

(1996) 08 KL CK 0053

High Court Of Kerala

Case No: C.R.P. No's. 497 and 498 of 1993

Dy. Supdt. of Police C.B.I.

APPELLANT

Vs

Nabeesa

RESPONDENT

Date of Decision: Aug. 14, 1996

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 151, 82, 83, 84
- Criminal Procedure Code, 1973 (CrPC) - Section 82, 83, 83(2), 84, 84(1)
- Specific Relief Act, 1963 - Section 41(b)

Citation: (1996) 2 KLJ 475

Hon'ble Judges: J.B. Koshy, J

Bench: Single Bench

Advocate: K. Kunhirama Menon, P. Ramakrishnan Nair and K.J. Antony, for the Appellant; T.V. Prabhakaran, T.R. Raman Pillai (Sr. Advocate) and Govt. Pleader (A.K. John), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

J.B. Koshy, J.

Since these two revision petitions deal with identical subject-matter, as agreed by the parties are disposed off together; 1st respondent in C.R.P. 497/93 filed O.S. 123/92 in the Sub Court, Kasaragod against the petitioner and respondents 2 to 4 praying for a permanent prohibitory injunction restraining them from trespassing into the plaint A schedule house and removal of B schedule movables therefrom. It was alleged in the plaint that the petitioner and respondents 2 to 4 are attempting to remove movables from the house wherein the 1st respondent is residing. It was also alleged that on the pretext that the movables in the house belong to one K.M. Abdullah who is an absconding accused in C.P. No. 2/92 before the Chief Judicial Magistrate, Ernakulam, the movable in the house are going to be taken away. The

1st respondent contended that the house does not belong to the said accused and the movables do not belong to him. On 22-9-1992 the Court issued emergent notice to the respondents and the matter was posted to 1-10-1992. On 28-9-1992 the petitioner filed I.A. 783/92 to advance the hearing and issue an an interim injunction forthwith stating that the 2nd respondent and some police officials started removal of the movables from the A schedule house. u/s 151 Cr. P.C. the Court issued an ad interim injunction as prayed for on 28-9-1992. On the same day, the 2nd respondent with a party of police officials unlawfully entered into the plaint A schedule house and started removing the B schedule movables. Despite the handing over of a copy of the injunction order, the movables were taken away. On the above allegations a petition was filed for issuance of a temporary mandatory injunction directing the police officials to produce the movables mentioned in the seizure memo in the court or, in default, to get them to be produced in the Court. The learned Sub Judge allowed the petition and temporary mandatory injunction was issued in the above petition to produce the movables mentioned in the seizure memo. C.M. Appeal filed against the above order was also dismissed. The order in C.M. Appeal is questioned here on the contention that the petitioner and the other police officials were only executing the order of attachment issued by the Chief Judicial Magistrate under sections 82 and 83 of the Code of Criminal Procedure bonafide and in good faith. It was contended that the attachment was legal and, in any event, the attachment was made under sections 82 and 83 Cr. P.C. The remedy of the petitioner is to file claim petition u/s 84 of Cr. P.C. and the civil suit itself is not maintainable. The interim order of the Court is, therefore, without jurisdiction and is liable to be interfered with by this Court u/s 115 C.P.C. Section 84 of the Code of Criminal Procedure provides as follows:

84. Claims and objections to attachment:--(1) If any claim is preferred to, or objection made to the attachment of, any property attached u/s 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment u/s 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(2) Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or if the claim or objection is in respect of property attached under an order endorsed under subsection (2) of section 83, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made.

(3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

So, any person other than the proclaimed person who claims any interest on such property can file claim petition or objection before a criminal court and after enquiry the criminal court is bound to pass an order. u/s 84 (4), any person whose claim or objection has been disallowed can also file a suit from that order. Therefore, it is contended that a cause of action to a third party will arise only after passing an order u/s 84(4) and since no such order was passed the civil case filed is without jurisdiction and on that ground, the impugned orders are liable to be set aside. Identical questions were coming up for consideration in C.R.P. No. 498/93 also.

2. It was also pointed out that, earlier, against the orders in Claim Petition No. 1/92 the contesting respondent filed claim Petition and thereafter Crl. M.C. 1395/92 was filed in this Court and that was dismissed by this Court. In the decision reported in [Munshi Ram and Others Vs. Municipal Committee, Chheharta](#), it was held that the special remedy u/s 86 of the Punjab Municipal Act regarding filing of an appeal bars civil suit by inevitable implication. Similar view was taken in the decision reported in [Firm Seth Radha Kishan \(Deceased\) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana](#). It was held that even though u/s 9 CPC, the court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred, a statute expressly or by necessary implication can bar the jurisdiction of the civil court in respect of a particular matter. The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil courts. A statute may specifically provide for ousting the jurisdiction of civil courts or it can impliedly prohibit by providing an effective remedy in a special Act. Even in such cases, the civil court's jurisdiction is not completely ousted. A suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is expressly or by necessary implication made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions. Therefore, it was argued that u/s 84 of Cr. P.C., there is a clear effective remedy to the third parties by filing a claim petition and they cannot file a separate suit. There is no dispute that the remedy given u/s 84 is not effective in adjudicating the claim or rights of the third parties and if it is proved after adjudication that in the goods attached, there is no interest to the proclaimer, the third party can, of course, get

back the property. In the decision reported in [Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others](#), it was held that a preventive relief by way of prohibitory injunction cannot be granted by a court with a view to restraining any person from instituting or prosecuting any proceeding and u/s 41 (b) of the Specific Relief Act there is a clear bar in granting such injunction. While granting injunction, court cannot nullify the provision of section 41 (b). In view of section 41 (b) of the Specific Relief Act, there is a specific bar in obtaining injunction. The Andhra Pradesh High court in [S.M.A. Somasundaram Mudaliar Vs. District Collector Chittoor and Another](#), held that matters covered by special tribunal are to be decided by that tribunal. When jurisdiction has been conferred upon special court for investigation of particular matters, its jurisdiction is exclusive and civil court cannot try the above. When order of attachment is issued under sections 82 and 83, the remedy for third party is provided u/s 84. Remedy u/s 84 is exclusive and if a person has got full opportunity of getting his right adjudicated provided by the special statute, he cannot adjudicate the same in a suit. He has to exhaust the remedy under the same. Of course, u/s 84 (4), after an order is passed, if the person is aggrieved, still he can file a suit.

3. It is argued on behalf of the 1st respondent that the Crl.M.C. 1395/95 was dismissed mainly because suit was already filed. To bar the jurisdiction of the civil court, it should be excluded expressly or by clear implication arising from the scheme of the Act by setting up a special tribunal to determine questions relating to rights or liabilities. Even if jurisdiction of civil court is excluded by statute, where provisions of statute have not been complied with or statutory tribunal has not acted in conformity with fundamental principles of judicial procedure, civil courts have jurisdiction to examine those cases as held by the constitutional Bench of the Supreme Court in [State of Kerala Vs. Ramaswami Iyer and Sons](#). It was argued that while issuing the attachment order, provisions of section 82 and 83 of the Cr.P.C. were not complied with and while issuing the attachment order the Magistrate's court has not acted in conformity with the fundamental principles of judicial procedure. It was further argued that u/s 83(2) Cr.P.C. an endorsement ought to have been given by jurisdictional Magistrate as the property situated in Kasargod district and the order was passed by the District Magistrate, Ernakulam. Such endorsement was not given and the attachment itself was against the procedure. The name of the parties, village etc. were also not mentioned. There is lapse of procedure and even if there is express or implied bar, parties can file a suit. With regard to the objection regarding section 83 endorsement, it was pointed out by the learned Senior Advocate appearing for the petitioner that section 83 (2) is applicable only for immovable property, (Such an argument is not correct as section 83 speak of both movable and immovable properties,) and, in any event, the District Magistrate, Ernakulam has got jurisdiction throughout the State and separate endorsement is not necessary.

4. A reading of sections 82, 83 and 84 of the Cr. P.C. makes it clear that after proclaiming a person as absconded and after publication of the proclamation u/s 82, the Court issuing such proclamation, for the reasons recorded in writing, can attach the property of the absconder (proclaimed person). The main object of section 83 is to compel an accused person to appear in obedience to a warrant issued by criminal court. The power of attachment of proclamation of an absconder's property u/s 83 is subject to the right of any other person to claim and object that the attached property belongs to him u/s 84. Section 84 provides a complete effective machinery to adjudicate the rights and interest of claimant or objector with regard to the claimant or objector with regard to attachment of the property u/s 83. When such a claim is put forward, the Magistrate should investigate and decide the matter after giving opportunity to all concerned parties and such decision shall be binding on criminal court. But whether provisions of section prevent an interested party in the attached goods from approaching a civil court impliedly even though there is no express bar. Can an affected person approach the civil court only after an order passed by u/s 84 (4) has to be considered in detail.

5. Whether the civil suit is maintainable in view of section 84 Cr. P.C. was considered in the decision reported in [The Secretary of State for India Vs. Ahalyabai Narayan Kulkarni](#). The Bombay High Court was dealing with identical question and held that person claiming interest in attached property u/s 83 of Cr. P.C. can file independent suit without going to Magistrate u/s 84 so long as the property is not sold by the Government and such person may obtain decree passed by the civil court which will be binding on the Government and Criminal court. In [Pawan Kumar Gupta Vs. The State of West Bengal](#), it was held that notwithstanding the provisions u/s 88, suit can be filed (old section corresponding to section 84) and it is an alternate remedy. Therefore, it can be concluded that the remedy of preferring a claim u/s 84 is not exclusive; but, merely permissive. It is not compulsory for a third person to prefer a claim u/s 84; but he can straightaway file a suit to set aside the sale proceedings. The wordings of section 84 show that a third party can file a claim u/s 84; but, there is no express or implied bar for a third party in filing a suit so as to affect the right of that party.

6. u/s 9 C.P.C. the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. As held by the Apex Court in the decision reported in [Smt. Ganga Bai Vs. Vijay Kumar and Others](#), and [Abdul Waheed Khan Vs. Bhawani and Others](#), a litigant having a grievance of a civil nature has, independently of any statute, a right to institute a civil suit, in same court or other unless its cognizance is either expressly or impliedly barred. It was also held by the Supreme Court in [Dewaji Vs. Ganpatlal](#), and [Musamia Imam Haider Bax Razvi Vs. Rabari Govindbhai Ratnabhai and Others](#), that exclusion of jurisdiction of civil court is not to be readily inferred. Such exclusion must be either explicitly expressed or clearly implied. In the decision cited by the learned Senior Advocate for the petitioner which are referred to in para 3 of this order, there

were either express bar or clear bar of civil court, jurisdiction by implication. It is true that when the statute expressly excludes the jurisdiction of a civil court or gives a finally to the orders of a special tribunal created by it for providing adequate remedy, jurisdiction of civil court is excluded. A reading of the provisions of section 84 Cr. P.C. would show that it neither expressly nor impliedly bar filing of a suit. It only enables a third party to file a claim u/s 84. In other words, if a third person other than the absconder claims to have any interest in the property, it is open for him to prefer a claim u/s 84. But, remedy of preferring a claim as above is not exclusive; but merely permissive. So long as the property has not been sold and disposed off it would be open to such party claiming any interest in it to obtain a decree of a civil court declaring his right in the property. If he succeeds in obtaining such decree before the property is finally disposed off by the Government, the decree would be binding and the property has to be disposed off according to the rights established under such decree. Sub-section (4) of section 84 Cr.P.C. does not prevent a person from filing a suit to establish his title to attach the property before filing a claim under sub-section (1) of section 84. Merely because a third party did not obtain an order under sub-section (1) of section 84, it cannot be said that the suit is premature. Section 84(4) only shows that even if the third party's claim is disallowed by the criminal court u/s 84(1), still that party can approach the civil court and order u/s 84(1) will be subject to the result of the suit, if suit is filed within one year of passing the order u/s 84(1). Therefore, section 84(4) only reiterates the civil court's jurisdiction to decide the civil rights on the properties attached. Therefore, it is clear that section 84 is an alternate remedy of a third party who claims rights over the properties attached u/s 83 and it does not operate as a bar to exercise the civil jurisdiction. Hence the suit is maintainable. Impugned order is attached before me only on the question of jurisdiction. If the police officers have acted bonafide as per the order of attachment, they may not be liable for any criminal action for disobeying the orders of injunction. But, the direction of the Court below to produce the movables as per seizure memo in the court is not illegal or without jurisdiction. There is no material irregularity or jurisdictional error in the order challenged. Therefore, Revision Applications are dismissed. The properties attached as per the seizure memo may be produced in the Court within two months from today.