

D. Albert Vs. Lalitha and ors.

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Court : Chennai

Decided On : Aug-18-1988

Reported in : AIR1989Mad73

Judge : Srinivasan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 4

Appeal No. : A.A.O. No. 697 of 1988

Appellant : D. Albert

Respondent : Lalitha and ors.

Advocate for Def. : G. Masilamani, Adv. for ;T.P. Mahoharan, Adv.

Advocate for Pet/Ap. : T.P. Rajagopal, Adv.

Disposition : Appeal allowed

Judgement :

Srinivasan, J.

1. The appellant herein instituted the suit, O.S. 130 of 1988 on the file of the Principal Subordinate Judge, Pondicherry, for a declaration that he is the absolute owner in possession of the suit property and the lodging business run therein, for an injunction restraining the defendants from interfering with his possession and

enjoyment of the property and the business and for a mandatory injunction directing the second defendant Municipality to issue a licence to run the business in the said premises. The first defendant is the mother of the plaintiff and the second defendant is the Pondicherry Municipality. According to the plaintiff, he sent moneys from Saudi Arabia where he was employed to his mother with instructions to purchase land and construct the building in the suit property and that the business was started on his instructions as he desired to give up his foreign assignment and settle down in India. He alleged that after his arrival to India and taking charge of the affairs, his mother began to make claims of ownership and interfere with his possession and enjoyment. He applied in I.A. 1369 of 1988 for interim injunction pending suit.

2. The Principal Subordinate Judge by order dated 2-5-1988, ordered notice to the defendants and granted interim injunction till 13-6-1988. The first defendant filed an application on 10-5-1988 for vacating the interim injunction. In the affidavit filed in support of the same she claimed ownership of the entire property and asserted that she was in possession and enjoyment thereof along with her husband. She alleged that the plaintiff had unlawfully locked one shop room and a passage in the ground floor taking advantage of the interim injunction. As the Principal Subordinate Judge's court was closed for summer holidays, the application was filed in the vacation Civil Court and numbered as I.A. 11 of 1988.

3. The plaintiff filed a long counter statement in I.A. 11 of 1988 contesting the claim made by the first defendant. On 25-5-1988, the Vacation Civil Judge passed the following order in I.A. 11 of 1988 --

'Counter filed by A-1 with documents Mr. T. Murugesan filed vakalat for R-2. Heard, Title deed filed by plaintiff. Licence produced. Hence, the ex parte injunction is vacated and status quo is ordered.'

Aggrieved by the same, the plaintiff has preferred this appeal.

4. At the outset, it has to be pointed out that the fair order does not contain a list of exhibits though reference is made by the judgment to the documents filed before him. At the request of counsel, I called for the records and on receipt of records, it

is seen that the appellant had filed several documents in the I.A. in support of his case. The records sent to this court do not contain any document of the first defendant. According to her learned counsel, as many as eight documents were filed in court along with a list of documents. The order refers to the production of the licence but even that document does not seem to have been marked. This unsatisfactory state of affairs is entirely due to the failure of the Vacation Civil Court to follow the rules. Rule 84 of the Civil Rules of Practice which is mandatory in its terms enjoins the Subordinate Courts to annex to the judgment a list of exhibits filed and witnesses examined. But it is seen that Courts in Pondicherry do not observe this rule. The practical utility of the rule has not been realised by these courts. The failure to adhere to the rule causes undue hardship to the parties to the proceedings when the matter is before an appellate forum. The present case is a glaring illustration of the same. When the first respondent asserts before me that eight documents were filed in the court below on her side and produces a copy of the list of exhibits, there is no indication in the court records in support of the same. But, the express reference in the order to the production of the licence shows that the assertion made by learned counsel for the first respondent cannot be rejected off-hand. This difficulty would not have arisen if the lower court had adhered to the procedure prescribed by the rules. Normally, I should embark on an investigation whether documents were filed by the first respondent or not, but in view of the fact that I am setting aside the order of the Court below on a more substantial ground and remanding the matter to the trial court, I am not doing so.

5. The order of the Vacation Civil Judge suffers from a very serious infirmity. Apart from the fact that he has not considered any of the documents relied on by the appellant or the documents said to have been filed by the first respondent excepting the licence referred to in the order but not marked as an exhibit, the Vacation Civil Judge has ordered 'status quo' while vacating the interim injunction. It is the vaguest order possible in the circumstances and wholly unworkable. When the parties are at loggerheads putting forward rival claims before the Court emphasising on their respective possession to the exclusion of one another, what will be the effect if the court merely orders 'status quo' without specifying the party in possession? The term 'status quo' has been defined in Shorter Oxford Dictionary as 'state in which', 'the existing state of things: In other words, it means

the state in which anything is already. Thus, when it is said that, status quo should prevail, it is meant that, matters are to remain as they are.

6. It is no doubt true that parties are well aware of the real state of things as they exist. But when they are fighting with each other, in a court of law, advancing cases diametrically opposed to each other, neither of them can be expected to meekly reconcile to the situation and stop interfering with the possession of the opposite party even if that is the real 'status quo'. Invariably, the immediate consequence is that the party who is not in possession would attempt to get into possession by asserting that he had been in possession already and on the date of the 'status quo' order he was in possession with the result that there would be a clash between the parties leading to intervention by police and criminal proceedings. There is no justification whatever for a civil court driving the parties to criminal proceedings by passing an order of 'status quo' without indicating what the status quo is. This is nothing but a grave dereliction on the part of the civil Court of its duty to decide a disputed question of fact. The Court is bound to decide prima facie on the materials available, whether the plaintiff is in possession or the defendant is in possession. Leaving the matter in doubt and ambiguity by passing an order of 'status quo' will result in more dangerous consequences than even deciding wrongly but clearly that one of the parties is in possession.

7. I am aware that many a court including the High Court have passed orders of 'status quo' simpliciter. In fact, some time back, I came across an order of the High Court on the following lines : 'Petitioner claims to be in possession. Respondent filed a counter that he is in possession. In the circumstances, status quo should continue till the disposal of the appeal. It is obvious that such orders should not be passed by any court, high or low. Whenever a Court passes an order directing the preservation of 'status quo' it should by the same order state in unequivocal terms what the 'status quo' is. Otherwise the court will be failing to do its duty.

8. Hence, the order of the vacation civil Judge has to be set aside and the matter has to go back for fresh disposal. However, counsel on both sides agreed that the application for injunction could be disposed of by the trial court along with the main suit within a short time as may be fixed by me in view of the fact that the Court has

to consider the same set of documents for the purpose of the application as well as the suit and duplication of work could be avoided by disposing of the suit and the application together. Learned counsel on both sides fairly agreed that till the disposal of the suit the arrangement which I directed by my order dated 23-6-1988 in C.M.P. 8408 of 1988 could prevail with a small clarification.

9. Hence the appeal is allowed and the order of the court below is set aside with the following directions :--

(1) The Principal Sub-Judge, Pondicherry shall post I. A. No. 1369 of 1988 along with O.S. 130 of 1988 on his file and dispose of both together before 31-12-1988 and send a report to this court;

(2) Till the disposal of the suit the appellant herein will be in possession of the first floor of the suit building and run the lodge called 'Albert Lodge'.

(3) The first respondent shall be in possession of the entire ground floor of the building and her possession shall not be disturbed till the disposal of the suit. Even if the appellant had locked any portion of the ground floor already, he shall open the same and allow it to be used by the first respondent.

Each party will bear its own costs in the appeal.

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