

(1989) 12 MAD CK 0040
In the Madras High Court

Southern Roadways Ltd. and Another	APPELLANT
Vs	
C. Palanikumar and Others	RESPONDENT

Date of Decision : 01-12-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115(2), 151
Constitution of India, 1950 — Article 227

Citation : (1990) 1 LW 244 : (1989) 2 MLJ 497

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—These civil revision petitions are by the same defendants in the respective suits against the respective plaintiffs therein, seeking to set aside Clause 2 of the order dated 24.10.1989 in the respective interlocutory applications filed therein. The said interlocutory applications were filed by the respective plaintiffs for interim injunction. Those interlocutory applications are I.A.Nos.932 to 959 of 1989 in O.S.Nos.1330 to 1357 of 1989 on the file of the District Munsifs Court, Thirumangalam. The suits are by different employees of the same defendants and they inter alia sought for orders of permanent injunction, restraining the defendants from giving effect to the relevant transfer orders passed by the defendants against the said employees. The trial Court held in Clause 1 of the respective orders in each of the said interlocutory applications that it had no jurisdiction to try each of the said interlocutory applications. But, in Clause 2 of the respective orders, it granted "in the interest of justice" interim injunction prayed for, for a month, to enable the respective plaintiffs to prefer an appeal against the above said Clause 1 of the respective orders.

2. Regarding Clause 1 of the respective orders, it is stated that the respondents-plaintiffs have preferred Civil Miscellaneous Appeals to the proper Court. It is only with reference to the above said Clause 2 of the respective orders these revision petitions have been filed in this Court.

3. Now, the question is whether the above said Clause 2 of the respective orders

can stand, when the lower Court itself held that it had no jurisdiction to try to the said interlocutory applications.

4. It is settled law that when a Court holds that it has no jurisdiction to try a proceeding before it, it cannot pass any order regarding the said proceeding. Any such order, even if passed, will be a nullity, (vide the decisions reported in *Kiran Singh and Others Vs. Chaman Paswan and Others*, . and *R. Venkataswami Naidu Vs. South India Viscose Ltd., Coimbatore*, So, these revision petitions have necessarily to be allowed and the above said Clause 2 of the respective orders have to be set aside.

5. However, the learned Counsel for the respondent in each of the Revision Petitions, contends that these Revision Petitions themselves are not maintainable, in view of the fact that appeals lie thereto and that Section 115(2) of C.P.C. provides specifically that where an appeal lies, revision will not lie. The said counsel contends that the respective orders sought to be revised, are only orders passed under Order 39, Rule 1 or 2, C.P.C. and that hence appeals lie against the said orders under Order 43 of C.P.C. But, I do not think that the said orders could be construed as orders under Order 39, Rule 1 or 2 of C.P.C. The said Clause 2 of the orders, being one absolutely without jurisdiction, cannot fall under Order 39, Rule 1 or 2 of C.P.C.

6. In this connection, the following passage from the decision reported in *Amar Nath and Others Vs. Jhandhu Lal and Others*, at 293 may also be usefully referred to:

But when jurisdiction is misused, exceeded or withheld by a Court and the product of its deliberations do not conform even to a semblance of the order envisaged under the provision of law then the power is there with the revision Court to put that Court back to its jurisdiction.

7. Further, it has also been held that whenever any such order is passed when the Court itself has held that it has no jurisdiction to try the matter in question, this Court sitting in revision can even suo motu revise it u/s 115 of C.P.C. In this connection, the following passage in the decision reported in *S. Sundaram Pillai and Others Vs. P. Govindaswami and Another*, may be usefully seen:

In any case, the High Court in the exercise of its revisional jurisdiction u/s 115 of C.P.C. cannot allow an order, which amounts to an abuse of the powers vested in the trial Court, to stand once such an order comes to the notice of High Court.

Even under Article 227 of the Constitution of India, such an order can be set aside. Further when Court exercises jurisdiction under Article 227 of the Constitution of India, even the restrictions embodied u/s 115(2) of C.P.C. will not be attracted. The learned Counsel for the respondent however contends that even when the Court holds that it has no jurisdiction to try a proceeding before it, yet it can pass any order u/s 151 of C.P.C. This contention has no merit. The power u/s 151 of C.P.C. can be exercised only when there is a proceeding

lawfully before the Court. In Raja Soap Factory and Others Vs. S.P. Shantharaj and Others, the Supreme Court so held as follows:

Section 151 preserves the inherent power of the Court as may be necessary for the ends of justice or to prevent abuse of the process of the Court. That power may be exercised where there is a proceedings lawfully before the High Court; it does not, however, authorise the High Court to invest itself with jurisdiction where it is not conferred by law.

The learned Counsel also sought to rely on the decision reported in Shankar v. Krishnaji A.I.R.1970 S.C.I. But the merger spoken to therein has absolutely no application at all to the facts of the present case. The Civil Miscellaneous Appeals said to have been filed by the respective respondents herein against Clause 1 of the above said respective orders are against the decision holding that the Court has no jurisdiction to try the said interlocutory applications. But, these revision petitions are against the injunctions granted under Clause 2 of the above said respective orders. So Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, has no application. Further the observations made have will also not affect the hearing the said appeals.

8. In the circumstances, these Civil Revision Petitions are allowed.