

V. Ganthimathi Vs. the Commissioner, Pudukottai Municipality

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Court : Chennai

Decided On : Feb-21-1991

Reported in : (1992)2MLJ488

Appellant : V. Ganthimathi

Respondent : The Commissioner, Pudukottai Municipality

Judgement :

ORDER

Janarthanam, J.

1. Pudukottai Municipality owns a farm growing grass going by the name 'Maruppini Pul Pannai'. The right to cut and remove the grass from the said farm for the period between 1.4.1990 and 31.3.1991 had been auctioned, on 22.2.1990. The maximum bid in the auction was Rs. 4,23,010. One Ganthimathi submitted a letter to the Municipal Council offering Rs. 4,33,035 for the licence to be granted in her favour to cut and remove the grass during the said period. As a consequence, the auction in favour of the highest bidder was not at all confirmed. Pending consideration of the offer of the said Ganthimathi, the Municipality, on appraisal of the relevant provisions, decided to reauction. Aggrieved by such decision, the said Ganthimathi, as plaintiff, filed O.S. No. 421 of 1990 on the file of the District Munsifs Court, Pudukottai against the Commissioner, Pudukottai Municipality as defendant on 4.4.1990 seeking the relief of declaration of her right to cut and

remove the grass from the farm during the period from 1.4.1990 to 31.3.1991 and for permanent injunction restraining the defendant and his men from re-auctioning the said right. She also filed I.A. No. 128 of 1991 on 18.1.1991 praying for the relief of interim injunction restraining the defendant and its men from interfering with her peaceful possession and enjoyment of the suit property namely, grass farm.

2. Learned District Munsif posted the said I.A. to 23.1.1991 for filing counter, on which date, counter had been filed and it was posted, for enquiry, to 24.1.1991, on which date, it was adjourned to 28.1.1991 besides making an order of interim injunction till then. On 28.1.1991, learned District Munsif was on casual leave and consequently, it was adjourned to 31.1.1991, on which date, both sides were not ready and consequently, it was further adjourned to 7.2.1991, of course, after extending the interim injunction till then. On 7.2.1991, learned District Munsif addressed a letter to the District Judge for the transfer of the case to the file of some other court for certain obvious personal embarrassment, adjourning the case to 27.2.1991 awaiting necessary orders. In so doing, no order was passed extending interim injunction. Therefore, the plaintiff has come forward with the present action, as an aggrieved person, under Section 115, C.P.C., as no order was passed extending the interim injunction.

3. Under the amended provisions of Section 115 of the Code of Civil Procedure, revisional jurisdiction can be invoked, only if the order under revision amounts to a 'case decided'. The Clauses (a) to (d) of the said section set out the circumstances in which the jurisdiction is to be exercised. The two parts of the section are not only separate and distinct but have entirely different ambit and role. The first part prescribes the basic conditions for invoking the revisional jurisdiction while the second part enumerates the circumstances in which the jurisdiction may be exercised. Although for invoking the revisional jurisdiction the condition prescribed in the first part of the section would suffice, yet for exercising the jurisdiction, in addition to the satisfaction of the condition laid in first part, the attraction of any one or more of Clauses (a) to (d) is also required.

4. The term 'case decided' is not confined to the decision of the case as a whole, but would also include part of a case, which decides a substantial question in controversy between the parties. The touchstone, therefore, would be to find out if the order under revision has determined some right or claim between the parties, which is legally enforceable. If it has, it would be 'a case decided' and jurisdiction under Section 115, C.P.C., may be invoked and not otherwise.

5. In the case on hand, it cannot be stated that any part of the controversy between the parties had been decided by not extending the order of interim injunction earlier granted and in this view of the matter, it goes without saying that the revision filed as such is rather incompetent and deserves outright dismissal even at the admission stage.

6. I am rather pained to state that the revision petition knocked at the door of the court with all sorts of trickery device with dirty hands. A cursory glance or perusal of the plaint would reveal that the right to cut and remove the grass in the farm has not been conferred in her favour by issuance of any order from the Municipality. However, there is no specific allegation that she entered into possession of the said farm pursuant to any order granted by the Municipality in her favour. The relief that had been prayed for in the suit would also indicate the declaratory relief of recognition of her right to cut and remove the grass from the said farm for the period between 1.4.1990 and 31.3.1991 and consequential relief of permanent injunction for restraining the defendant and his men from re-auctioning the said right. Curiously enough, she would incorporate averments in the affidavit filed in support of the I.A., as if she had been inducted into possession of the farm and prayed for the interim relief of injunction restraining (he defendant and his men from interfering with her peaceful possession and enjoyment, which is not at all the relief prayed for in the suit, leave alone the other lacuna of seeking the said relief as a separate one by paying necessary court fee. However, I may nasten to add that the trial court should not at all get influenced by any of the observations made by me in this order.

7. For the above reasons, the civil revision petition is dismissed even at the admission stage.

