit or a proceeding in the nature of a suit can be filed or entertained u/s 151 of C.P.C. Section 151 of the C.P. Code preserves inherent power of the Court to make such orders as may be necessary in the ends of justice or to prevent abuse of the process of the Court. This power can be exercised by a Court in a suit or a proceeding in the nature of a suit properly instituted before it. In Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and Others, , the Supreme Court after considering its previous decisions in Padam Sen and Another Vs. The State of Uttar Pradesh, and ARJUN SINGH v. MAHINDRA AIR 1964 SC 933 has explained the scope of the inherent power of the Court as follows :-

"Having regard to the said decision, the. scope of the inherent power of a Court u/s 151 of the Code may be defined thus: The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes, into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of Section 151 of the Code, they do not control the undoubted power of the Court conferred u/s 151 of the Code to make a suitable order to prevent the abuse of the process of the Court."

The decision in Ramkarandas Radhavallabh Vs. Bhagwandas Dwarkadas, is also to the same effect. In that decision, it is laid down that when there is an express provision made in the Code for setting aside a decree passed under Order 37 of

the C.P. Code, there is no scope for resorting to Section 151 of the C.P.C. for setting aside such a decree.

There are specific provisions contained in the C.P. Code for filing a suit for various reliefs including the relief of permanent injunction. The inherent power of a Court is neither intended nor it enables a Court to entertain a suit and grant a decree. The inherent power of the Court is intended to be exercised in a suit or a proceeding in the nature of a suit pending or in some cases even after disposal, to meet the ends of justice or to prevent abuse of the process of the Court, where there is no specific provision either in the CPC or in any other law for the time being in force to meet such a situation. The exercise of the inherent power for entertaining a suit and granting a decree is quite opposed to the provisions of the C.P. Code and is impermissible in law. Section 94 of the C.P.C. which relates to supplemental proceedings also does not enable the Court to pass an order of temporary injunction without there being a properly instituted suit, because supplemental proceedings provided by this Section are a means to an end and not an end in themselves. An order of temporary injunction is a means to an end and not an end in itself. It is granted in aid of the main relief for which the suit is filed or to protect and safeguard the rights of the parties arising in the suit or connected with relief sought for in the suit.

6. Learned Munsiff has also failed to see that Subsection (2) of Section 80 of the Code, as inserted by Central Act 106 of 1976, enables the plaintiff to institute a suit with the leave of the Court without serving any notice as required by Subsection (1) thereof, where an urgent or immediate relief is required to be obtained against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity. In such a case, the Court can grant interim order after giving to the Government or Public Officer as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit. Thus, there is a specific provision made in the CPC to meet even the contingency of the nature, which is pleaded by the 1st respondent in the instant case.

7. It is therefore clear that the learned Munsiff has misdirected himself and acted illegally and in excess of his jurisdiction in granting an order of temporary injunction without there being a suit instituted before the Court for a permanent injunction or for any other relief in aid of which, the temporary injunction of the nature granted by him could have been sought for and granted.

8. There is also an objection raised by the 1st respondent that the Civil revision petition u/s 115 of the C.P.C. is not maintainable as the order granting temporary injunction is appealable under Order 43 Rule 1(r) of the C.P. Code. The temporary injunction granted by the trial Court is not the one granted in the suit. It is granted in the purported exercise of the inherent power of the Court u/s 151 of the C.P. Code. The application filed u/s 151 of the C.P. Code has been disposed of by the learned Munsiff in terms of the order of temporary injunction in question. Such an order is not appealable under Order 43 Rule 1 (r) of the Code

as it is not the one made under Order 39 Rules 1 and 2 of the C.P. Code. Hence, the objection regarding maintainability of the Civil Revision Petition is overruled.

9. For the reasons stated above, this Civil Revision Petition is allowed. The order dated 6-11-1987, passed in Civil Miscellaneous Case No. 23/1987, by the Principal Munsiff, Sirsi, is set aside and the Civil Miscellaneous Case No. 23/87 is dismissed as not maintainable.