

**Kemparasaiah Vs. Rajasetty**

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**Court :** Karnataka

**Decided On :** Jul-16-1987

**Reported in :** ILR1987KAR2863

**Judge :** Kulkarni, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rule 1; Code of Civil Procedure (CPC) (Amendment) Act, 1976

**Appeal No. :** C.R.P. No. 1858 of 1987

**Appellant :** Kemparasaiah

**Respondent :** Rajasetty

**Advocate for Def. :** Ravivarma Kumar, Adv.

**Advocate for Pet/Ap. :** M.R. Janardhana, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**Kulkarni, J.**

1. This is defendant-6's Revision against the order dated 23-1-1987 passed by the Civil Judge, Mandya, in M.S.C. Appeal No. 45/86 affirming the order dated 28-8-

1986 passed by the Munsiff, Nagamangala, in O.S. No. 45/85 granting the temporary injunction.

2. The plaintiff filed the suit for partition and possession of his one-fourth share in the various suit properties including the suit item No. 1 property bearing Sy. No. 64/4 alleging that the suit properties including the suit item No. 1 property were the ancestral properties of the plaintiff and defendants-1 to 4 and that defendant-6, claiming to have purchased the property from defendant-5, was trying to dispossess him. He also urged that the sale, if any, by defendant-5 in favour of defendant-6 was not legal and was not for legal necessity or for the benefit of the estate and was not binding on him. In the course of the suit, he filed LA. No. II under Order 39 Rules 1 and 2 read with Section 151 C.P.C. requesting for a temporary injunction restraining defendants-5 and 6 from interfering with the plaintiff's possession of the suit item No. 1 property. It was resisted by defendants-5 and 6. The Trial Court allowed I.A-II and granted the temporary injunction pending the suit. Defendant-6 filed Misc. Appeal No, 45/86. The Learned Civil Judge dismissed that appeal and confirmed the grant of temporary injunction. Hence, the revision by defendant-6.

3. Both the Courts-below have concurrently held that the plaintiff and the other members of the joint family are in possession of the suit item No. 1 property. The said conclusion arrived at by the Courts below is well substantiated by the material on record. This conclusion cannot be said to be either absurd or perverse or unreasonable when, prima facie, supported by the unimpeachable evidence placed by the parties before the Court.

4. However, an interesting point was tried to be made out by the Learned Counsel Sri Janardana that, when the consequential relief of injunction itself had not been prayed for in the suit, the Courts-below had no jurisdiction to grant the temporary injunction. For that purpose, he relied on *Aboobucker v. Kunhamoo*, AIR 1958 Madras 287. It lays down as :

'An interim relief granted during the pendency of a suit should not be of greater scope than what could be granted in the suit itself, after the party has established his right in the suit to that relief. This consideration would be a very relevant factor

to be taken into account in deciding whether a Court should or even could grant such an interim relief, especially so when the person against whom the interim injunction is sought is not a party to the suit, and against whom no relief could be granted in the suit itself.'

It has further laid-down as :

'An interim relief is granted to a person on the footing that that person is prima facie entitled to the right on which is based the claim for the main relief as well as the interim relief. That relief is granted as an interim measure till the disposal of the suit in which is to be investigated the validity of the claim of right that has been put forward. If no such claim has been put forward in the suit, it means that there can be no occasion for investigation of such a claim in the suit, there can be no justification for the grant of an interim relief which will just lapse on the termination of the suit, but which will leave the parties in the same position in which they were before the institution of the suit, in the course of which the interim relief was sought and obtained. That is not the scope of Order 39 Rule 1(a).'

5. He, then, relied on *Zandaram v. Prahladrao*, : AIR1963 Guj160 . It reads as :

'When the suit is for a permanent injunction of a particular kind, an interim injunction of the same kind can be issued but not of a different kind unless there is a provision for such a thing in Order 39, C P. Code. In a suit for a permanent injunction to restrain the defendant from disturbing the possession of the plaintiff, it is not open to the Court to give a temporary injunction restraining the defendant from obstructing the plaintiff from taking possession of the property, The two are of different kinds. In the first it is only the right to continue in possession ; whereas in the second the question is of the right to take possession. In the first, it is assumed that the plaintiff is in possession and has a right to continue in possession ; whereas in the second, unless it is decided that the plaintiff has a right to occupy, he would not be entitled to take possession anew.'

Further, the Gujarat High Court has stated as :

'Moreover, if in such a suit, the defendant does not admit the right of the plaintiff to be in possession, a temporary injunction will not be allowed unless there is a clear finding that the plaintiff has made out a prima facie case of being entitled to be in possession.'

6. The said Aboobucker's case<sup>1</sup> was decided with reference to Order 39 Rule 1(a). There was no consideration of Order 39 Rule 1(c) in the said Aboobucker's case<sup>1</sup>. Further, Order 39 Rule 1(c) has been amended by the Amending Act, 1976 which has made vital departure from the previous position in law. Even the Gujarat decision<sup>2</sup> referred to above is one that has been decided long prior to the coming into force of the amendment of Order 39 Rule 1(c) in 1976.

7. Order 39 Rule 1(c), as it stands amended, reads as :

'Where in any suit it is proved by affidavit or otherwise--

(a) xxx xxx(b) xxx xxx(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 other 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.'

8. The C.P.C. of the A.I.R. Manual, Fourth Edition, at page 670 has re-produced the objects and reasons. It reads as:

'Clause 89, sub-clause (i) - 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.'

The commentary at page 679 in the C.P.C. of the A.I.R. Manual reads as :

'In a suit for declaration where no relief for a mandatory injunction is prayed for, the Court has jurisdiction to issue an injunction merely to preserve the status quo. It has no jurisdiction to deprive one person from the possession of a certain property, which he holds, or to give possession to one party after taking it away from another - : AIR1951 All558 .'

9. In *K. Babudhom Singh v. H. Romonyaima Singh*, AIR 1962 Manipur 18 it has been stated as :

'In a suit for declaration of title, the plaintiff has every right to defend the possession of his tenant and he is entitled to apply for temporary injunction to protect the possession of his tenant, which is on his own behalf, even though the tenant is not party to the suit.'

10. The commentary at page 679 in the C.P.C. of the A.I.R. Manual, further reads as :

'In a suit for declaration that the plaintiff is a citizen of India, a temporary injunction restraining the defendant State from deporting the plaintiff outside India during the pendency of suit can be granted. 1970 All WR (HC) 58.'

11. The Learned Counsel Sri Ravivarma Kumar referred me to *K. Benimadhob v. K. Madhsudon*, AIR 1969 Manipur 21. It is laid-down in para-8 as :

'The Learned Counsel for the appellant contended that the plaintiffs did not pray for any permanent injunction and that, therefore, they are not entitled to any temporary injunction This argument may hold good in a case falling under the provisions of Rule 2 of Order 39, Civil P.C But, the present case is governed by Order 39, Rule 1, Civil P.C. So, the order of the Subordinate Judge is correct, though he did not discuss the points, which have to be borne in mind by the Court when it issues temporary injunction.'

The said Manipur case is an authority for the view that even though no relief of permanent injunction has been sought for in the suit, still the Court can grant the temporary injunction. Therefore, the said Manipur case clearly lays down that even though there is no prayer for permanent injunction in the suit, still a temporary

injunction can be granted for the purpose of preserving the estate or in aid of the final relief that can be granted to the party.

12. In *Manohar Lal v. Seth Hiralal*, : AIR 1962 SC527 , the Supreme Court has laid-down that even where the circumstances are not covered by Order 39 or any rules made under the C.P.C., the Court still can grant a temporary injunction under Section 151 C.P.C. in order to maintain the status-quo as between the parties.

13. *Sri Ravivarma Kumar*, then, referred me to *Madan Mohan v. Revti Prasad*, which reads as :

'The amendment of Order 39 Rule 1 by the Act of 104 of 1976 has been made for the purpose of including within the purview of the provisions of Order 39 Rule 1 C.P.C. such suits where the defendant threatens to dispossess the plaintiff or otherwise cause any injury to the plaintiff in relation to any property in dispute in such suits. It appears that the legislature felt that such a suit should also be covered by the provisions of Order 39 Rule 1 C.P.C. and by the inclusion of Clause (c) in Order 39 Rule 1 C.P.C., maintenance of status quo in respect of possession of immovable property could also be one of the circumstances in which a civil Court may be entitled to issue a temporary injunction under that provision. Even before the amendment was introduced a temporary injunction for maintaining status quo relating to possession of immovable property could have been issued in a proper case although not under the provisions of Order 39 Rules 1 and 2 C.P.C., but under the inherent powers of the Court under Section 151 C.P.C.'

Therefore, in view of the said Rajasthan ruling<sup>6</sup> and the view expressed by the Supreme Court in AIR 1962 SC 5275 and in view of the clear amendment introduced by Rule 1(c) of Order 39, it becomes crystal clear that even though no relief of permanent injunction is sought for in the suit, still the Court has got jurisdiction to grant the temporary injunction in order to maintain the status-quo between the parties and in aid of the final relief that might be granted in the suit.

14. Even though the suit might have been filed for partition and possession, the grant of temporary injunction would be in aid of the final relief of partition and

possession that has been sought for by the party. Therefore, in view of the amendment effected in Order 39 Rule 1(c), the two rulings AIR 1958 Madras 2871 and AIR 1963 Gujarat 1602 cannot be considered to be good law at all. Therefore, under these circumstances, the argument of the Learned Counsel Sri Janardana that no temporary injunction can be granted when a relief of permanent injunction has not been sought for, cannot be accepted.

15. As already shown above, both the Courts below have concurrently held that the plaintiff and the other members of the joint family are in possession of the suit item No. 1 property and defendants-5 and 6 have been interfering with the possession of the plaintiff and defendants-1 to 4 in respect of suit item No. 1 property. Even the nature of the contention raised by defendant-6 itself is sufficient to show that he has been threatening to dispossess the plaintiff from the suit item No. 1 property. Therefore, both the Courts below were justified in granting temporary injunction. Hence, there is no merit in the revision. It is dismissed.

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