

Ramalah Vs. Gowdappa

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Court : Karnataka

Decided On : Dec-16-1988

Reported in : ILR1989KAR962

Judge : Hakeem and Navadgi, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151

Appeal No. : C.R.P. No. 30 of 1985

Appellant : Ramalah

Respondent : Gowdappa

Advocate for Def. : M.S. Gopal, Adv.

Advocate for Pet/Ap. : N.K. Ramesh, Adv. for ;Kadidal Manjappa, Adv.

Disposition : C.R.P. allowed

Judgement :

ORDER

Hakeem, J

1. This petition has come before us on a reference made by the learned Single Judge to consider the following questions of law:

1. Whether the defendants can file an application seeking temporary injunction against the plaintiffs in a suit filed by the plaintiffs? and

2. Whether the decision of this Court in SUGANDA BAI v. SULU BAI AND ORS. [1975(1) KLJ 96] 1975(1) KLJ 96 places any restriction in the matter of grant of temporary injunction in favour of defendants in a suit filed by the plaintiffs?

2. Petitioners were defendants and the respondents were plaintiffs in the trial Court. For the sake of convenience the parties will be referred to by their status in the Court below.

3. The brief facts, leading to this reference are as follows:

The plaintiffs filed a suit in O.S.No. 19 of 1980 on the file of the Civil Judge at Chikkaballapur, claiming partition and separate possession of their two-thirds share in the plaint schedule properties which are alleged to be the Joint family properties of the plaintiffs and the defendants. In the said suit, the defendants filed an interlocutory application (I.A.V), seeking temporary injunction to restrain the plaintiffs from interfering with their possession of certain items of the plaint schedule properties, which according to the defendants had fallen to their share in an earlier partition of the family properties in the year 1953 and that they were in exclusive possession of the same since then. It is further pleaded that taking advantage of the suit the plaintiffs were attempting to interfere with their (defendants) possession and enjoyment of the said properties.

3.1. The plaintiffs contested the said application, contending, inter alia, that they were entitled to joint enjoyment with the defendants of the properties mentioned in the schedule to the application (I.A.V), as the same was still undivided and hence the defendants are not entitled to the relief claimed by them in the application.

3.2. On consideration of the pleadings and other material on record, the learned trial Judge allowed the defendant's application and granted the temporary injunction in their favour.

3.3. Aggrieved by the said order, the plaintiffs preferred Miscellaneous Appeal No. 6 of 1981 on the file of the District Judge at Kolar. By his order dated 15-10-1984

the learned District Judge, allowed the plaintiff's appeal and set aside the order on I.A.V. made by the trial Court on the ground that the cause of action alleged in the defendant's application (I.A.V) was different from the original cause of action on which the plaintiffs had filed the suit. In reaching the said conclusion the Appellate Court placed reliance upon a decision of this Court in *Suganda Bai v. Salu Bai & ors.* It is the validity of that order that is challenged in this revision petition.

4. The learned Single Judge is of the opinion that the principle laid down in *Suganda Bai's* case (*supra*) restricting the power of a Court to grant temporary injunction, at the instance of a defendant in a suit, cannot be contemplated in view of the wide inherent power of the Court under Section 151 of the CPC, in circumstances not covered by Order XXXIX of the Code. We are entirely in agreement with the view of the learned Single Judge. For this proposition the learned Single Judge relied upon the Ruling of the Supreme Court in *MANOHARLAL CHOPRA v. RAI BAHADUR RAO RAJA SETH HIRALAL* : AIR 1962 SC527 dealing with the power of the Court to issue interim injunction under circumstances not covered by Order XXXIX of the Code. Referring to the conflicting views of various High Courts, it has observed thus:

'We are of the opinion that the latter view is correct and that the Courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of Order XXXIX C.P.C. There is no such expression in Section 94 which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order XXXIX or by any Rules made under the Code. It is well settled that the provisions of the Code are not exhaustive for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them.'

Further, it is observed thus:

'If the provisions of Section 94 were not there in the Code, the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction.'

XXX XXX XXXThere is nothing in Order XXXIX Rules 1 and 2, which provide specifically that a temporary injunction is not to be issued in cases which are not mentioned in those Rules. The Rules only provide that, in the circumstances mentioned in them, the Court may grant a temporary injunction. Further, the provisions of Section 151 of the Code make it clear that the inherent powers are not controlled by the provisions of the Code.'

5. In that view of the matter there cannot be any doubt about the maintainability of the application, filed by the defendants for grant of temporary injunction, and the inherent jurisdiction of the Civil Court to consider the same on merits. Accordingly, we answer question No. 1 in the affirmative.

6. The only other question that remains for consideration is whether Suganda Bai's case (supra) places any restriction in the matter of grant of temporary injunction in favour of the defendants, in a suit filed by the plaintiffs? On a careful perusal of the ruling rendered by Govinda Bhat, C.J., we are of the opinion that it does not militate against the view taken by the Supreme Court in Manoharlal Chopra's case (supra) regarding inherent jurisdiction of a Court to grant temporary injunction in appropriate cases.

7. In Suganda Bai's case (supra) what has been laid down is that it is only where the defendant's claim to interim relief arises out of the cause of action in the suit or is incidental to it, that he can ask for a temporary injunction against the plaintiff. It was a case where a temporary injunction was granted against the plaintiff in her suit for a permanent injunction against defendant-1. The cause of action for the plaintiff's suit arose in the year 1970, whereas the alleged cause of action for defendant-1 for temporary injunction arose in the year 1973. The two causes of action were clearly distinct and different in point of time and otherwise in the circumstances, it was held that the Courts below were in error in granting temporary injunction in favour of defendant-1.

8. It seems to us that the view taken by the learned trial Judge is in conformity with the view in Manoharlal Chopra's case (supra) and the learned District Judge was in error in allowing the appeal on the ground that the defendants application (I.A.V) was not at all maintainable. The cause of action for the plaintiffs for the relief

claimed by them in their suit being one for partition and separate possession of their alleged two thirds share in the plaint schedule properties and the defendants having disputed the nature of the property being joint, the defendant's claim for interim relief can be said to be incidental to the cause of action on which the plaintiffs had filed the suit. In the circumstances, this revision petition has to succeed.

9. In the result, the C.R.P. is allowed. The impugned order dated 15-10-1984 passed by the District Judge in M.A.No. 6/81 is hereby set aside. The matter is remitted to him for fresh disposal thereof in accordance with law. No costs.

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