(1996) 08 MP CK 0086

Madhya Pradesh High Court

Case No: C.R. No. 1136 of 1994

Harjee alias Hajari		APPELLANT
	Vs	
Ranjeet Singh		RESPONDENT

Date of Decision: Aug. 12, 1996

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151

Citation: (1998) 2 MPJR 422

Hon'ble Judges: Sreesh Chandra Pandey, J

Bench: Single Bench

Advocate: T.C. Naik, for the Appellant; A.D. Deoras, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.C. Pandey, J.

The order of disposal of this revision shall also govern the connected Civil Revision No. 1086 of 1994, parties being Umrao v. Ranjit and five others.

This revision is directed against the order dated 23.7.1994 passed by 4th Civil Judge, Class-II, Sehore, in Civil Suit No. 56-A of 1994. The learned Civil Judge has ordered that the order of temporary injunction passed in favour of non-applicant No. 1 is still operative after the order of remand passed by the High Court.

Shortly stated, the facts of this case are that the non-applicant No. 1 filed a suit for declaration of title and permanent injunction against the applicant and non-applicants. No. 2 to 6 in respect of lands, in dispute. His case was that he had agreed to purchase the suit land form Hajari for a consideration of Rs. 2, 700/- and was placed in possession. Since the date of execution of the sale-deed, the non-applicant No. 1 claimed to be in possession.

The non-applicant No. 1 filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, and obtained the temporary injunction. It appears that there was an objection to the maintainability of the suit that the non-applicant No. 6 belonged to Scheduled Caste and that the sale-deed executed by him was not, in reality, a sale transaction, but a loan transaction and it was governed by M.P. Anusuchit Jati Rin Sahayata Adhiniyam, 1967. For this reason the trial Court came to the conclusion that the suit was not maintainable for want of jurisdiction in view of the express bar under the aforesaid Adhiniyam. The matter was confirmed in appeal but the High Court set aside the dismissal of the suit and remanded the case back to the trial Court.

Taking advantage of the reversal of fortune of the applicants and the other non-applicants, an application u/s 151 of the CPC was filed by the non-applicant No. 1, on the assumption that the order of temporary injunction dated 2.12.1980 still enured in his favour to the effect that applicants were interfering with his possession in contravention of temporary injunction and the Court should grant him police force to protect his rights.

Despite opposition on the part of the applicants, the trial Court seems to have taken the view that the injunction order passed on 2.12.80 was revived by reversal of the order of the dismissal of the suit and adjourned the case for investigating the circumstances if the non-applicant No. 1 was entitled to police help or not.

The primary contention of Shri T. C. Naik, leanred senior counsel for the applicants is that there is no automatic revival of the order of temporary injunction. Once the trial Court dismissed the suit, the order of temporary injunction did not survive. In the submission of the leanred counsel for the applicants, life of temporary injunction endures so long as the suit is pending or until it is vacated by the Court that passed. Dismissal of a suit tolls the knell of a temporary injunction. Once a temporary injunction is dead, it cannot be resuscitated or revived as a matter of course, on removal of decree order which caused its death. Life of a temporary injunction is temporary and it remains alive pendente lite. The learned counsel for the applicant referred to the two decisions holding that an order of attachment before judgment is not revived on reversal of the decree of Court which granted the order of attachment. They are the cases of Gangappa v. Boregowda and others (1) and Jairam Singh and others v. Settlement Officer (Consolidation) and others (2). A Division Bench of this Court has taken a similar view in the case of Madanlal Chhotelal and others v. Ramprakash Ghasiram (3).

The learned counsel for the non-applicant No. 1 has contended that the decision cited by the learned counsel for the applicants are not opposite. The matter of grant of temporary injunction is different. The learned counsel submitted that there is no question of merger of an order of temporary injunction. However, the learned counsel did not cite any authority in support of the proposition.

The precise question for determination is whether the Court below assumed the jurisdiction in holding that the ''temporary injunction'' passed by the trial Court on 2.12.1980 is alive and enduring despite the vicissitudes suffered by the suit as already indicated.

It is well known that the relied of injunction was evolved by the Courts in England as a matter of historical development when it was found that common law was inadequate. Like several other things in Law, we have adopted the British system of law as a matter of historical accident. In equity, the quia timet action has been stated by ''Snell''s Equity'' as follows, at page 651 (Twenty Ninth Edition) :-

(1) THE PRINCIPLE, Although the plaintiff must establish his right, he may be entitled to an injunction even through an infringement has not taken place but is merely feared or threatened; for "prevending justice excellent punishing justice". This class of action, known as quia timet, has long been established, but the plaintiff must establish a strong case, "no one can obtain a quia timet order by merely saying ''Timeo''. "He must prove that there is an imminent danger of very substantial damage, or further damage, e. g. by showing that the threatened act" is attended with extreme probability of irreparable injury to the property of the plaintiff, including also danger to their existence. "A quia timet injunction may be granted to restrain an anticipated breach of statutory duty.

It may be noted that Section 53 of the Specific Relief Act, 1877 dealt with the temporary injunction which has been re-enacted as Section 37 of the Specific Relief Act, 1963. The equitable reliefs were codified by the British after making suitable modifications. Unlike provisions for permanent injunctions, the aforesaid sections merely adopted by reference of the provisions of the prevailing Code of Civil Procedure. Thus, we are relegated to the portion of reading the substantive as well as procedural law in the body of the CPC which was essentially made for regulating the procedure in Civil suits and execution proceedings. Now, if we go through relevant provisions of the Code of Civil Procedure, we shall find that it is Section 94 (c) of the Code which gives power for granting temporary injunction. Accordingly, we find that Order 39 Rules 1 and 2 of the C.P.C. have been framed for the purpose of grant of temporary injunction. It is also well established that where an injunction cannot be granted under Order 39, Rules 1 and 2 of the C.P.C, then he Court can take resort to Section 151 thereof (See the case of Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal (1).

Now, having noticed the nature of temporary injunction in equity we may note that Section 39 (1) of the Code of Civil Prodedure itself provides for the grant of temporary injunction, as the Court thinks fit until the disposal of the suit or ''until further orders''. Thus, the final limit of subsistence of a temporary injunction is until the disposal of the suit. It is plain and clear because the words ''unitl further orders'' shall not allow passing of an order when the suit is no longer pending. The moment the suit is dismissed, the trial Court looses its sesin over the matter. The temporary

injunction must, therefore, end with the suit. The further question whether it would be revived automatically the moment the suit is resuscitated could be assumed by saying that it could not last the interval. The moment an injunction is vacated, a party can act as it likes without any prohibitory order from the Court. Thus, a temporary injunction will have to be revived in case one of the parties wants to take advantage of reversal of a decree of dismissal in appeal. The Court will have to look into circumstancesa fresh with clear eyes the entire period after filing of the suit with special emphasis on the interlude between dismissal of the suit and reversal of dismissal in appeal or revision. The subsequent events after dismissal of the suit shall go into oblivion if we accept the theory of automatic revival.

Apart form the principles, stated above, this Court sustains its view, taken from the authorities of various High Courts. The view of Madras High Court in the case of C. Kamatchi Ammal v. Kattabomman Transport Corporation Limited & others, (2) is as follows :-

.... Even otherwise, all interlocutory orders made in the course of a proceeding in the nature of a suit must necessarily lapse with the decision of the suit itself, unless, of course, the suit is one for permanent injunction and the interim injunction is made permanent as a part of the decretal order made by the Court....

Similar view was taken by learned single Judge of Gujarat High Court in the case of Gohel Parbhatbhai Nathabhai v. Pandya Arvind Kumar Ambelal, (3). There is a direct case of Allahabad High Court of Nagar Mahapalika. Lucknow v. Ved Prakash, (4). In that case it was held that the moment a suit was dismissed in default, the order of interim injunction did not survive, and the interim injunction was not automatically revived when the order of dismissal of the suit was set aside.

For all these reasons, both the revisions are allowed and orders dated 23.7.94 in Civil Suit No. 58-A of 1994 and Civil Suit No. 56-A of 1994 are set aside. The trial Court shall proceed further in accordance with law. There shall be no order as to costs.