

Shivaraya Vs. Sharanappa and ors

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Court : Karnataka

Decided On : Sep-11-1962

Reported in : AIR1965Kant34; AIR1965Mys34; (1967)1MysLJ414

Judge : M. Sadasivayya, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151- Order 9, Rule 9 - Order 39, Rule 4

Appeal No. : Civil Revn. Petn. No. 232 of 1961

Appellant : Shivaraya

Respondent : Sharanappa and ors

Judgement :

ORDER

(1) In the course of a miscellaneous proceeding pertaining to an application under Order 9, Rule 9 of the Code of Civil Procedure, the Petitioner therein had filed an application which purported to be under the provisions of Order 39 and Section 151 of the C.P.C. On that application, he had obtained an ex parte Order of temporary injunction against the respondent. Thereafter, the respondent filed an application which purported to be under Order 39, Rule 4 of the C.P.C. The lower Court then set aside the Order of temporary injunction which it had passed. It is against this Order that the petitioner in the said proceeding under Order 9, Rule 9 of the C. P. C has now come up in revision.

(2) Sri Manohar Rao Jahagirdar the learned Advocate for the respondent raised a preliminary objection to the effect that a revision was not maintainable and that the proper remedy for the petitioner was to go up in appeal, as provided in O. 43, Rule 1(r) of the C.P.C. As against this objection it has been argued by Sri V.S. Kulkarni the learned Advocate for the petitioner that in his application for temporary injunction, he had invoked the power of the Court not merely under the provisions of Order 39, but also Section 151 of the C.P.C. It is contended by him that the Order of temporary injunction was one, passed really in the exercise of the Court's inherent jurisdiction and that the lower Court has committed a grave error in taking the view that it had no jurisdiction to pass such an Order in the exercise of its power under section 151 of the C.P.C.

(3) It seems to me that the Court has taken a somewhat narrow view, of its inherent powers. In view of the decision of the Supreme Court, in the case of Manohar Lal Chopra v. Rai Bhadur Rao Raja Seth Hiralal reported in : AIR 1962 SC527 , it can no longer be open to doubt that even in the respect of matters not falling under the provisions of Order 39, it would be within the competence of the Court, when the interests of justice so require, to make an appropriate order in the exercise of its inherent powers. The only ground on which the lower Court has vacated the Order of temporary injunction is that its power under S. 151 could not be invoked and that the matter did not fall within the scope of Order 39 of the C.P.C.

(3a) This is a grave error committed by the lower Court in regard to its jurisdiction. The Court had really jurisdiction; having regard to the circumstances of a particular case, it could either exercise or decline to exercise its inherent power, in accordance with its judicial discretion. But to say that the Court did not at all have the jurisdiction to make an Order in the exercise of its inherent powers, is an error which requires to be set right in revision. Though the Order was passed on an application made by the Respondent under Rule 4 of Order 39, the Order which has been passed by the lower Court is, in substance an Order pertaining to its jurisdiction under Section 151 of the C.P.C. In these circumstances, I am satisfied that the petitioner is justified in approaching the Court of revision. There is no substance in the contention that the petitioner ought to have approached the Court

of appeal, because, in its real nature, the Order passed by the trial Court cannot be an order under Order 39 of the C.P.C. having regard to the fact that it is not an Order made in a suit.

This Revision Petition is allowed and the Order passed by the lower Court is set aside, with the direction that the lower Court will dispose of afresh, the question as to whether the Order of temporary injunction passed by it should or should not be vacated, after again hearing both the sides. No order as to costs in this revision petition.

(4) Revision allowed.

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