
(2004) 12 AP CK 0113
In the Andhra Pradesh High Court
Case No : CMA No. 2704 of 1998

State of A.P. and Another

APPELLANT

Vs

Kancharana Raghu and Others

RESPONDENT

Date of Decision : 07-12-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A
Specific Relief Act, 1963 — Section 38, 39, 40, 41, 42

Citation : (2005) 1 ALD 741 : (2005) 2 ALT 2 : (2005) 2 RCR(Civil) 300

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Government Pleader for Arbitration, for the Appellant; A. Hanumantha Reddy, for the Respondent

Judgement

V.V.S. Rao, J.—The respondents herein filed a suit being O.S. No. 310 of 1992 on the file of the Court of the III Additional Senior Civil Judge, Visakhapatnam. The suit is for declaration that classification of land admeasuring Acs.7.00 in R.S. No. 13 of Madhavadhara Village, as poramboke land in the revenue records, is illegal and for a permanent injunction restraining the defendants, namely, the State of A.P. represented by District Collector, Visakhapatnam and the Mandal Revenue Officer (Urban), Visakhapatnam in any manner interfering with the plaintiffs' possession. By judgment and decree dated 7.6.1996, the trial Court allowed the suit declaring as well as granting injunction as prayed for.

2. Aggrieved by the judgment and decree, the defendants/appellants preferred appeal being A.S. No. 365 of 1996 on the file of the Court of the II Additional District Judge, Visakhapatnam. Along with the appeal, the appellants filed LA. No. 1186 of 1996 under Order XLI Rule 5 of Code of Civil Procedure, 1908 (CPC) for suspension of the judgment and decree of the Trial Court. But the Trial Court by an order dated 21.1.1997 passed Interim orders suspending the decree, insofar as the same declares the classification, as illegal. Be that as it is, the respondents herein filed LA. No. 954 of 1998 under Rule 2A of Order XXXIX of

CPC alleging that in spite of the orders of the Appellate Court dated 21.1.1997, the second respondent removed the fencing around the suit schedule property laid by the plaintiffs/respondents. In the said application, the respondents prayed for grant of attachment of the properties of the second appellant and also for detention of the Mandal Revenue Officer for wilful and deliberate disobedience of the orders of permanent injunction granted by the Court of the III Additional Senior Civil Judge, Visakhapatnam in O.S. No. 310 of 1992. By impugned order dated 26.10.1998, the learned II Additional District Judge, Visakhapatnam having come to the conclusion that there is disobedience of the permanent injunction granted by the Trial Court, sentenced the second appellant to undergo simple imprisonment for one day. This is subject-matter of this C.M.A.

3. The learned Government Pleader for arbitration submits that when the respondents have already filed execution petition before the Trial Court being E.P. No. 388 of 1996, they ought to have proceeded under Order XXI Rule 32 of CPC. Secondly, he would urge that an application under Rule 2A of Order XXXIX CPC would lie only when an ad interim injunction is granted by the Trial Court under Order XXXIX Rules 1 and 2 of CPC, and the violation of the decree for permanent injunction granted by the Trial Court, if any, does not come within the powers conferred under Rule 2A of Order XXXIX CPC. Alternatively, he contends that the second appellant did not violate the order of injunction and acting bona fide, he only initiated steps to protect the Government land.

4. Per contra, the learned Counsel for the respondents, Sri A. Hanumantha Reddy, submits that the respondents are left without any remedy though they obtained a decree for injunction and, therefore, there was nothing wrong for the Appellate Court to pass the impugned order. He, however, does not dispute the submission of the learned Government Pleader that Order XXXIX Rule 2A CPC has no application when an order for permanent injunction is violated.

5. The fact of the matter is not in dispute. The only question that would arise for consideration is in relation to scope of power conferred on the Civil Court under Rule 2A of Order XXXIX CPC. Rules 1 and 2 of Order XXXIX CPC confer power on the Civil Court to grant a temporary injunction to prevent the defendants from, in any manner, damaging, altering or interfering with the suit property. The power, it is well settled under Order XXXIX Rules 1 and 2 CPC, can be exercised to ensure "status quo" in relation to the property, which is the subject-matter of the suit or rights and duties in relation to such property. The exercise of power under these rules is also subject to the well settled principles, in that the plaintiff or defendant seeking an order of injunction has to plead and prove prima facie case, balance of convenience and has to demonstrate that the non-grant of ad interim injunction would cause hardship to him. Be that as it is, Rule 2A introduced by the CPC (Amendment) Act 1976 is an endeavour of the Legislature to fill up a lacuna. Though the Civil Court was conferred the power to grant injunction, there was no such power to deal with the cases of disobedience or flouting of orders of injunction. This lacuna has now been fulfilled by Rule 2A of

Order XXXIX CPC, which reads as follows:

Order XXXIX Rule 2A (1) "In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto."

6. In plain words, the power conferred on the Civil Court to attach or detain the property of the contravener of an order of injunction is not in respect of all types of injunction orders. Such power is available only when an allegation is made, that there is disobedience of an order of injunction granted under Rules 1 and 2 of Order XXXIX CPC. Chapter VIII (Sections 38 - 42) of Specific Relief Act, 1963 deal with perpetual injunction. Though the same principles which weigh with the Court while granting a temporary injunction equally applicable while granting permanent perpetual injunction u/s 38 of the Specific Relief Act, the nature of injunction granted as temporary measure is altogether different. A temporary injunction would confer a right to the plaintiff to protect possession pending suit whereas permanent injunction granted in favour of plaintiff after suit would continue to be a protective measure to him. Therefore the power under Rule 2A of Order XXXIX CPC would not be available when an allegation is made that an ad interim injunction under Order XXXIX Rules 1 and 2 CPC has been disobeyed.

7. A person who obtains a decree of permanent injunction in a regular suit has a remedy by way of Order XXI Rule 32 CPC, which enables the Executing Court to enforce a decree for permanent injunction either by attaching the property of the judgment-debtor or by order of detention of the judgment-debtor by the police. The violation of permanent injunction, therefore, can be set right in execution proceedings under Order XXI Rule 32 CPC and not by way of an application under 2A of Order XXXIX CPC. In a decision of Gujarat High Court in *Gohel Parbhatbhai Nathabhai Vs. Pandya Arwindkumar Ambalal*, , after considering this aspect of the matter, it was held as under:

Normally, once when the temporary injunctions are granted they would be continued till the disposal of the suits and, therefore, such temporary injunctions have the span of life till the suits are disposed of and, therefore, the period of detention is prescribed at three months. The express language of Rule 2-A of Order XXXIX if read in proper context it would make it clear that it is only in

respect of temporary injunction which is granted either, Rule 1 or Rule 2, and if breach thereof is committed then the consequence would follow as mentioned in Rule 2-A. Therefore, the argument that it would also include permanent injunction granted at the time of passing the decree is totally misconceived. Therefore, that argument cannot be accepted.

8. It is brought to my notice that the respondents have already filed execution petition before the executing Court. Further, there is no denial that in the application filed by the appellants under Order XLI Rule 5 CPC in A.S. No. 365 of 1996, the lower Appellate Court did not suspend the Trial Court's decree insofar as permanent injunction is concerned. Therefore the Executing Court where the E.P. is pending is free to proceed further and pass appropriate orders in E.P.No. 388 of 1996. The respondents are given liberty to approach the Executing Court with a copy of this order.

9. The C.M.A., subject to the above observations, is allowed and the impugned order of the learned II Additional District Judge, Visakhapatnam in LA. No. 954 of 1998 in A.S. No. 365 of 1996, is set aside. There shall be no order as to costs.