

Aleyamma Vs. Indicula

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Court : Kerala

Decided On : Apr-15-1981

Reported in : AIR1982Ker44

Judge : P.C. Balakrishna Menon, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 35A - Order 39, Rule 1

Appeal No. : C.R.P. No. 3333 of 1980-F

Appellant : Aleyamma

Respondent : indicula

Advocate for Def. : K.C. John, Adv.

Advocate for Pet/Ap. : M.C. John, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P.C. Balakrishna Menon, J.

1. The plaintiff is the revision-petitioner. The suit is for declaration of the plaintiff's title and possession and also for an injunction restraining the defendant from taking possession of the suit property in execution of the decree in O. S. No. 380

of 1123 of the Munsiff's Court, Thiruvalla.

2. The revision arises out of I. A. No. 1751 of 1980 filed by the plaintiff for a temporary, injunction restraining the defendant from taking possession of the suit property in execution of the decree in O. S. No. 380 of 1123 pending disposal of the suit. According to the plaintiff, the suit property was settled and given to her in consideration of her Sthreedhanam received by her father-in-law, Geevarghese and she is in possession of the property since last thirty years. The defendant obtained a decree in O. S. No. 380 of 1123 for possession of 14 cents of land in Sy. No. 178/12A of Kadapra Village. During the pendency of the suit, the plaintiff's father-in-law died and her husband was impleaded as a supplemental defendant in the suit. The suit was decreed and in execution of the decree the defendant was attempting to take possession of the property in the present suit, which is different from the decree-schedule property in O. S. No. 380 of 1123. The defendant has no right to take possession of the suit property in execution of the decree that he has obtained against the plaintiff's husband. The defendant filed a counter statement to the application for temporary injunction and contended that the suit property is the same as the property in O. S. 380 of 1123. That suit was decreed as early as on 18-5-1956. The decree of the trial Court was confirmed in appeal, but in Second Appeal the concurrent decrees of the two Courts below were set aside and the suit was remanded to the trial Court for fresh consideration. After remand, the suit was, again decreed for possession of the property and that decree is confirmed in appeal and in Second Appeal. The counter-statement also refers to the plea raised by the plaintiff's husband in execution that he is entitled to fixity of tenure under the Kerala Land Reforms Act. That plea was rejected by the execution Court which ordered delivery of the property to the defendant. This order for delivery was confirmed in appeal and in Second Appeal by this Court. Thereafter, the plaintiff's husband applied to the Land Tribunal, Thiruvalla for purchase of jenm rights in the property under Section 72-B of the Kerala Land Reforms Act. This application was rejected by the Land Tribunal and the order of the Land Tribunal was confirmed in appeal by the Appellate Authority (Land Reforms), and in further revision by this Court. For all these reasons, it is stated in the counter-statement that the suit and the application for temporary injunction are not bona fide and that the defendant should be allowed to take possession of the

property in execution of the decree in O. S. No. 380 of 1123. According to the defendant, the suit property is the same as the property involved in O. S. No. 380 of 1123.

3. Both the Courts below have found that the plaintiff has not made out a prima facie case for a temporary injunction. Accordingly J. A. No. 1751 of 1980 Was dismissed by the trial Court and the order of the trial Court was confirmed in appeal by the District Court, Alleppey. The trial Court in dismissing the application with costs, has also ordered the plaintiff to pay compensatory costs of Rs. 500/- to the defendant. The order of the trial Court reads as follows.

'In the result, I dismiss this application with costs. In addition to costs, plaintiff-petitioner is ordered to pay Rs. 500/- as compensatory costs to the defendant for initiating such frivolous, vexatious false proceedings against the defendant and the defendant will be allowed to realise such costs by executing this order against the plaintiff, Petition ordered accordingly.' This order for payment of compensatory costs is also confirmed by the Appellate Court.

4. On the finding that the plaintiff has not made out a prima facie case, the Courts below were right in rejecting the plaintiff's prayer for a temporary injunction. Nothing is made out before me to interfere with the decision of the Courts below that the plaintiff has not made out a prima facie case for the issue of a temporary injunction, However, I do not find any valid ground to order compensatory costs against the plaintiff. Section 35A(1) of the C.P.C. is as follows :

'35-A, Compensatory costs in respect of false or vexatious claims or defences. (1) If in any suit or other proceeding, including an execution proceeding but excluding an appeal or revision, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if it so thinks fit, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.' I do not find in the counter

statement filed by the defendant an objection to the claim of the plaintiff on the ground that the claim for injunction is false or vexatious to the knowledge of the plaintiff. In an application for temporary injunction, the Court is concerned only with a prima facie case and is not expected to enter any definite finding as to the plaintiff's title and possession of the suit property. At the stage when the Court is considering only a prima facie case, it is most inappropriate to order the plaintiff to pay compensatory costs to the defendant on the ground that the plaintiff's case is frivolous and vexations.

5. In *Gaya Prasad Shastri, Pandit v. Ramji Lal*, (ILR 1949 All 135) it is stated at page 143 :

'It is true that the conduct of the plaintiff to persistently refusing the monthly rent which was remitted to him does not reflect such credit upon him as an honest landlord. But costs which can be awarded under Section 35A are compensatory and not penal. I have examined the judgment of the learned trial Judge but find that he has given no details of the sum of Rs. 100/- which he awarded as special costs. This part of his order cannot therefore be upheld.'

In *Krishnapur Mutt, Udipi v. P. Gopalakrishnayya*, (AIR 1967 Mys 65) it is held at p. 66, para 14 :

'14. Under Section 35A the Code of Civil Procedure, compensatory costs are to be awarded if the Court finds the claim or defence to be false or vexatious, and they are intended to be compensation for the successful party and not either a punishment for the unsuccessful party or a deterrent against future litigation.'

In *Kaza Sriramamurthy v. Andhra University*, (AIR 1966 Andh Pra 179) the law relating to compensatory costs under Section 35A of 'the C. P. C. is stated at p. 180 para. 2 as follows:--

'2. Now in connection with the costs, the defendant-University would certainly be entitled to have the normal costs both of the trial Court as well as the Court of first appeal. The lower appellate Court, however, awarded Rs. 100/- towards the special costs, which admittedly is not the normal costs. The Court can award such

costs only under Section 35A of the Code of Civil Procedure. Under Section 35A, C. P. C. any party who objects to the claim on the ground that the claim is false or vexatious to the knowledge of the party by whom it has been put forward and if thereafter the plaintiff insists on such claim which is ultimately disallowed, the Court in its discretion, after recording the reasons for holding such claim to be false or vexatious to the knowledge of the plaintiff, can make an order for the payment to the defendant some costs by way of compensation within the limit prescribed by that section. It would thus be clear that the Court was entitled to award costs by way of compensation only in a case where the defendant objects that the claim is false or vexatious to the knowledge of the plaintiff and the same was ultimately found to be so false or vexatious. Then at the discretion of the Court the defendant can claim costs by way of compensation. The costs that are awarded thus are compensatory and not penal. Every dismissal of the suit need not necessarily be false or vexatious to the knowledge of the plaintiff. It has to be specifically found on the material placed before the Court, and by assigning reasons that the claim was false or vexatious to the knowledge of the plaintiff and that in spite of the objection of the defendant he persisted in that and ultimately the Court found that the claim was to the knowledge of the plaintiff vexatious or false.' Section 35A of the C. P. C. is not a penal provision to punish the person directed to pay compensatory costs; it is by way of recompense to the successful party that the Court is empowered to order compensatory costs to be paid to him. In the present case, at the stage when an application for temporary injunction is filed, there is no question of any compensation to be paid to the defendant. On the failure of the plaintiff to prove a prima facie case for injunction the application for temporary injunction is only to be dismissed and on such dismissal it is open to the defendant to execute the decree that he has obtained and taken delivery of possession of the property. But that does not mean that at the stage when a prima facie case is considered and found against, a case for compensatory costs, is made out in favour of the defendant.

6. In *Swarnam Iyer v. Veeragu Ammal*, (AIR 1943 Mad 286, at p. 287) it is held as follows:

'It does not appear that any objection was raised on behalf of the plaintiff to the effect that the defence was false or vexatious to the knowledge of the defendant and in the absence of any such objection, I do not think that the Court has the power to award compensatory costs under Section 35A. Moreover, an order under Section 35A has to be passed after recording reasons for holding the defence to be false or vexatious. In my opinion, the words 'having regard to the contention raised, I think that this is a case in which the plaintiff is entitled to some compensation' are not a sufficient recording of the reasons for holding the defence to be false or vexatious to the knowledge of the defendant.'

The same view is expressed in the decision in *Pati Banda Bharadrajudu v. Pisipati Lakshminarayana*, (AIR 1951 Mad 655). In *Vijayan v. Gramodbarana Sanghom*, (1978 Ker LT 407), it is held in paragraph 3 as follows:

'3. The question of compensatory costs arises only when a false or vexatious claim or defence is taken. Something more is necessary to attract the section. The claim or defence must be either disallowed, abandoned or withdrawn. Not only that, the Court should think it fit to make an order for payment of compensatory costs by the person who made the claim or defence. Thereasons for holding the claim to be false or vexatious are also to be recorded. So, in a case where no claim or defence was made, the Court does not get jurisdiction to award compensatory costs.'

7. For the aforesaid reasons, it is clear that no case has been made out for an order for compensatory costs against the plaintiff at the present stage of the case. As adverted to above, it is inappropriate to make an order for compensatory costs on the dismissal of an application for temporary injunction when the Court is concerned only with the question whether the plaintiff has made out a prima facie case. It is premature for the Court to find that the claim of the plaintiff is frivolous or vexatious. Even before the suit has come up for trial and before any evidence is adduced, it is not proper for the Court to come to a conclusion that the claim of the plaintiff is frivolous and vexatious, rendering the plaintiff also liable for payment of compensatory costs to the defendant. In this view of the matter, the order for compensatory costs cannot be sustained and the same is hereby set aside.

8. The trial Court is directed to dispose of the suit untrammelled by the observations contained in its order on the application for temporary injunction and also the appellate order against the same. If in disposing of the suit it is found a case for ordering compensatory costs in terms of Section 35A of the C. P. C. is made out, it is open to the trial Court to order the same.

The C. R. P. is allowed in part vacating the order for compensatory costs and dismissed in all other respects. There will be no order as to costs in this civil revision petition.

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