

(1985) 07 GAU CK 0008
In the Gauhati High Court
Case No : Civil Revision No. 6 of 1985

Smt. Wangkhem Ningol Pheiroijam Ongbi Nupimacha Devi and Others APPELLANT

Vs

Kshetrimayum Kulla Singh and Another RESPONDENT

Date of Decision : 15-07-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 4, Order 43 Rule 1
Limitation Act, 1963 — Article 116, 5

Citation : AIR 1987 Guw 16

Hon'ble Judges : K.N. Saikia, J

Bench : Single Bench

Advocate : A. Nilamani Singh, for the Appellant; N. Kerani Singh, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Saikia, J.—This civil revision u/s 115, C.P.C. and/or Article 227 of the Constitution of India, is from the order of the Subordinate Judge (II) of Manipur at Imphal dated 15-4-85 affirming the order dated 11-2-85, making the injunction order absolute.

2. In Original Suit No. 9 of 1985, the plaintiff Kshetrimayum Kulla Singh, filed an application for an interim order of temporary injunction against the defendants/opposite parties, restraining them from dispossessing the plaintiff from the suit land by way of execution of a decree or otherwise under Order 39, Rules 1 and 2, read with Section 151 of the C. P. C. and this application was registered as Judicial Misc. Case No. 26 of 1985.

3. By order dated 11-2-1985, the learned Subordinate Judge (II), Manipur, after perusing the plaint and the affidavits, found that prima facie case for injunction and for maintenance of status quo between the parties as on that date was made out and that delay would defeat the purpose of that application as well as that of

the suit. Considering those circumstances, he found sufficient grounds for passing an order ex parte against the defendants. Hence, the Court ordered that status quo as on that date between the parties be maintained and the defendants/opp. parties be restrained from demolishing the building standing on the suit land till the disposal of that application. Notice was issued to the opp. parties/defendants to show cause why it should not be made absolute and the plaintiff/petitioner was ordered to deliver and send to the opp. parties all documents along with the notice as required by Order 39, Rule 3, C.P.C. From the application as well as this interim order there arises, no doubt, that the Court proceeded under Order 39 and notices were required to be issued under Order 39, Rule 3, C.P.C.

4. The defendants/opposite parties Nos. 1 to 3 filed written objection to the above application for discharging, setting aside or vacating the aforesaid ex parte order of the Court dated 11-2-85 under Order 39, Rule 4 and/or Section 151, CPC.

5. By the impugned order dated 15-4-85, it was ordered by the learned Subordinate Judge (II), Manipur after hearing the parties, that status quo between the parties be maintained till the disposal of the Original Suit No. 9 of 1985 and the application was accordingly disposed of. Hence, this revision petition.

6. Mr. N. Kerani Singh, the learned counsel for the respondents, raising a preliminary objection submits that this revision petition is not maintainable in view of the provisions of Section 115 read with Order 43, Rule 1(r) of the C.P.C., inasmuch as the impugned order is appealable and hence no revision lies.

7. Mr. A. Nilamani Singh, the learned counsel for the petitioners, demurs and submits that the impugned order could still be regarded as one passed u/s 151, C.P.C. rather than under Order 39, Rules 1 and 2, CP.C. Counsel rightly submits that to properly characterise the order, it is necessary to ascertain from the order itself under what provision the Court passed the order. Referring to para 10 of the order dated 15-4-85, Mr. Singh points out that this is a simple order for maintenance of status quo between the parties and could very well be passed u/s 151, C.P.C." This would be possible in view of the fact that both in the injunction petition as well as in the objection filed against the interim order, Section 151 was clearly mentioned, of course, along with Order 39, Rules 1 and 2, C.P.C. This part of the order involves no restraint or injunction. Therefore, it could not be regarded as one under Order 39, Rules 1 and 2, C.P.C. Mr. Singh, however, does not dispute the position in law that if the order can be considered to be one under Order 39, Rules 1 and it would be an appealable order and no revision would lie.

8. The relevant provisions may be conveniently referred to at this stage. Sub-section (2) of Section 115, provides that the High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either

to the High Court or to any Court subordinate thereto. Order 43, Rule 1(r) reads :
"an order under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order 39."

There is no escape from the conclusion that if the impugned order was under Order 39, Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10, it would be appealable under this provision and no revision would lie.

9. As the application for injunction as well as the objection filed referred to both Order 39, Rules 1 and 2 as well as Section 151 of the C.P.C, it is only from the intrinsic evidence of the interim order as well as the final order that we have to decide under which provision the Court passed the order. We have seen from the order dated 11-2-85 that the Court analysed the requirements of the prima facie case and balance of convenience and inconvenience between the parties and passed the order for maintenance of status quo and explicit order for issue of notice as required by Order 39, Rule 3, C.P.C. This leaves no doubt that the Court acted under the provisions of Order 39, Rule 3, CPC.

10. Earlier, the Court referred to the order dated 11-2-85 and also referred to earlier findings that the plaintiff had made out a prima facie case and the question to be decided was whether there was any ground for varying or vacating the ex parte order passed against the defendants/opposite parties under Order 39, Rule 4, C.P.C. As regards the order dated 15-4-85, the Court similarly discussed the question of prima facie case, the balance of convenience and irreparable injury and also concluded that it considered it proper to maintain status quo between the parties and did not find any ground for discharging, varying, setting aside or vacating the ex parte order dated 11-2-1985.

11. From the above discussions, there arises no doubt that the Court while passing both the orders, proceeded under Order 39, Rules 1, 2, 3 and 4, C.P.C.

12. When an application is made for injunction mentioning both Order 39, Rules 1 and 2, as well as Section 151, Cr. P.O., the appellate or revisional Court should scrutinise whether the order was passed under Order 39, Rules 1 and 2 or Section 151, C.P.C. If it is found intrinsically from the orders that the Court proceeded to discuss the requirement of prima facie case, balance of convenience and irreparable injury, inference will be justified that the Court acted under Order 1, rather than u/s 151, C.P.C. If on the other hand, the Court has observed that no injunction was justified under Order 39, Rules 1 and 2, but for the ends of justice, under the circumstances of the case, an order was passed then it would be reasonable to hold that the impugned order was passed u/s 151, C.P.C. This may be taken only as a guideline and not as a cut and dried formula. The decision would depend on the circumstances of the case and the intrinsic evidence of the impugned order. In *Patram v. Rameshwardayal* AIR 1979 NOC 182 (Madh Pra), it has been held that even though the trial Court did mention Section 151 while granting temporary injunction, it is evident from the perusal of the order that the Court did apply all the principles of Order 39, Rules 1, 2 and considered the case in the light of the irreparable injury, nature of the

case and balance of convenience and was of the opinion that in order to maintain status quo regarding the suit land, an injunction was necessary. Under those circumstances even if the trial Court passed order of temporary injunction by relying on the provisions of Section 151 to act upon in the circumstances which, according to it, might not have been fully covered by the provisions of Order 39, Rules 1, 2 the order does not lose its nature of being one of temporary injunction granted in accordance with the provisions of Order 1. It was further observed that whenever inherent powers are invoked to do so, the Court, in effect, simply uses the inherent powers to act and it is deemed that the order ultimately made would still be one under the relevant provisions and, therefore, the consequence is that such an order being under the aforesaid procedural provision would remain appealable. The fact that the Court preferred to act by relying on the provisions of Section 151 would not make the order non-appealable because the order would have to be treated as having been passed under Rules 1, 2 of Order 39. I respectfully agree with this view.

13. The final order was passed on 15-4-85 and this revision petition was filed on 13-5-85. Mr. A. Nilamani Singh, the learned counsel for the petitioners, rightly submits that even if this revision petition were to have been treated as an appeal it would be within time. As I am disposing this revision application, it would be open for the petitioner to file an appeal against the final order dated 15-4-85 under Order 43, Rule 1(r) C.P.C. If and when an appeal is filed there is no reason why the appellate Court should not consider the period of pendency of this revision petition before this Court, namely, from 13-5-85 to 15-7-85. This period need be considered for the purpose of condonation of delay in filing the appeal under the facts and circumstances of the case, the petitioners having bona fide believed that a revision would lie and not an appeal. Mr. A. Nilamani Singh, submits that the observations made in this order may give the learned appellate Court an impression that the findings of the trial Court have been affirmed by this Court. It is an accepted principle that the purpose of deciding the question of injunction is different from the purpose of deciding the suit itself. Injunction is sought for to maintain the property in dispute in status quo, while in the suit the disputed rights of the parties are adjudicated upon. An observation in course of the order granting or refusing injunction should not normally be of any consequence in the matter of deciding the suit or for that matter in deciding the appeal against the impugned order. The appellate Court will decide the appeal being in no way trammelled by the observations made in this order. This petition is accordingly rejected and the rule is discharged. There will, however, be no order as to costs.