

(1990) 12 KL CK 0056

High Court Of Kerala

Case No: C.R.P. 2022 of 1990

Daniel Varghese

APPELLANT

Vs

K.P. Chellappan

RESPONDENT

Date of Decision: Dec. 13, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 58(5)
- Specific Relief Act, 1963 - Section 41

Citation: (1991) 1 KLJ 429

Hon'ble Judges: M.M. Pareed Pillay, J

Bench: Single Bench

Advocate: M.V. Thampan, for the Appellant; B. Suresh Kumar, for the Respondent

Judgement

M.M. Pareed Pillay, J.

Revision Petitioner (Plaintiff) filed the suit under Order 21, Rule 58(5) CPC claiming that the property is not liable to be attached in O.S. 133 of 1982. He filed I.A. 954 of 1990 before the Munsiff's Court for injunction. The Munsiff dismissed the petition. C.M.A. 36 of 1990 filed, by the revision Petitioner was dismissed by the District Judge.

2. First Defendant had obtained a decree in O.S. 133 of 1982 against Defendants 2 and 3. In execution of the decree 27 cents of property was attached on 16th July 1987. Case of the revision Petitioner is that he purchased the property by sale deed dated 17th December 1984 from the second Defendant in O.S. 133 of 1982. The claim petition filed by the revision Petitioner as E.A. 10 of 1988 was dismissed for default. Restoration application E.A. 263 of 1989 was also dismissed. He filed G.R.P. 2416 of 1989. That attempt was also unsuccessful. It is thereafter that the present suit was filed.

3. The question that arises for determination is as to whether any injunction can be granted against execution of the decree in O.S. 133 of 1982 in the present suit. The

suit has been filed under Order 21, Rule 58(5) of the Code of Civil Procedure. Under Rule 5 when a claim or an objection is preferred and the Court under the proviso to Sub-rule (1) refused to entertain it the party against whom such order is made can institute a suit to establish his right to the property. Regarding the maintainability of the suit there is no dispute. Whether in such a suit an order of injunction can be granted is the moot point for consideration. Rule 5 clearly states that subject to the result of the suit order refusing to entertain the claim or objection shall be conclusive. That makes the position sufficiently clear that in a suit filed under Order 21, Rule 58(5) an interim injunction cannot be granted restraining the enforcement of the decree in the suit where the attachment has been made. Merely because the revision Petitioner has filed O.S. 133 of 1982 the conclusiveness of the order dismissing the claim is not in any way lost. So long as the conclusiveness of the order remains the revision Petitioner is not entitled to any order of injunction.

4. On still another ground revision Petitioner cannot sustain his plea for injunction. Section 41(b) of the Specific Relief Act is a clear bar to the prayer for injunction as it is postulated that injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought. In other words, if any person wants to obtain injunction against another from instituting or prosecuting any proceeding he has necessarily to file the suit before a Court not subordinate to the Court where the matter sought to be injuncted is being proceeded with. District Judge rightly held that in view of Section 41(b) of the Specific Relief Act revision Petitioner is not entitled to the injunction restraining further proceedings in O.S. 133 of 1982 of the Sub Court, Pathanamthitta.

The District Judge was justified in dismissing the appeal. There is no merit in the C.R.P. and hence the same is dismissed with no order as to costs: