

Veerabhadrappe Vs. Mayappa

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Court : Karnataka

Decided On : Oct-09-1992

Reported in : ILR1993KAR161

Judge : Krishnan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 39, Rule 1 and 2 - Order 43, Rule 1

Appeal No. : C.R.P. No. 3531 of 1992

Appellant : Veerabhadrappe

Respondent : Mayappa

Advocate for Def. : S.V. Prakash, Adv.

Advocate for Pet/Ap. : B. Rudragowda, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

Krishnan, J.

1. The Revision Petitioner is the plaintiff before Munsiff, Channagiri in O.S.No. 44/91, a suit filed by him for specific performance of the alleged Agreement to Sell

in his favour in respect of the suit property. During the pendency of the said suit, the defendant filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC numbered as I.A.IV for grant of temporary injunction against the plaintiff to restrain him from interfering with his peaceful possession and enjoyment of the suit property. That was opposed by the plaintiff. The learned Munsiff after considering the merits of the claim put forward by the defendant in the said application held that he had not made out a case for grant of injunction and consequently dismissed the said application. The defendant being aggrieved by the said order of the learned Munsiff preferred Misc. Appeal No. 29/1991 on the file of Civil Judge, Bhadravathi who came to the conclusion that the order of the Munsiff rejecting the prayer made by the defendant was perverse and arbitrary and caused injustice and therefore it was liable to be set aside and therefore he allowed I.A.IV filed by the defendant before the trial Court and granted injunction in his favour restraining the plaintiff from interfering with his peaceful possession and enjoyment of suit property. It is being aggrieved by this order of the learned Civil Judge that the plaintiff has preferred this Revision Petition.

2. The short Points that arise for consideration in this Revision Petition are : (1) Whether the defendant could seek for redress against the plaintiff by having resort to Order 39 Rules 1 and 2 CPC to : protect his possession, and (2) If the defendant cannot seek for relief under Order 39 Rules 1 and 2 CPC, whether he could have preferred an appeal to the learned Civil Judge when his application for grant of injunction came to be dismissed.

3. Unfortunately, both the Courts below have not bestowed their attention on these important aspects that arise for consideration in a case of this kind. However, as the position in law is beyond any kind of dispute, the learned Advocates were heard with reference to these two Points.

4. Order 39 Rules 1 and 2 CPC after 1976 amendment read as hereunder:

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

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

2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.'

These provisions make it abundantly clear that it is only under Sub-clause (a) of Order 39 Rule 1 CPC that any party to the suit could be restrained by means of an order of temporary injunction, which clearly pre-supposes that either the plaintiff or the defendant could file the application against the other party under this particular sub-clause. The other two sub-clauses viz., (b) and (c) of Order 39 Rule 1 CPC as also Order 39 Rule 2 CPC enable the Court to grant injunction against the defendant restraining him from committing the several acts mentioned therein. The word 'any party' occurring in Sub-rule (a) of Rule 1 does not find a place in these Rules. Therefore it is clear that it is only the plaintiff that could seek redress under these Rules against the defendant. Having regard to the plain language of these

Rules, by no means could it be contended that defendant is entitled to obtain an order of injunction against the plaintiff under these very sub-rules. A faint attempt was made by the learned Advocate for respondent by relying upon the observations made by the Supreme Court in the Decision reported in MANOHARLAL CHOPRA v. RAI BHADUR RAO RAJA SETH HIRALAL, : AIR 1962 SC527 : Rule 19, wherein it has been mentioned that there is nothing in Order 39 Rules 1 and 2 which provides specifically that a temporary injunction is not to be issued in cases which are not mentioned in those Rules. This observation of the Supreme Court has to be read in the context of the earlier and later observations made therein wherein their Lordships have discussed the aspect that the Court has always got inherent powers to grant injunction under Section 151 CPC. It is in that context that in Paragraph 19 it has been stated that the particular Rules do not provide that no injunction should be issued in cases which are not mentioned therein. By these observations it cannot be said that the Court could still grant injunction under those very Rules themselves in respect of cases which do not fall under the said Rules. Therefore, the contention that even under these sub-rules viz., Sub-rule (b) and (c) of Rule 1 or Rule 2 of Order 39 CPC. a defendant can obtain an order of injunction against the plaintiff cannot be accepted. It is not the case of the defendant that the case put forward by him fits into Sub-rule (a) of Order 39 Rule 1 CPC. wherein any party could be restrained by grant of an injunction.

5. The learned Advocate for the respondent contended that the Court always has inherent powers under Section 151 CPC to grant injunction against one party at the instance of the other party in appropriate cases and that the order in question must be deemed to have been made exercising the powers under Section 151 CPC. There could be absolutely no doubt that the Courts have inherent jurisdiction to grant injunction in favour of any party at the instance of the other irrespective of his status viz., whether he is a plaintiff or defendant and it could also be taken that the learned Munsiff in the present case exercised his inherent powers and found that this was not a fit case to grant injunction.

6. Learned Advocate for the respondent invited my attention to the Division Bench Decision of this Court in RAMAIAH AND ORS. v. GODAPPA AND ORS., 1989

KLJ 210, to canvass that the defendant could maintain an application to protect his possession against the plaintiff under these Rules. There is absolutely nothing in this Decision to the effect that the defendant could maintain such an application under these Rules. What has been pointed out is that the Court has got inherent powers under Section 151 CPC to grant injunction in cases not covered by Order 39 CPC about which proposition there could be absolutely no dispute. The Decision in JAGJIR SINGH KHANNA v. DR. RAKHAL DAS MULLICK, : AIR1988 Cal95 was also cited by the learned Advocate for the respondent. Again there is nothing in this Decision to support the extreme proposition canvassed on behalf of the respondent. What has been stated therein is that a temporary injunction would be granted under Section 94(c) only if a case satisfying the requirements of Order 39 Rules 1 and 2 is made out and it is not correct to state that the Court has two sources of power to grant injunction one under Section 94(c) and the other under Order 39 Rules 1 and 2. Again I fail to see as to how this Decision assists learned Counsel for the respondent to canvass the extreme proposition. Therefore it is clear that a defendant cannot maintain an application under these provisions viz., under Order 39 Rules 1 Sub-clauses (b) and (c) and Rule 2 CPC. When defendant cannot maintain an application under these Rules, and it is not the case of the defendant that his application has to be considered under Rule 39(1)(a) CPC., the maximum that could be canvassed is that it should be deemed that he invoked the inherent jurisdiction of the Munsiff to grant an injunction and that the same was refused by the learned Munsiff. Assuming it to be so, the aspect as to the remedy the defendant had could be more appropriately considered when I take up Point No. 2 for consideration, suffice it to say for purpose of Point No. 1 to say that the defendant cannot maintain an application for injunction under Sub-clauses (b) and (c) of Order 39 Rules 1 and 2 CPC.

7. Taking that the defendant did invoke the power of the learned Munsiff under Section 151 CPC to grant the injunction and the same was refused, it has to be seen as to what was the remedy that was available to the defendant. Order 43 Rule 1 categories the various types of order against which an appeal could be preferred. So far as the order of injunction is concerned, Sub-rule (r) refers to an order under Rule 1, Rule 2, Rule 2(a), Rule 4 or Rule 10 of Order 39. There is no sub-rule under Order 43 Rule 1 C.P.C. which makes provision for preferring an

appeal against an order of refusing to grant an injunction under Section 151 C.P.C. If that be so, the remedy for the defendant was by filing a Revision Petition before this Court against the order of the learned Munsiff. There was absolutely no scope for him to have preferred an appeal against the order of the learned Munsiff to the Civil Judge, nor could the Civil Judge entertain such an appeal. Having regard to the clear language of Order 43 Rule 1 C.P.C. there is no necessity to refer to any Decision in this regard. However, if need be, reference may be made to the Decision of the Supreme Court in KESHARDEO CHAMRIA v. RADHA KISEN CHAMRIA AND ORS., : [1953]4SCR136 it has been pointed out that -

'Under the Code of Civil Procedure, certain specific orders mentioned in Section 104 and Order 43 Rule 1 only are appellable and no appeal lies from any other orders.'

It has been pointed out that an order made under Section 151 simpliciter is not appealable, A Full Bench of the Allahabad High Court while dealing with the connected matter in the Decision reported in ZILLA PARISHAD, BUDAUN AND ORS. v. BRAHMA RISHI SHARMA, : AIR1970 All376 has observed in para 20 as follows:

'It is obvious that if an order is passed under Section 151 C.P.C. no appeal lies.'

The learned Single Judge of the Bombay High Court in the Decision in M/s U.D.PATEL & CO. v. C.M.MILLIGAM & CLARKE LTD., : AIR1956 Bom598 has pointed out -

'in holding that the order dismissing the notice of motion must be taken as an order passed, not under the provisions of Order 39, but, under Section 151 of the Code, and if that be the true position, the appeal preferred by the plaintiffs is incompetent.'

When an order passed under Section 151 C.P.C. does not find a place either in Section 104 or under any of the sub-clauses of Order 43 Rule 1 and further when Section 105 specifically enjoins that no appeal shall lie from any order made by a Court in exercise of its original or appellate jurisdiction except in respect of the

cases otherwise provided, no further argument is necessary to say that against the order passed under Section 151 C.P.C. no appeal could be filed.

8. The learned Advocate for the respondent urged that he had filed the application under Section 39 Rules (1) and (2) C.P.C. and as the learned Munsiff has also not held that an application was not maintainable under the said Rules and on the other hand has on merits held that his client was not entitled to the order of injunction, it should be deemed that it is an order passed under Order 39 Rules 1 and 2 C.P.C. As pointed out at an earlier stage this aspect of the defendant not being entitled to maintain an application for grant of injunction against the plaintiff under these Rules under the circumstances adverted to already had not come to the notice of anyone. Only on that account it cannot be said that the order passed by the learned Munsiff is also one under Order 39 Rules 1 and 2 C.P.C. Even if the learned Munsiff under the circumstances had granted an order of injunction in favour of the defendant it could have been stated that such order was beyond the provisions of Order 39 Rules 1 and 2 C.P.C. and not under those provisions. Therefore it is clear that there is absolutely no scope for the defendant to have maintained an appeal against that order before the learned Civil Judge. In that view of the matter, it is clear that the order passed by the learned Civil Judge was one completely lacking jurisdiction and on that sole ground itself the order passed by him is liable to be set aside. When that is so, there is absolutely no necessity to go into the merits of the case to find out whether the order of the learned Civil Judge granting injunction could be sustained or not.

9. Therefore it is clear that the order of injunction granted by the learned Civil Judge should be set aside and the Revision Petition should be allowed. However, this cannot in any way affect the right of the defendant-respondent herein to move this Court against the order of the learned Munsiff or to seek any other appropriate remedy available to him under law. If the defendant seeks any other remedy before the learned Munsiff he shall deal with the said proceeding without in any way being influenced by the observations made by the learned Munsiff or the Civil Judge.

In the result, the order passed by the Civil Judge is set aside and the Revision Petition is allowed subject to the observations made above.

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