

Renuka Devi Vs. D. Manoharan

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Court : Chennai

Decided On : Nov-18-1997

Reported in : 1997(3)CTC567; (1998)IIMLJ245

Judge : S.S. Subramani, J.

Acts : [Constitution of India](#) - Article 227; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rule 1

Appeal No. : C.R.P. No. 2226 and C.M.P. No. 11268 of 1997

Appellant : Renuka Devi

Respondent : D. Manoharan

Advocate for Def. : V. Lakshmi Narayanan, Adv.

Advocate for Pet/Ap. : M.S. Krishnan, Adv. for ;Sarvabhauman Associates

Judgement :

ORDER

S.S. Subramani, J.

1. Defendant in O.S.No. 5345 of 1997, on the file of the VII Assistant. City Civil Court, Madras, is the revision petition. The plaintiff claiming himself to be a tenant under the defendant filed this suit for injunction, to restrain her from entering into

the building. It is the case of the respondent that the defendant let out the building to him, by virtue of an affidavit dated 17.7.97, on his agreeing to pay the the monthly rent of Rs. 1,500. It is also his case that he has paid a sum of Rs. 40,000 as advance to the petitioner. It is further averred in the plaint, that on 31.7.97 at about 10.00 a.m. the defendant came to the suit premises, and wanted the plaintiff to vacate the premises, on the ground, that the plaintiff happened to be a brother of an Advocate. She also offered to return the sum of Rs. 40,000 which has been paid as advance. The plaintiff did not agree for the same, which created a misunderstanding between the parties. It is his further case that on 1.8.1997, the defendant with her family members shouted at him and attempted to enter in to the suit premises, and the same was resisted by the family members of the plaintiff. It is said that the plaintiff, however, managed to prevent them from entering into the building. Thereafter, the defendant made a open challenge stating that they are capable of removing the plaintiff without the intervention of the Court, though the plaintiff's brother is an Advocate. A police complaint was made by the plaintiff, which was not fruitful. The suit was, therefore, filed to restrain the defendant, on the basis of the apprehension that she may enter into the property at any times.

2. The suit was filed on 1.8.1997, and on the same date, an interim injunction was granted as follows:-

'Heard,. Perused the records. There is prima facie case. Ad interim injunction till 14.8.97 under Order 39, Rule 3 to be complied with.'

The present revision is filed against that order.

3. At the time when the revision was being heard, this order was not in force, and it is admitted by both the counsel that the interim order was already vacated. The respondent also filed an appeal before the Appellate Court, which was also without any success. As it is, there is no injunction. Under ordinary circumstances, I would have dismissed the civil revision petition as infructuous. But certain telling facts compel me to say that the dismissal of the injunction petition itself may not be sufficient to meet the ends of Justice, especially when certain facts are brought to my notice. While exercising the powers under Article 227 of the [Constitution of India](#), this Court is entitled to take into consideration the grievance of the party,

and if it is found to be true, it is also duty bound to see that the grievance is redressed to the maximum possible extent. It is here, the C.M.P. No. 11268 of 1997, gains its importance, where the petitioner seeks a direction to the respondent to hand over possession of the suit premises to her.

4. The alleged rental arrangement is dated 17.7.97, which is in the form of an affidavit, sworn by the respondent in Rs. 10 stamp paper. An affidavit is taken as a rental arrangement, and he has filed the suit on that basis, and obtained an order of interim injunction. The case of the petitioner is that under the guise of the said ex parte order of interim injunction, the first floor portion of the premises was forcibly occupied by him along with other persons. The very appearance of the rent arrangement itself creates some suspicion. There is a finding by the trial Court as well as by the appellate Court, that the document is a created and forged document. Various other circumstances have also been taken by the courts below to come to the conclusion that the case as pleaded by the respondent is false, and that was the reason why Courts below refused to exercise their discretion in his favour.

5. What is the effect of that order will be the main consideration, when we consider C.M.P. No. 11268 of 1997. The effect of the order is that the respondent has come to Court with a fraudulent document so as to deprive another person of her property. Eventhough the injunction application was dismissed, if he continues in possession on the basis of the fraudulent document, is not the Court impliedly holding him to continue in possession. The Court in such cases will have to be little more active, since such person should not get the benefit out of their own fraud.

6. The argument of the learned counsel for the petitioner is that the petitioner can only file a suit for recovery of possession and she cannot take the law into her own hands. I do not think that the court will be helpless in such cases. The person coming to the Court with false case, with the aid of false and fraudulent document, is not entitled to any equity, nor he is entitled to get any orders in his favour. The law is settled that such cases should be thrown out even at the threshold. The court has also a duty to see that as far as possible, litigation is avoided, and

multiplicity of proceedings are avoided, and when the Court has such a power to grant relief, it should not close its eyes on technicalities.

7. Learned counsel for the respondent submitted that we are only at the preliminary stage, and if the respondent is thrown out of the property at this stage, and if he is ultimately in a position to prove his case, the hardship cannot be compensated. I am not agreeing with the said submission. When the Court forms an impression, on the basis of the case of the respondent and comes to the conclusion that the party has come with a false case, after creating a document, following the settled legal position, it has to be thrown out at the threshold. He should not be given an opportunity to adduce evidence to prove his fraud. Instance are not wanting. On the basis of the oral evidence, truth cannot be suppressed and fraud cannot be perpetuated. In all such cases, it is only because the Court has been silent, and has permitted the party to prove the fraud. That should not be the attitude of a Court, when a blatant injustice and fraud are brought to its notice. It has to be removed without any delay.

8. Both the Courts have on materials found that the plaintiff has come with a fraudulent documents, as if executed by the petitioner. He occupied the building on that basis and he had the courage enough to move the trial Court to get an order of injunction. Though it is vacated, he continues to be in possession. Under our system, possession has great weight, and if that is allowed to stand, on the basis of a fraudulent document, the loss or the injustice can never be compensated. In such cases, I do not think that the petitioner must be asked to file a suit and get possession, as contended by the counsel for the respondent. That will amount to granting a premium on the fraud.

9. I am very sorry to say that one of the Legal Practitioners, who claims to have identified the signature of the petitioner has also played his part in the fraud. According to the document, he has identified the signature on 14.7.1997, when there was no signature at all. Even according to the respondent, he has signed it on 17.7.97. The legal practitioner who attested the signature on the basis of identification, is also a Notary Public. How far they have been faithful to their profession is a matter which requires a detailed study.

10. When the petitioner brought to the notice of the Court, that the very same building is the subject matter of another lease, naturally the respondent had to change his stand, and the argument dated 17.7.1997 allegedly entered with the petitioner had to be changed. I do not want to elaborate the falsity of the respondent's case, since the same has been taken note of by the Courts below.

11. Even though the document is dated 17.7.1997, no evidence is on record to show that the respondent was in possession till 1.8.1997. His occupation is only after the interim order of the trial Court, and he has taken advantage of the ex parte order of injunction.

12. Counsel for the respondent has very seriously contended that when the interim order has been vacated, the civil revision petition can only be dismissed as infructuous, and no more orders are required in such cases. Now I come to the powers of Court and how such cases have to be dealt with. In the decision reported in *S.P. Chengalvaraya Naidu (Dead) By LRS. v. Jagannath (Deal) By LRS. and Ors.* 1994 (1) S.C. 1 in paragraph 6, their Lordships held that 'a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is deception in order to gain by another's loss. It is a cheating intended to get an advantage.' Their Lordships said in the very same judgment, in the earlier paragraph that we have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.'

13. In *Indian Bank v. Satyam Fibers (India) Pvt. Ltd.* : AIR 1996 SC2592 of the reports. Their Lordships held thus:-

The judiciary in India also possesses inherent power, specially under Section 151, C.P.C., to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from

indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business.'

In paragraph 23 of the judgment, Their Lordships said thus:

'Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the Court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its orders. The court has also the inherent power to set aside a sale brought about by fraud practised upon the court or to set aside the order recording compromise obtained by fraud.'

In paragraph 28, their Lordship said that fraud is an essential ingredient of forgery. In paragraphs 24 to 27 of the Judgment. Their Lordships considered whether forgery is a fraud and whether forgery and fraud were proved in that case. In paragraph 25, it is stated as hereunder:-

'Forgery has its origin in the French word 'forger', which signifies: '.....to frame or fashion a thing as the smith doth his works upon the anvil. And it is used in our law for the fraudulent making and publishing of false writings to the prejudice of another man's right.'

14. The grievance of the petitioner is that since the Court has refused injunction, the possibility of his withdrawing the suit is probable, and if so, the petitioner will be without any remedy, except by filing a suit for recovery of possession. I feel that the said contention has some force. It is in these circumstances, the power under Article 226 and 227 of the [Constitution of India](#), requires consideration.

15. In a recent decision of the Supreme Court, this question was considered, and the same is reported in *Puran Singh and Ors. v. State of Punjab and Ors.* : [1996]1SCR730 of the Judgment, Their Lordships observed thus:-

'When the Constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of

superintendence over all courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction have to be traced and found in Articles 226 and 227 itself. No useful purpose will be served by limiting the power of the High Court by procedural provisions prescribed in the Code. Of course, on many questions, the provisions and procedures prescribed under the Code can be taken up as guide while exercising the power, for granting relief to persons, who have invoked the jurisdiction of the High Court. Different provisions and procedures under the Code are based on well recognised principles for exercise of discretionary power, and they are reasonable and rational. But at the same time, many procedures prescribed in the said Code are responsible for delaying the delivery of justice and causing delay in securing the remedy available to person who pursues such remedies. The High Court should be left to adopt a procedure which can be held to be not only reasonable but also expeditious.

16. In an earlier decision of the Calcutta High Court, reported in *Bhagat Singh v. Jagbir Sawhney* : AIR1941 Cal670 Lord Williams, J. considered the scope of Section 151, C.P.C., and held as hereunder:-

'The Code is not exhaustive; there are cases which are not provided for in it, and the High Court must not file its hands and allow injustice to be done. The law cannot make express provisions against all inconveniences, and the Court has, therefore, in many cases where the circumstances warrant it, and the necessities of the case require it, to act upon the assumption of the possession of an inherent power to act *ex debito justitiae* and to do that real and substantial justice and the administration of which alone it exists.'

This decision was followed by a Divisions Bench of the same Calcutta High Court, in the case reported in *Sujit Pal v. Prabir Kumar Sun and Ors.* : AIR1986 Cal220 and the same was approved by the Hon'ble Supreme Court.

17. Our High Court had an occasion to consider the scope of Section 151 C.P.C., in the case reported in *Century Flour Mills Ltd. v. S. Suppiah and Anr.* 1975 (1) M.L.J. 54 wherein a Full Bench of this Court has held that 'the inherent powers of the High Court under Section 151 of the Code of Civil Procedure, are wide and are

not subject to any limitation.' In that case, the Full Bench considered as to what orders should be passed in the case of a violation of the stay or injunction. It was held in that case, that 'Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. The inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice.'

18. Here, it is a case of fraud, and the person had taken advantage of his own fraud. When these facts are brought to the notice of the Court, can such a person be allowed to remain in possession with immunity and take advantage of his own fraud? if the Court refuses to act on that grievance, it only means, that it abdicates its duty, and it also perpetuates the fraud and injustice,

19. I direct the respondent/Plaintiff in O.S. No. 5345 of 1997, on the file of the VII Asst, City Civil Court Madras, to hand over the possession of the building i.e., the first floor of the premises at No. 114, Amman Koil St, wall Tax Road, Madras-79, forthwith. The same is to be reported on 19.11.1997. If he fails to surrender possession, as directed, further direction will follow, when the case is posted on 19.11.1997.

20. On the basis of the decision reported in S.P. Chengalvaraya Naidu (Dead) By LRS. v. Jagannath (Deal) By LRS. and Ors. : AIR 1994 SC853 , the respondent has no right to approach the Court, and therefore, the suit filed by him is also directed to be struck off from file. The respondent is also bound to pay the cost of the petitioner so far incurred by her, and is also bound to pay the exemplary costs, which I quantify at Rs. 5,000.

21. For reporting compliance of the above direction, post the matter on 19.11.1997.