

(2005) 10 MAD CK 0023

In the Madras High Court

Case No : O.S.A. No's. 248 to 250 of 2005 and C.M.P. No's. 16130 to 16133 of 2005

Smt. Jayachitra and Master G. Amresh rep. by Father and
Natural Guardian V. Ganeshh

APPELLANT

Vs

A.N.S. Nall Azhagu and Others

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Citation : (2005) 5 CTC 418 : (2006) 1 LW 541

Hon'ble Judges : P.K. Misra, J;N. Kannadasan, J

Bench : Division Bench

Advocate : R. Krishnaswamy, for K. Hari Shankar, for the Appellant; P.S. Raman, for Sathish Parasaran, for Respondents 1 and 3 in all OSAs, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—These three appeals are directed against the common order dated 20.9.2005, passed by the learned single Judge in O.A.

No. 568 of 2005, Appln.Nos.2341, 2775 and 3947 of 2005 arising out of C.S. No. 479 of 2005.

2. The facts giving rise to the present appeals are as follows :-

The suit bearing C.S. No. 479 of 2005 has been filed by the plaintiffs/respondents against the present appellants/defendants for permanent

injunction restraining the defendants from interfering with the possession of the plaintiffs and enjoyment of "A" Schedule property, except by due

process of law, and for mandatory injunction directing the defendants to deliver the original title deeds and documents as indicated in "B" schedule.

Schedule "A" consist of land and building. There is no dispute that such land and house belong to the plaintiffs. On 15.12.1999, there was an

agreement between the plaintiffs and the defendants for sale of the property bearing Door No. 91, Poes Garden, Chennai. A sum of Rs.70 lakhs

had been paid by the defendants and a further sum of Rs.70 lakhs was paid towards fixtures and furniture. The title deeds relating to the disputed

house were deposited with an Advocate Mr. N.S. Varadachari. According to the plaintiffs, even though other formalities such as clearance from

the Income Tax Department, permission from the High Court regarding sale of minor's share had been obtained, the defendants did not evince any

interest in completion of the transaction. In the meantime, the plaintiffs 2 & 3 had been adjudicated as Insolvents, which has been subsequently

revoked. While the matter stood thus, according to the plaintiffs, the defendants forcibly trespassed upon a portion of the property on 13.1.2005

and no action was taken by the police in spite of the complaint given by the plaintiffs. On the basis of the aforesaid allegations, the suit was filed for

the reliefs already indicated. During pendency of such suit, the plaintiffs filed O.A. No. 568 of 2005 for interim injunction seeking to restrain the

defendants from interfering with the peaceful possession and enjoyment of suit "A" Schedule property and an ex-parte order of injunction was

granted on 18.5.2005. Appln. No. 2341 of 2005 had been filed by the defendants for vacating the above order of interim injunction. Appln. No.

2775 of 2005 had been filed by the plaintiffs seeking for interim mandatory injunction directing the defendants to restore the original title

deeds/documents indicated in the suit "B" Schedule to the custody of Mr. N.S. Varadhachari. Appln. No. 3947 of 2005 had been filed by the

defendants for appointment of Advocate Commissioner to inspect "A" schedule property and to submit report regarding actual possession of the

said property. Pursuant to a direction issued in the said Application, the Advocate Commissioner submitted a report on 2.9.2005.

3. The learned single Judge under the impugned orders has allowed O.A. No. 568 of 2005 and made the interim injunction dated 18.5.2005

absolute, with a further direction to the defendants to handover possession of the first floor of the suit "A" schedule property and rejected Appln.

No. 2341 of 2005, which had been filed by the defendants for vacating the interim injunction. The learned single Judge has also allowed Appln.

No. 2775 of 2005 directing the defendants to deposit "B" schedule documents with the Deputy Registrar (Original Side) for safe custody in the

Court till disposal of the suit. Appln. No. 3947 of 2005 has been closed with a direction to the applicants therein to pay a further sum of

Rs.5,000/- towards final remuneration of the Advocate Commissioner.

4. O.S.A.Nos.248 of 2005 is directed against the order making the interim injunction absolute. O.S.A. No. 250 of 2005 is directed against the

order rejecting Appln.No.2341 of 2005 which had been filed by the defendants to vacate the interim injunction. In other words, O.S.A.Nos.248

and 250 of 2005 relate to the order of injunction. O.S.A. No. 249 of 2005 is directed against the order relating to Appln. No. 2775 of 2005,

wherein the defendants have been directed to deposit the documents taken from the Advocate with the Deputy Registrar (Original Side) of the

High Court.

5. The main thrust of the learned Senior Counsel appearing for the appellants relate to the order of injunction passed by the learned single Judge.

6. For considering the question of grant of injunction, a Court is required to find out prima facie case in favour of the person seeking injunction, the

question of irreparable loss to such applicant and the question of balance of convenience. By very nature of things, any discussion on such aspects

at the time of considering the question of injunction can only be a prima facie consideration. A detailed analysis of various materials is not to be

undertaken at the time of consideration of such interim matters. When the matter comes up in appeal, the Appellate Court is also equally expected

to consider such aspects prima facie and a detailed discussion regarding pros and cons of the rival cases is to be eschewed as otherwise the parties

may be prejudiced at the time of trial. Prima facie case means the party is not expected to prove his case to the hilt.

7. In the present case, the main contention of the plaintiffs is to the effect that as per the agreement of sale, possession was to be delivered to the

defendants on the completion of the transaction at the time of registration of the document and for the aforesaid purpose, the title deeds and other

relevant documents are kept under the safe custody of an Advocate, namely, Mr. N.S. Varadhachari and the defendants have obtained such

documents by dubious means and also forcibly trespassed upon a portion of the property in the first floor and, therefore, necessary orders

protecting the right and possession of the plaintiffs should be passed.

8. The contention of the defendants on the other hand is that though initially possession has not been delivered, subsequently, when the plaintiffs were unable to complete the transaction due to adjudication of Insolvency proceedings, the keys of the house had been handed over on 14.6.2001 and thereafter a relation of the defendants remained in the house. Subsequently, there was a death in the family of the plaintiffs, who wanted to use the property temporarily for the purpose of obsequies, and taking advantage of the latitude of the defendants in permitting them to perform the obsequies in the disputed premises, the plaintiffs overstayed there forcibly and refused to vacate the portion of the ground floor and when the matter was brought to the attention of the police, parties were advised to maintain status quo. It is therefore the case of the defendants that they being in possession, no injunction should be granted and, since the documents had been handed over by the Advocate to them, there is no warrant for giving any direction regarding return of any document.

9. The learned Single Judge has referred to certain features and more particularly to the report of the Advocate Commissioner and has *prima facie* discarded the case of the defendants regarding handing over of possession on 14.6.2001 and has come to the conclusion that the first floor of the property has been forcibly trespassed upon by the defendants. The learned single Judge has also come to the conclusion that the documents in custody of the Advocate had been taken away by the defendants in an unusual manner. In view of such conclusion, the learned single Judge has granted an order of injunction and further directed the defendants, their agents to handover possession of the first floor. The learned single Judge has also further directed that the documents in question should be kept under the safe custody of the Deputy Registrar (Original Side) of the High Court.

10. So far as the injunction is concerned, the main contention of the learned Senior Counsel for the appellants is to the effect that in view of the admitted fact that the defendants' relation is occupying the first floor, no such injunction should be granted. Learned Senior Counsel for the respondents on the other hand has submitted that it cannot be said that the defendants were in settled possession of the first floor and, therefore, in order to protect the lawful possession of the plaintiffs, the learned single Judge

was justified in giving a direction for redelivery of possession of the first floor.

11. In *Dalpat Kumar and another Vs. Prahlad Singh and others*, , it was observed :-

4. ... Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in exercise of the power of granting ad interim injunction is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliened by affidavit or otherwise that there is ""a prima facie case"" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in ""irreparable injury"" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way

of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

12. As already indicated at the threshold, any detailed examination relating to rival claims at this stage is likely to prejudice either party at the time of trial. The materials on record prima facie indicate about the possession of the plaintiffs at least from the month of September, 2004. The case of the defendants to the effect that the plaintiffs were permitted to occupy a portion of the ground floor in the month of November, 2004 prima facie appears to be untenable in view of the documents on record, more particularly the documents relating to payment of electricity dues. After going through the order passed by the learned single Judge and particularly after perusing the report of the Advocate Commissioner, the prima facie conclusion of the learned single Judge to the effect that the defendants had trespassed upon the first floor in the month of January, 2005, cannot be characterised as capricious or arbitrary. The question remains as to whether the learned single Judge is justified in giving a direction to the defendants, their relations, their agents to handover possession of the first floor to the plaintiffs. Even though on the face of it, such a direction may appear to be unusual, in the peculiar facts and circumstances of the case, we do not feel inclined to interfere with such part of the order. It is not the case of the defendants that the first floor is being used by them for any particular purpose. The lady relation of the defendants seems to be merely occupying such first floor" on their behalf.

13. Keeping in view the fact that the entire house appears to be one unit with one electric meter and the fact that the plaintiffs are occupying the ground floor, it would not be in the interest of justice to permit the relation of the

defendants to continue to occupy the first floor. Since prima facie

it is found that the defendants were not in settled possession, the direction given by the learned single Judge does not require any interference.

14. It has been submitted by the learned Senior Counsel for the appellants that the learned single Judge while passing the order of injunction and

directing the defendants to restore possession of the first floor to the plaintiffs, has issued an order in the nature of mandatory injunction to restore

status quo even prior to the institution of the suit.

15. It is of course true that ordinarily an injunction of such type may not be issued, but the Court is not powerless to do so if the facts and

circumstances so warrant. Such power has been recognised in many decisions such as reported in AIR 1973 J & K 63 (Goverdhan Singh v.

Mulkh Raj) and (1977) 1 Andh WR (HC) 62 (Ganpathi Reddy v. Duvvuri Chinnapa Reddy). The aforesaid decisions followed by a learned single

Judge of Bombay High Court reported in Baban Narayan Landge Vs. Mahadu Bhikaji Tonchar and Others, . Learned single Judge has quoted the

following from the decision of Andhra Pradesh High Court :-

The main grievance of the learned Advocate for the petitioners was that a mandatory injunction cannot be granted so as to restore the status quo

prior to the institution of the suit, but there is no such limitation on the Court's power to grant a mandatory injunction of that nature in an

appropriate case, particularly when the status quo ante has been altered shortly prior to the suit and that act itself was the direct and proximate

cause as a result of which the suit came to be filed.

16. In our opinion, the aforesaid observation, which was cited with approval by the learned single Judge of Bombay High Court, reflects the

correct position. Applying the ratio of the said decision to the present case, we think the learned single Judge was justified, keeping in view the

peculiar facts and circumstances of the case, in issuing the order of injunction by directing the defendants to restore possession to the plaintiff.

17. So far as the direction of the learned single Judge regarding deposit of documents taken from the Advocate with the Deputy Registrar (Original

Side), High Court, is concerned, such an order appears to be eminently suitable. Admittedly the documents had been handed over to the

Advocate for safe custody until the conclusion of the transaction. It is stated that

the defendants themselves have now filed a suit for specific performance of the contract. Keeping in view these aspects, the direction to keep the documents in safe custody of the Deputy Registrar (Original Side), High Court, appears to be a fair order, which does not call for any interference.

18. For the aforesaid reasons, we do not find any merit in the appeals, which are accordingly dismissed. It is made clear that any discussion made by the learned single Judge or in the present order must be taken to be only a prima facie opinion and the suits are to be disposed on their own merit in accordance with law on the basis of the evidence on record without being influenced in any manner by the prima facie observations made by the learned single Judge or by us in the present order. The order of the learned single Judge regarding delivery of possession should be complied with within a period of one week from today. There would be no order as to costs. Consequently, the connected miscellaneous petitions are closed.