

Supreme Court of India

Jacky vs Tiny @ Antony & Ors on 9 April, 1948

Author:J.

Bench: Sudhansu Jyoti Mukhopadhaya, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4453 OF 2014
(arising out of SLP(C)No.3909 of 2012)

JACKY

... APPELLANT

VERSUS

TINY @ ANTONY & ORS.

... RESPONDENTS

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

2. This appeal has been preferred by the plaintiff-appellant against the judgment and order dated 27.10.2011 passed by the High Court of Kerala at Ernakulam in O.P. (C) No.1792 of 2011. By the impugned judgment and order, the High Court while exercising its power under Articles 226 and 227 of the Constitution of India, set aside the plaint and further proceedings initiated on the basis of the plaint in the suit, quashed the order passed by the Munsiff Court and imposed cost of Rs.25,000/- on the appellant for payment in favour of the respondent-writ petitioner.

3. The only question which is required to be determined in this case is whether the High Court while exercising its power under Articles 226 and 227 of the Constitution of India is competent to set aside the plaint ?

4. The case of the 1st respondent herein before the High Court was that the shop bearing no. X/306 was leased to the father of the 1st respondent in the year 1962 by an oral lease by the father of the 2nd respondent, namely, Akkarappatty Jose. After the death of the father of the 1st respondent, the appellant herein, his brothers and mother continued as tenants of the shop. They are running a business of Photostat, telephone booth, fax, lamination etc. in the said shop. After the death of the father of the 2nd respondent, his property devolved upon his children.

5. A partition suit is stated to be pending in the Sub Court, Thrissur bearing O.S. No. 891 of 2000 with respect to the property of the father of the 2nd respondent in which the building is the subject matter. Against the preliminary decree in the above said suit an appeal is said to be pending before the High Court of Kerala. Further case of the 1st respondent was that since the children of Mr. Akkarappatty Jose tried to trespass into the property, he and his mother filed O.S. No. 2881 of 2006 before the Munsiff Court, Thrissur for injunction restraining them from forcefully evicting them

from the property and it was decreed in their favour by decree and judgment dated 16.10.2008.

6. The case of the appellant is that the schedule shop was purchased by the appellant vide deeds dated 26.5.2010 and on 16.2.2011 from the children of Mr. Akkarrapatti Jose. The 1st respondent contended that after purchase the appellant herein attempted to trespass into the property leased to the 1st respondent and tried to demolish the wall of the room. Hence, the 1st respondent and his mother filed O.S. No. 2180 of 2010 before the Munsiff Court, Thrissur for injunction and the same is pending.

7. The appellant herein filed O.S. No. 2426 of 2010 before the Munsiff Court, Thrissur against the 1st respondent, his mother and his brothers claiming absolute title over the property. According to the 1st respondent, he was harassed by the Sub Inspector of Police, Thrissur and against the same he filed representation before the higher authorities since they have not taken any action, Writ Petition (C) No. 36924 of 2010 was filed by him before the High Court of Kerala and the same is pending without any orders.

8. Further case of the 1st respondent was that the appellant herein has filed an affidavit in O.S. No. 2180 of 2010 pending before the Munsiff Court, Thrissur making an undertaking that he would not forcefully dispossess the 1st respondent from the property. Even though there is an undertaking given by the appellant herein, the appellant continued to harass the 1st respondent. Therefore, the 1st respondent moved before the High Court of Kerala by filing W.P. (C) No. 12638 of 2011 for police protection. In the said case, interim order was passed by the High Court on 26.4.2011 directing the authorities to protect 1st respondent and his siblings to carry on the business in the shop room. Thereafter the High Court disposed of the W.P (C) No. 12638 of 2011 by making the interim order absolute.

9. The 1st respondent contended that under the circumstances, with an intention to evict him, the appellant herein colluded with the 2nd respondent filed O.S. No. 1654 of 2011 before the Munsiff Court, Thrissur on 6.5.2011. The Munsiff Court, Thrissur by an interim order dated 27.5.2011 enjoined the 2nd respondent from conducting any prohibited business in the shop room either directly or through someone else. By virtue of the said court's order, 3rd respondent herein Thrissur Municipal Corporation issued notice on 1.6.2011 to the 2nd respondent directing him to close the business in the shop room. The 1st respondent, thereafter, moved before the High Court of Kerala by filing Original Petition (C) No. 1792 of 2011 praying inter alia to call for the original records of the O.S. No. 1654 of 2011 pending before the Munsiff Court, Thrissur and to quash the plaint filed by the appellant in the civil suit. On notice, the appellant appeared and filed counter affidavit before the High Court assailing the very maintainability of the original petition. On hearing the parties, the High Court passed the impugned judgment and order on 27.10.2011.

10. While according to the appellant Writ Petition under Articles 226 and 227 of the Constitution of India was not maintainable to quash the plaint or the suit proceedings and/or the injunction order passed by the trial Court, per contra according to the 1st respondent it was open to the High Court to issue such writ on being satisfied that the order obtained by the appellant was by deceitful means in order to harm the 1st respondent.

11. From the impugned order, we find that the appellant challenged the very maintainability of the writ petition and argued that the writ petition was not maintainable to quash any plaint or a civil suit. The High Court noticed the stand taken by the 1st respondent who pleaded as follows:

The appellant has fraudulently filed the suit to harass the 1st respondent and to ensure that the business run in the shop is closed down. The said suit was filed by the appellant after having failed in all illegal attempts to evict the 1st respondent from the shop room which was in his possession as a tenant for a very long time. The appellant deliberately and fraudulently omitted to have implead the 1st respondent as a defendant to the suit in order to obtain an order from the court so that it could be misused to cause Municipal Corporation to pass an order to close down the shop.

12. The High Court having noticed the rival contentions accepted the plea taken by the 1st respondent and observed as follows:

“49. There can be no doubt that though Ex.P2 and P3 orders are procured by 1st respondent against 2nd respondent, those are intended to be misused to harass petitioner. It is also clear that those orders are obtained to ensure that petitioner’s shop and the business run by him for very long period are closed down. The means and methods adopted by 1st respondent to obtain Ex.P2 and P3 orders are most undesirable and those cannot be approved by any court.

50. It is unfortunate that an argument is raised by learned counsel for 1st respondent that Ex P2 and Ex P3 orders are passed against 2nd respondent and not against petitioner and hence, petitioner has no locus standi etc. A person who has obtained an order from a court, on the basis of pleading of facts which are false to his own knowledge, without making the person who is actually targeted a party to the proceeding with the sole intention to misuse the order against him, the former shall not be heard to say that the latter has not locus standi to challenge such order, only on the ground that the order is passed against some other person and not the targeted person.

51. If the court is satisfied that an order is obtained by any person by deceitful means to harm another, it can even suo motu undo the harm. So the question of locus standi etc. is not very relevant in cases of this type. At any rate, no person shall be permitted by the court to take undue advantage of his own dishonesty and contend that the other party who is illegally wounded by him has no locus standi. He has no right to request the court to show a red signal to the other who rushes to the court for justice.”

13. In view of such observations, the High Court allowed the writ petition and quashed the plaint and other orders.

14. The maintainability of writ petition in a matter of landlord-tenant dispute was considered by this Court in *Shalini Shyam Shetty and another v. Rajendra Shankar Patil*, (2010) 8 SCC 329. In the said

case, this Court noticed the scope of interference by the High Court in civil matters/private disputes under Article 226 of the Constitution of India and held that the High Court committed an error in entertaining writ petition in a dispute between landlord and tenant and where the only respondent is a private landlord.

15. Nature and scope of power under Article 227 of the Constitution of India was considered by this Court in *Jai Singh and others v. Municipal Corporation of Delhi and another*, (2010) 9 SCC 385. In the said case, this Court held:

“15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well-recognised principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognised constraints. It can not be exercised like a “bull in a china shop”, to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.”

16. The question whether the one or other order procured by the appellant against the 2nd respondent was with the intention to harass the 1st respondent is a question of fact which can be determined on the basis of evidence. There is no such issue framed nor any evidence brought on record to suggest Ex. P2 and P3 the orders obtained by the appellant against the 2nd respondent with intention to misuse the same and harass the 1st respondent. If the 1st respondent was aggrieved against the orders contained in Ex.P2 and P3 which were passed by the courts in one or other suit against a third party (2nd respondent) and to which 1st respondent was not a party, he was not remediless and could have challenged the same before an appropriate forum.

17. A petition under Article 226 or Article 227 of Constitution of India can neither be entertained to decide the landlord-tenant dispute nor it is maintainable against a private individual to determine an intense dispute including the question whether one party harassing the other party. The High Court under Article 227 has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them within the bounds of their authority

but it was not the case of the 1st respondent that the order passed by the Munsiff Court was without any jurisdiction or was so exercised exceeding its jurisdiction. If a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of Constitution of India can be exercised to question a plaint.

18. For the reasons aforesaid, we set aside the impugned judgment and order dated 27.10.2011 passed by the High Court of Kerala at Ernakulam in O.P.(C) No.1792 of 2011 and allow the appeal.

.....J.

(SUDHANSU JYOTI MUKHOPADHAYA)J.

(S.A. BOBDE) NEW DELHI;

APRIL 9, 2014.
