

(2008) 06 KL CK 0039
In the High Court Of Kerala
Case No : C.R.P. No. 953 of 2004

Sesu Naika

APPELLANT

Vs

The Paivalike Panchayath and Others

RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Citation : (2008) 3 ILR (Ker) 281 : (2008) 2 KarLJ 853 : (2008) 2 KLJ 853 :
(2008) 3 KLT 297 : (2009) 5 RCR(Civil) 118

Hon'ble Judges : Harun-UI-Rashid, J

Bench : Single Bench

Advocate : T.D. Rajalakshmi and E.R. Venkiteswaran, for the Appellant; Kodoth Sreedharan, for the Respondent

Final Decision : Dismissed

Judgement

Harun-UI-Rashid, J.—The decree holder in E.P. 108/2003 in O.S. 632/1992 on the file of the Munsiff Court, Kasargode is the revision petitioner. The Execution petition was filed praying for an order directing the respondents/judgment debtors to comply with the terms of the compromise decree passed in the suit and in failure to do so, to proceed against them. The decree in this case is based on a compromise. The compromise decree directs the respondents/judgment debtors to construct a regular fence within a period of six months and also to construct a sufficient and necessary drainage on the northern side of the road to avoid flow of rain water across the road and to the properties of the revision petitioner. Thus the parties agreed to a future mode of conduct to do a specific act and obtain a decree in those terms. The question posed in this revision petition is as to whether the decree passed in terms of the compromise is a decree for mandatory injunction or is at a simple compromise decree. If the decree is a decree for mandatory injunction, the same shall be executed within a period of three years under Article 135 of the Limitation Act. If the decree in hand is a simple compromise decree, a period of 12 years is available under Article 136 of the Limitation Act for execution. Clauses 5 and 6 of the

compromise which forms part of the decree dated 30-10-1999 in A.S. 65/1997 on the file of the Sub Court, Kasargode reads as follows:

5. That within a period of six months from this day the Respondents-Defendants are liable to construct a regular fence in the place of the temporary fence put up by the Appellant-Plaintiff and they themselves have to bear all the expenses thereof for putting up of the said fence;

6. That the Respondents-Defendants are also liable to construct sufficient and necessary drainage on the northern side of the Road so as to avoid any flow of rain water across the road and to the properties of the Appellant-Plaintiff.

Since the respondents/Judgment debtors did not comply with the decree, the Execution petition was filed for a direction to the judgment debtors/respondents to comply with the terms as mentioned in clauses 5 and 6 of the compromise decree.

2. The respondents/judgment debtors in their objection contended inter-alia that the execution petition is barred by limitation, since the same was filed beyond three years as contemplated under Article 135 of the Limitation Act. The court below accepted the said contention and dismissed the execution petition finding that the execution petition was filed beyond the time limit prescribed under Article 135 of the Limitation Act.

3. The decree was passed on 30-10-1999. The execution petition was filed on 19-6-2003 which is after 3 years. It is argued by the counsel for the petitioner/decree holder that the decree in this case is a compromise decree and not a decree of mandatory injunction as contemplated under the Specific Relief Act or Article 135 of the Limitation Act. According to the counsel the compromise decree passed in this case cannot be treated as a decree for mandatory injunction; but shall be taken as a decree other than a decree for mandatory injunction in which case the period of limitation is 12 years, under Article 136 of the Limitation Act. The execution court dismissed the E.P. on two grounds; one is that the petitioner/decree holder has not succeeded in proving that the respondents/ judgment debtors had not complied with the terms of the decree and the other is that the execution petition is barred by law of limitation.

4. I have examined the nature of the decree passed by the court below. The dispute regarding the liability on the part of the respondents/judgment debtors in the suit is to construct a regular fence at their expense and also to construct sufficient and necessary drainage on the northern side of the road so as to avoid any flow of rain water across the road and to the properties of the petitioner/decree holder. The reliefs sought for in the plaint is in the nature of mandatory injunction. The liability and duty of the respondents/ judgment debtors to construct a regular fence and provide necessary drainage is accepted by them. Accordingly the matter was compromised. The respondents/judgment debtors undertook the work to construct the fence and drainage. The meaning of clause 5 and 6 of the compromise in substance amounts to grant of injunction by

agreement though not after adjudication of rights by the court. The prayer for mandatory injunction is intended by the petitioner. The petitioner prays for it and the court awards it in a compromise decree on a joint request of the parties themselves. It is clear that where the parties agree to a future mode of conduct either by doing an act or by refraining to do some act and obtain a decree in those terms, this may in appropriate cases, amount to self-induced injunction against one's self. In a case of this nature the decree must be correlated to the relief claimed in the plaint. Thus there cannot be any real difference in an injunction granted by the court after adjudication of the rights and a self-invited injunction under a compromise decree. If the positive mandates mentioned in the compromise to regulate their future mode of conduct were intended to be enforced as injunction then, notwithstanding the fact that no injunction is specifically granted under the decree, it must be held to be a decree for injunction. The terms agreed by the parties in substance grants injunction by agreement. Viewed in this light, and going by the terms of clause 5 and 6 of the compromise decree, the decree in substance, grants injunction by agreement though not after adjudication of rights by the court. A careful consideration of the clauses in the compromise decree leaves no room for doubt in my mind that the parties had intended that injunction in terms thereof ought to be granted. In the circumstances in limitation for launching the execution proceedings is only 3 years in the case of mandatory injunction under Article 135 of the Limitation Act. For the reasons stated, the impugned order does not call for interference by this Court. No grounds are made out to take a different view from the decision arrived at by the court below.

In the result this Civil Revision Petition is without any merit and accordingly dismissed. There will be no order as to costs.