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Court : Kerala

Decided On : Nov-25-1988

Reported in : AIR1989Ker188

Judge : Verghese Kalliath, J.

Acts : [Specific Relief Act, 1963](#) - Sections 37

Appeal No. : S.A. No. 740 of 1983-D

Appellant : Padmanabhan

Respondent : Thomas and anr.

Advocate for Def. : K.N. Narayana Pillai, Adv.

Advocate for Pet/Ap. : K. Ravivarma Thampan and; A.S.P. Kurup, Adv.

Disposition : Appeal allowed

Judgement :

Verghese Kalliath, J.

1. This is an appeal by the defendant in a suit for injunction. The short facts which resulted in the filing of the suit are these.

2. Admittedly, the defendant is a rentee of a shop room from the first respondent's father. The annual rent of the building was Rs. 120/-. From July, 1979 onwards due to financial difficulties the defendant was not in a position to do trade in the shop room. The shop room remained closed.

3. The case of the defendant is that on 11-1-1980 the son of the original landlord; the first plaintiff along with a college student -- a neighbour of the 1st plaintiff forcibly trespassed into the room and broke open the room by removing the lock and attempted to reduce the room in question into their possession. Immediately, the defendant lodged a complaint before the police. On 12-1-1980 the police made an investigation and found the room broken open by two persons -- the first plaintiff and the 2nd plaintiff. The police took the key of the room and registered a case against the plaintiffs. The plaintiffs filed the suit on 15-1-1980 for an injunction restraining the defendant from entering into the shop room. The plaintiffs' case is that the room was surrendered in July, 1976 and in August, 1979 it was rented out to the 2nd plaintiff. There was no occasion for the plaintiffs to break open the shop room in question and that they are in possession of the shop from (sic) and so, they are entitled to obtain a decree for injunction.

4. The trial Court directed its pointed attention on three facts: (i) whether there was a surrender of the building as stated by the plaintiffs (ii) whether there was a handing over of the building to the 2nd plaintiff as rentee and (iii) whether the statement by the plaintiffs that they have received rent from the 2nd plaintiff is correct or not. These facts are enquired into since the plaintiffs have averred those facts before the Court. On the above three questions of fact, the trial Court found that the case pleaded by the plaintiffs has not been proved. In fact, when the trial Court said that the facts were not proved it has to be understood that the facts spoken to by the plaintiffs in the circumstances of the case are untrue. Holding that the plaintiffs' case is not proved the trial Court dismissed the suit. The plaintiffs filed an appeal.

5. On the crucial questions of fact and the findings thereon by the trial Court the appellate Court agreed with the trial Court. The appellate Court also found that there was no surrender of the building, that there was no handing over of the

building to the 2nd plaintiff and the statement that the 2nd plaintiff has paid rent is thoroughly unreliable. The appellate Court thought that even though what has been pleaded by the plaintiffs is not proved there is a forceful entry into the shop room and that gave the plaintiffs the entitlement to be in possession of the property and that possession is sufficient for a decree for injunction and so, decreed the suit. Now, the defendant appeals.

6. It has to be remembered that a suit for injunction is an equitable remedy and the primary requirement for the grant of an equitable remedy is that the person who claims the remedy must come before the Court with clean hands. He must show equity and he must show, his entitlement under the equity the relief he has sought. Fairness and good faith are the two important 'things required for obtaining any equitable relief. If the plaintiff in his conduct with the person against whom the relief is sought has acted in an unfair or inequitable manner he would not be entitled to the injunction. In this case, on the facts proved, the plaintiffs' dealing is not fair; it is inequitable and so, an equitable remedy under the Specific Relief Act should be denied to such a person. The trial Court has done so. That decision is a correct decision. At any rate it cannot be said that it is a wrong decision which has to be reversed in appeal. The appellate Court ought to have considered these aspects before reversing the decision of the trial Court. Only after considering the above aspects, the appellate powers can be exercised to correct the lower Court judgment. This principle also has to be considered as a principle which has to be applied in considering the appeal by the appellate Court.

7. Learned counsel for the appellant submitted before me that this Court had occasion to consider the question whether wrongful possession is sufficient for maintaining a suit for injunction as against the true owner himself. In certain circumstances, it may be correct to grant injunction against the person who may be found to be in wrongful possession. But those circumstances are different from the circumstances emerging in this case. It cannot be said that a temporary unlawful possession obtained by an unlawful act is sufficient for maintaining a suit for injunction. Counsel referred me to the Text Book of Law of Injunction by Basu and submitted that possession alone is insufficient but there must be an entitlement to possession. Here there is no entitlement to possession. Of course,

that proposition requires very deep consideration. If there is an established possession even if it is unlawful the person in unlawful possession can perhaps maintain a suit for injunction. In this case, it has to be noted that forcible entry was on 11-1-1980 and a complaint was filed on 12-1-1980 and pursuant to that complaint the key was taken by the police. In this context, I have to say that the plaintiffs have no possession at all since an indicia to say that one has got possession of the locked room is the possession of the key. In this case, on the date when the suit was instituted, that is on 15-1-1980, the key was with the police and so, it cannot be said that the plaintiffs were in possession of the property on 15-1-1980. It is a case where a party has taken law in his hands and thereafter tried to obtain an equitable relief from the Court. I do not think that the appellate Court was justified in reversing the judgment of the trial Court in the circumstances of the case. In the result, I set aside the judgment of the appellate Court and restore the judgment of the trial Court.

The Second appeal is allowed.

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