

Kerala High Court

Sathyabhama Amma vs Vijaya Amma on 3 October, 1994

Equivalent citations: AIR 1995 Ker 74

Author: G Rajasekharan

Bench: G Rajasekharan

ORDER G. Rajasekharan, J.

1. The revision petitioner in both the Civil Revision Petitions, is the plaintiff in a Suit for injunction.
2. The suit property admittedly belonged to one Sreedharan Nair who died on 27-8-1990. The plaintiff is the sister of Sreedharan Nair, and the defendant the widow. The plaintiff claims possession over the suit property as having given to her by Sreedharan Nair, and that there was an understanding that the property will be given over to her. The claim is resisted by the defendant on the plea that on the death of Sreedharan Nair, the property devolved upon her, being the sole heir and ever since, she is in possession and enjoyment and the plaintiff has no manner of right.
3. In the trial court, the plaintiff filed IA No. 878/92 for a temporary injunction. There was IA No. 946/92 by the defendant praying for a temporary injunction restraining the plaintiff from trespassing into the property, from altering the nature of the property and from interfering with the peaceful possession and enjoyment by the defendant. The trial court heard both applications together and by a common order dismissed the application of the plaintiff and allowed the application of the defendant. The appellate court in CMA Nos, 105/92 and 106/92 dismissed the appeals of the plaintiff. The plaintiff has come up in revision.
4. CRP No. 922/94 relates to the application by the defendant, and the other Revision Petition relates to the application by the plaintiff.
5. The main argument advanced by the learned counsel for the revision petitioner is that Order 39, Rule 1, C.P.C. does not provide for an application for injunction by the defendant against the plaintiff and so, the defendant's application for temporary injunction was incompetent and allowing such an application is illegal and unsustainable. According to learned counsel, the amendment of the C.P.C. in 1976 and insertion of Sub-clause (c) of Rule I and also addition of the words "or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit" in the last portion of the rule, make it clear that a defendant in a suit is not entitled to seek injunction against the plaintiff.

6. Rule 1 of Order XXXIX reads as follows :

"Sub-rule (1) : Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit is in danger or being wasted, damaged or alienated by any party to the suit, or wrongfully sold or delivered in execution of a decree, or

(b) that the defendant threatens or intends to remove or dispose of his property with a view to defrauding his creditors -

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit -

the Court may by order grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further orders."

7. According to learned counsel, the insertion of Clause (c) actually explains and controls Clauses (a) and (b) and a reading of Clause (c) together with the words in the last portion of the Rule "or dispossession of the plaintiff or otherwise causing any injury to the plaintiff in relation to any property in dispute in the suit" makes it clear that only a plaintiff is entitled to seek for an injunction and not the defendant against the plaintiff.

8. This argument cannot be accepted. Clauses (a), (b) and (c) deal with different situations and they stand independently. Clause (a) deals with the situation where the property in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold or delivered in execution of a decree. Clause (b) deals with the situation where the defendant threatens or intends to remove or dispose of his property with a view to defrauding the plaintiff. Clause (c) deals with the situation where the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to the property in dispute in the suit. In all these different situations, the remedy or relief also is provided. In a situation covered by Clause (a), if the property in dispute is in danger of being wasted etc. by any party to the suit, the court may by order grant a temporary injunction to restrain such objectionable act. In that situation, either the plaintiff or the defendant is entitled to seek for the relief of temporary injunction. May be, that in the two other situations covered by Clauses (b) and (c) it is only the plaintiff who is entitled to seek the injunction against the defendant. The argument that Clause (c) controls the other two clauses, or that by inserting Clause (c) and adding the words "or dispossession of the plaintiff or otherwise causing any injury to the plaintiff in relation to any property in dispute in the Suit", Clauses (a) and (b) stand controlled or explained, cannot be accepted. The insertion of the words quoted supra in the last part of the Rule also does not make matters different. Those words only relate to Clause (c) where threat of dispossession of the plaintiff or injury to the plaintiff in relation to the property in dispute is contemplated.

9. The matter is covered by decisions of this Court. In *Gopalakrishnan Nair v. Joshi* (reported in 1985 Ker 132), the Court held that under Order 39, Rule 1, in particular circumstances, the court is entitled to grant injunction against the plaintiff, if the defendant's claim to relief arose out of the plain-tiff's cause of action or was incidental to it.

10. According to counsel, in arriving at that conclusion, the court did not consider the impact of Clause (c) and so, the decision requires reconsideration. In a later decision in *Vincent v. Aisumma* reported in 1988 (I) Ker LT 420 : (AIR 1989 Kerala 81), this court considered all the provisions including Clause (c) and ruled that Rule 1 of Order 39 contains indications that an order of injunction can be passed either against a defendant or against the plaintiff. The court proceeded to hold (at p. 82, Para 5 of AIR);

"Out of the three Clauses in the Rule, the last two refer to orders of injunction passed against defendants, whereas the first Clause (a) does not confine to applications filed by the plaintiffs alone. The words "by any party to the suit" in the said Clause are sufficient enough to indicate that the legislature intended such orders to be passed even on applications filed by the defendants."

It was reasoned that the above proposition gain support from some of the expressions employed in Rules 2A, 3, 3A and 4 of Order XXXIX. I am in respectful agreement with those reasonings and it is clear that Clause (a) of Order 39, Rule 1(1) takes in cases where both the plaintiff as well as the defendant can approach the court for temporary injunctions. In the circumstances, the decisions do not call for any reconsideration according to me.

11. The objects and reasons for the insertion of Sub-clause (c) make matters clearer in this regard. The objection and reasons are :

"Rule 1 of Order XXXIX is primarily concerned with the preservation of the property in dispute till the legal rights are ascertained. On a literal reading of the Rule, the situation where the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the Suit is not covered by the Rule. The Rule is being amended accordingly."

(Emphasis supplied) So, it was thought that a literal reading of Clauses (a) and (b) did not take in a situation where the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, and it was for that reason, Clause (c) was inserted. That cannot in any way control or explain the provisions contained in Clauses (a) and (b). In the circumstances, without hesitation I hold that in cases covered by Clause (a) of Order 39, Rule 1, the defendant can also seek injunction to restrain the plaintiff.

12. In the case at hand, the prayer in the defendant's application has been noticed earlier. It seeks to restrain the plaintiff from trespassing into the property, from altering the nature of the property and from interfering with the peaceful possession and enjoyment by the defendant. The prayer to restrain the plaintiff from altering the nature of the property certainly will fall within the ambit of the 'property being damaged'.

13. Further, the object of issuing temporary injunctions under Order 39 is to preserve the property or to maintain the status quo pending litigation. If actually the defendant was in possession of the property and pending the suit there is trespass, that will tilt the status quo ante. So also, if the defendant's possession and enjoyment is interfered with, that also will affect the status quo. Attempts to alter the nature and lie of the property pending suit also will lead to the same result. In

the circumstances, for maintaining the status quo, injunctions could be granted in favour of the defendant also. For the above reasons, the contention that the application by the defendant was incompetent has only to be rejected.

14. The defendant is the sole heir of deceased Sreedharan Nair. The defendant claims possession and enjoyment of the property on the plea that on the death of Sreedharan Nair the property devolved upon her. That claim is perfectly sustainable in law. On the other hand, what the plaintiff claims is possession having been given by Sreedharan Nair on the understanding that the property will be given over to her. On a consideration of the evidence tendered by the parties, both the lower courts have concurrently found that on the date of the suit, the defendant was legally entitled to and was factually in possession of the property and accordingly the plaintiff's injunction application was dismissed and that of the defendant was allowed. No interference is called for in these revision petitions under Section 115 of the Code of Civil Procedure.

The Revision Petitions are devoid of merits and hence dismissed. In the circumstances of the case, there will be no order as to costs.