

**Fr. Simon Vs. Fr. Skaria**

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**SooperKanoon Citation :** [sooperkanoon.com/727013](http://sooperkanoon.com/727013)

**Court :** Kerala

**Decided On :** Oct-07-2004

**Reported in :** 2004(3)KLT620

**Judge :** P.R. Raman, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 94 and 151 - Order 39, Rules 1 and 2

**Appeal No. :** F.A.O. No. 221 of 2004

**Appellant :** Fr. Simon

**Respondent :** Fr. Skaria

**Advocate for Def. :** N. Subramaniam,; M.S. Narayanan,; R. Pramodh,;

**Advocate for Pet/Ap. :** K. Ramakumar, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**P.R. Raman, J.**

1. This appeal arises out of an order in I.A.1969/2004 in O.Section 6/1985 dated 17.7.2004 on the file of the 1st Additional District Court, Ernakulam.

2. Appellants are defendants 16, 33, 4, 34, 39, 41, 46 and 47 in the suit and respondents in I.A.1969/2004. The only respondent herein is the 53rd defendant who is the petitioner in the said LA. He filed I.A.1969/2004 before the Court below under Order XXXIX, Rule 1 read with Section 151 of the Code of Civil Procedure praying for an order of temporary injunction restraining the 16th defendant and anybody else claiming under him from issuing any kind of notice or Marriage Deshakuri or like certificates and from representing themselves as the Vicar of the Piravom Valiyapalli and acting as such or doing any kinds of acts or deeds claiming the 16th defendant as the Vicar of the Piravom Valiyapalli and also from convening or conducting any meeting representing any one else other than the respondent herein who is the Vicar of the Piravom Valiyapalli till the disposal of the suit.

3. The suit was one filed by the plaintiff for a declaration that Piravom St. Mary's Orthodox Syrian Church also known as Piravom Valiyapalli and its assets described in the plaint schedule are to be administered under the constitution of Malankara Orthodox Syrian Church originally passed on 26.12.1934 and as amended subsequently under Metropolitans, priests and other religious dignitaries and office bearers appointed and functioning under the said constitution. The cause of action for the suit alleged is that defendants 1 to 18, 26 to 28 and others caused obstruction to the worship of the plaintiffs under the 1934 constitution in the plaint Church and acted in violation to the right of the plaintiffs.

4. Petitioner (53rd defendant) in I.A. claimed to be the Vicar of the Church who conducted the election to the Managing Committee of the Church in the year 2003-2004 with the supervision of an advocate Commissioner appointed by the Court. The cause of action for filing the petition is that the first respondent (10th defendant) published ExtA1 notice calling for some quotations, calling annual meeting of Marthamariam Samajom, invitation for the appointment of driver etc.

5. Petitioners herein as respondents in the said petition, contended that the prayer made in the petition is beyond scope of the suit and cause of action is entirely different. They also raised a preliminary objection regarding the maintainability of the petition on the contention that no injunction can be sought by a defendant

against another defendant/defendants. The Court below, by order dated 17th July, 2004 decided the maintainability of the petition alone and held that the petition is maintainable. Respondents therein were directed to file a counter and the matter was adjourned for hearing the injunction petition on merits. It is challenging the said order passed by the Court below on the question of maintainability, that the present first appeal is filed.

6. The only question arises for consideration in this appeal is as to whether an application for injunction against a co-defendant is maintainable?

7. Learned counsel appearing for the respondent submitted that as per the order impugned, the Court below has found that the Court has power under Section 151 C.P.C. to grant an injunction, even if Order XXXIX, Rule 1 strictly will not apply to the case. Hence according to him, this is not an appealable order. However, it may not be necessary to pronounce finally on the maintainability of the appeal since the very application was filed under Order XXXIX, Rule 1 read with Section 151 of the Code of Civil Procedure and even otherwise a revision will lie before this Court. Hence I shall proceed to consider contention on merits.

8. For the purpose of deciding the maintainability of the petition for injunction, the Court below placed reliance on decision of this Court in James v. Jaimon James (1998 (1) KLT 233) wherein it was held that in appropriate cases, a mandatory injunction can be issued at an interlocutory stage invoking the power under Section 151 of the Code of Civil Procedure. It was also held that Order XXXIX, Rules 1 and 2 are not exhaustive of the circumstances under which interim injunction can be granted and the language employed in those two rules is clearly wide enough to include an order in the form of a mandatory injunction and admits of no exception with reference to a point of time to which it can be made. Injunctions are a form of equitable relief and they have to be adjusted or moulded in aid of equity and justice to the facts and circumstances of each particular case. Jurisdiction is thus undoubted even under Order XXXIX, Rules 1 & 2. Even if it cannot be granted under the said Rules, Section 151 is the source of such jurisdiction. In the present case, the Court found that the petitioner before the Court below being a defendant is not entitled to get an injunction under Order

XXXIX, Rule 1 C.P.C. against a co-defendant but held that a petition under Section 151 is perfectly maintainable.

9. The learned counsel for the petitioner submitted that when there is a specific, enabling provision in the Code of Civil Procedure as per Order XXXIX, Rules 1 and 2, in the matter of grant of injunction, the Court cannot exercise the inherent power under Section 151 C.P.C. if an application for injunction does not fall within the ambit of Order XXXIX, Rules 1 and 2. It is his further case that in so far as Order XXXIX, Rules 1 and 2 do not confer any right on a defendant to get an injunction against the co-defendant, it must be impliedly held as not permissible as per the rules and hence the inherent power under Section 151 cannot be invoked to grant any relief contrary to what is impliedly prohibited.

10. This contention may not hold good in the light of the pronouncement of the Apex Court in *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* (AIR 1962 SC 527). It was held by the Apex Court in the said decision that 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. The effect of the expression 'if it is so prescribed' in Section 94 is only this that when the rules in Order XXXIX, Civil P.C. prescribe the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make necessary orders in the interests of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. 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. It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions of Section 94 of the Code have their effect and not in taking away the right of the Court to exercise its inherent power. Section 151 itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court, it is a power inherent in the

Court by virtue of its duty to do justice, between the parties before it. Further, when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code. Thus, there being 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, the Courts have inherent jurisdiction to issue, temporary injunction in circumstances which are not covered by the provisions of Order XXXIX, C.P.C. if the Court is of opinion that the interest of justice require the issue of such interim injunction.'

11. The above decision of the Apex Court is a complete answer to the contention of the petitioner herein. The mere fact that the injunction sought for cannot be brought within the prescribed Rule under Order XXXIX, Rules 1 and 2, by itself does not take away its inherent power under Section 151 of the Code of Civil Procedure. As held by the Apex Court, Section 151 saves the inherent power of the Court, a power which is inherent in nature. There is nothing in Order XXXIX, Rules 1 and 2 in any way limiting or abrogating the inherent power of the Court under Section 151 of the Code of Civil Procedure. Thus, unless the Rule contains any express prohibition the Court have the inherent power under Section 151 C.P.C.

12. In *Rainibai v. Kamala Devi* (AIR 1996 SC 1946) the Apex Court again held that in a suit of declaration of title simpliciter, the Court has power under Order XXXIX, Rules 1 and 2 or even under Section 151 C.P.C. to grant ad interim injunction pending suit. It was held that the Court has inherent power to protect the right of the parties in a pending suit. The same is the view taken by this Court in *James's case* (1998 (1) KLT 233) reference to which was already made by me earlier. In *Hamsa v. George* (1995 (2) KLT 326) a Division Bench of this Court specifically considered the question as to whether a temporary injunction can be granted on an application of a defendant and it was held that the Court has inherent power de hors the provisions of Order XXXIX of the Code to grant temporary injunction. A clear distinction is made by the framers of Rules as between the situation in Clause (a) and the situation in either Clause (b) or Clause (c) of Rule 1 of Order XXXIX. In respect of the former, injunction can be granted whoever applied for the

same, whereas in respect of the latter no injunction can be granted on the motion of a defendant. There, the Court held that a defendant is disabled from moving an application under Order XXXIX, Rule 1(c) of the Code, if the plaintiff threatens to dispossess the defendant or otherwise cause injury to him in relation to any property in dispute in the suit. But at the same time, it was held that the only remedy open to the defendant is to invoke the jurisdiction of the Court under Section 151 of the Code which saves inherent power of the Court to pass orders to meet the ends of justice and to prevent the abuse of process of Court or to institute a separate suit to establish his case.

13. In the light of the above decisions, it can not therefore be contended that merely because an injunction sought for in the present case does not fall under Order XXXIX, Rule 1 or 2, a petition under Section 151 of the Code of Civil Procedure seeking such a relief is not maintainable.

14. I am not pronouncing anything on the merits of the case and it is open to the parties to raise their respective contentions as the Court below itself has posted the matter for counter affidavit of the respondent.

In the circumstances, no fault can thus be found against the order passed by the Court below. Hence this appeal is dismissed. No costs.

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