
Conservation Assistant Vs Ramachandira Ramanuja Dasar

CRP (PD) No. 3105 of 2014 and M.P. No. 1 of 2014

Court: Madras High Court

Date of Decision: Sept. 25, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 39 Rule 2, Order 39 Rule 3A, Order 43 Rule 1,
80#Constitution of India, 1950 " Article 19(1)(b), 227, 25, 25(1), 49

Citation: (2014) 5 LW 417 : (2015) 1 MLJ 60

Hon'ble Judges: S. Vimala, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

S. Vimala, J.

We avail this opportunity to direct the Government of India to maintain all national monuments under the respective Acts

referred to above and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and

grandeur of the monuments, sculptures secured through breathless and passionate labour workmanship, craftsmanship and the skills of the Indian

architects, artists and masons is continued to be preserved. - So said the Hon"ble Supreme Court in AIR 1977 Supreme Court 2766 (Rajeev

Mankotia v. Secretary to the President of India and Others).

1.1. Contending that the expectation and directions of the Hon"ble Supreme Court cannot be implemented/fulfilled if the illegal order of injunction

is allowed to perpetuate, the Civil Revision Petition has been filed by the defendant in the suit.

2. The Civil Revision Petition has been filed under Article 227 of Constitution of India, against the Fair and decreetal order passed in I.A. No. 445

of 2014 in O.S. No. 49 of 2014 dated 16.06.2014, making the interim injunction already granted absolute till the disposal of the suit.

2.1. The order passed on 16.06.2014 reads as under:

Counter of R1 and R2/SMD: Counter of R1 and R2 not filed. R1 present during calling hours. Called absent, subsequently, when the matter was

called again at 12.00 p.m. And 01.00 p.m. R1 and R2 not present. No representation for both. Counter not filed. Hence, R1 and R2 set exparte.

Heard the learned counsel for the petitioner. Records perused. On facts and circumstances of the case, interim injunction already granted is made

absolute till the disposal of the suit. Petition closed.

3. Ad-interim exparte order of injunction has been granted on 10.03.2014. This injunction has been granted till 14.03.2014.

4. This order of injunction was extended till 28.04.2014 for a period of 45 days, which is against the provisions of order 39 rule 3A C.P.C. and

that this extension is stated to have been made despite objections made for the extension of injunction order.

4.1. The defendants filed CRP before the Hon"ble High Court in CRP. No. 1782 of 2014 and after hearing both sides, the High Court on

09.06.2014, though dismissed the CRP, but, directed the learned Principal District Munsif, to dispose of I.A. No. 445 of 2014, including the issue

regarding jurisdiction of Civil Court, within a period of 21 days from the date of receipt of the order

5. The interim injunction granted is to the effect that the right of the petitioners and the general public to install/place idol and to offer worship from

8.00 a.m. to 05.00 p.m., in the suit premises, namely, at Venkatramana Temple should not be interfered with.

6. The prayer in the plaint did not speak any thing about installation or placing of any idol inside the temple. The prayer is that the right to worship

from 8.00 a.m. To 05.00 p.m. At Venkatramana Temple should not be interfered with. In fact, in para-8 of the plaint, it is stated that if Section 80

C.P.C. Notice is given, the defendants would remove the idols from the temple and therefore, petition has been filed to dispense with notice under

Section 80 C.P.C. Pointing out that there is critical difference and relevance in the relief claimed in the plaint and the relief granted in the injunction

order and that would justify filing of the petition under Article 227 of Constitution of India, this Civil Revision Petition has been filed.

7. The other contentions raised with reference to illegal exercise of jurisdiction in granting the order of injunction as well as making the order

absolute are as follows:

(i) The suit property is a non-idol/non-worship/non-living temple monument coming under the purview of Ancient Monuments and Archaeological

sites and Remains Act 24 of 1958.

(ii) The grant of adjournment for 45 days, and thereby extending the order of injunction is illegal when the law enjoins the Court to dispose of the

injunction petition within a period of 30 days.

(iii) When the suit itself is not maintainable, the grant of interim injunction is also without jurisdiction and it is null and void.

(iv) When the relief is granted in excess of the averments in the plaint, the grant of injunction which would amount to grant of exparte ad-interim

mandatory injunction, is illegal and non-est in law.

(v) When the plaint averments are patently false and also in suppression of material facts, it amounts to playing fraud upon the Court and therefore,

the plaint should have been rejected.

(vi) When several Interlocutory Applications have been allowed without notice, when there is no urgency at all, the orders are liable to be set

aside.

(vii) When there was an earlier suit filed in O.S. No. 486 of 1999, directing the HR & CE Department to install the idol and it was dismissed for

non-prosecution, it is evident that there was no idol at all in the Temple. The pleadings contra to this must be untrue.

(viii) The non-filing of counter cannot be the reason for the Court to make the interim injunction absolute without looking into the merits of the

matter.

(ix) The Court cannot aid the plaintiff in making use of the order of injunction as a tool to place the idol inside the temple and then trying to

substantiate the case saying that there had been idol / worship and that the defendant shall not interfere with their right to worship.

(x) The order passed by the Court below has given the following reasons for the grant of interim injunction:

7.1. The Court is expected to consider (a) prima facie case (b) balance of convenience and (c) irreparable loss while granting the order of

injunction. The Court below has considered the only aspect regarding prima facie case and has given the following reasons for the grant of

injunction, which is claimed to be unsustainable.

(a) The documents 1 and 3 would show that the suit Temple is a Sacred temple

(b) Article 25 of Constitution of India gives the religious freedom to the Indian citizen to offer worship.

(c) Article 19(1)(b) and (1) (C) gives the right to form association of their choices.

(d) Under Article 51A of the Constitution of India, every citizen of India has got a fundamental duty to protect the public property.

(e) Under Article 49 of the Constitution of India the ancient and historic places and documents are to be protected.

(f) Even though the defendants are maintaining and protecting the suit temple, it cannot deny the religious freedom of the citizens under Article

25(1) of Constitution of India.

(g) The defendants do not have the right to stop the plaintiffs from offering worship and if that is permitted, it would amount to injustice and it

would put the plaintiffs at loss.

7.2. So said, the Court below has granted order of injunction which is alleged as illegal, factually as well as legally.

8. Admittedly the suit property is under the maintenance of the defendant. When there was an earlier suit in O.S. No. 486 of 1999, directing the

HR & CE Department to install the idol and it was dismissed for non-prosecution, it can be inferred that there was no idol at all in the Temple. The

pleadings contra to this must be untrue It is also not pleaded as to when the idol was installed after the dismissal of the suit. Therefore the reasons

which ought to weigh with the Court to decline the order of injunction has been considered as reasons for grant of injunction which would be

elaborated in the subsequent paragraphs also.

8.1. It is the case of the defendants/revision petitioners that there was no idol at Venkatramana Temple and there was no worship at all. In other

words, it is stated to be non-living temple monument. It is stated that there was Tamil Inscriptions-the Prisoners" Well since from the time of its

protection in 1921 till 10.03.2014. It is one out of the eight Centrally Protected Mounments located at Gingee.

8.2. It is contended that the plaintiffs after obtaining an order of injunction have entered into the temple and had installed the idol and it amounts to

abuse of process of law and therefore, this Court should exercise supervisory jurisdiction under Article 227 of Constitution of India and should

correct the mistake.

8.3. It is the contention of the learned counsel for the plaintiffs / respondents herein that the revision petition itself is not maintainable and the

remedy open to the defendant is either to file the appeal or to approach the same Court seeking cancellation of the order of injunction. In support

of these contentions, the following decision are relied upon:

(i) A. Venkatasubbiah Naidu Vs. S. Challappan and Others,

Rule 3-A casts a three-pronged protection to the party against whom the ex parte injunction order was passed. First is the legal obligation that the

Court shall make an endeavour to finally dispose of the application of injunction within the period of thirty days. Second is, the legal obligation that

if for any valid reasons the Court could not finally dispose of the application within the aforesaid time the Court has to record the reasons thereof in

writing. What would happen if a Court does not do either of the courses? We have to bear in mind that in such a case the Court would have by-

passed the three protective humps which the legislature has provided for the safety of the person against whom the order was passed without

affording him an opportunity to have a say in the matter. First is that the Court is obliged to give him notice before passing the order. It is only by

way of a very exceptional contingency that the Court is empowered to by-pass the said protective measure. Second is the statutory obligation cast

on the Court to pass final orders on the application within the period of thirty days. Here also it is only in very exceptional cases that the Court can

by-pass such a rule in which cases the legislature mandates on the court to have adequate reasons for such bypassing and to record those reasons

in writing. If that hump is also bypassed by the Court it is difficult to hold that the party affected by the order should necessarily be the sole sufferer.

It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said rule is the

repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal

of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be applicable as indicated in Order 43 Rule 1 of the

Code. The choice is for the party affected by the order either to move the appellate court or to approach the same court which passed the ex parte

order for any relief.

(ii) Mohd. Yunus Vs. Mohd. Mustaqim and Others,

A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227. The supervisory

jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited ""to seeing that an inferior Court or Tribunal functions within

the limits of its authority"", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our

opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge

to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with

the procedure established by law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or

Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to

correct errors of law in the decision.

(iii) Jasbir Singh Vs. State of Punjab,

The power of Superintendence does not imply that High Court can influence the Subordinate Judiciary to pass any order or judgment in a

particular manner.

(iv) MLJ 2010) 6 172 (Governing council of American College vs. Dr. M. Davamani Christofer)

When an effective and efficacious appeal remedy is available to the parties, invocation of the extraordinary jurisdiction under Art. 227 is not

maintainable. Therefore, when a finding has been given by the trial Court on the basis of the evidence that finding can be challenged only by

invoking appeal remedy and the same cannot be challenged under Art. 227 of Constitution of India.

But, in the same decision, the decision of the Hon"ble Supreme Court has been quoted, where under, it has been held as follows:

Further, as held by the Honourable Supreme Court in the judgment reported in Surya Dev Rai Vs. Ram Chander Rai and Others, , that the

jurisdiction under Article 227 can be invoked when the subordinate court assumed the jurisdiction which it does not have or has failed to exercise a

jurisdiction which it does have or exercising the jurisdiction in a manner not permitted by law and failure of justice or grave injustice has occasioned

thereby.

8.4. The citations relied upon also speak about the circumstances under which the affected party should be driven to the statutory / ordinary

remedy of filing the appeal or moving the same Court for cancellation of order or the party should be given the extraordinary remedy under Art.

227 of Constitution of India. The more specific question would be whether the remedy of appeal or the remedy under Art. 227 of Constitution of

India would be effective and efficacious.

8.5. The learned counsel for the revision petitioner is relying upon the following decisions in order to support the contention that it is a fit case to

exercise the jurisdiction under Art. 227 of the Constitution of India:-

(i) AIR 1996 MYSORE 74 (Mathew Philips v. P.O. Koshy):-

4. In the exercise of the discretionary power of granting a temporary injunction, the non-consideration of the material point, viz., whether the

plaintiff has made out a prima facie case of legal injury, vitiates the exercise of jurisdiction vested under Rule 2 of Order 39 of the Code of Civil

Procedure and therefore, the order under revision cannot be allowed to remain uncorrected under S. 115 of the Code of Civil Procedure.

(ii) P.S.K. Kanagaraj and Others Vs. Kamaraj and Another, :-

In view of the binding precedents, when a fraud is manifested and abuse of process of court is also brought to the notice of the court and when the

plaintiff has obtained unfair advantage at the cost of others, naturally, it is the duty of the court to see that the miscarriage of justice does not survive

further....

(iii) Ranipet Municipality Vs. M. Shamsheerkhan, :-

11. In K. Sreedharan Vs. Iyyakandy Seethali and Others, the Kerala High Court has an occasion to consider what is meant by abuse of the

process of the Court and it was held as follows:-

The power of the court to make such order as are necessary to prevent abuse of the process of court is inherent in every court. The term ""abuse

of the process of the court"" has not been defined. What then this terms means? Its meaning therefore has to be gathered from other sources. ""A

malicious abuse of legal process occurs where the party employs it for some unlawful object, not the purpose which it is intended by the law to

effect in other words a perversion of it. Yet another shade of meaning is this: ""Abuse of process is the malicious and improper use of some regular

legal proceeding to obtain some advantage over an opponent."" This is a term generally used to proceeding which is wanting in bona fide and is

frivolous, vexatious or oppressive. An abuse of the process of court can be committed by the court or by a party. It is therefore clear that where a

court employed a procedure in doing something which it never intended to do, but resulted in miscarriage of justice, there is what is called an abuse

of the process of the court. If a subordinate court commits an abuse of the process of the Court, a superior court has the power, nay the duty to

prevent the said abuse becoming perpetual by interfering with the proceeding. What then is an abuse of the process of the court committed by a

party to the proceedings? Instituting vexatious, obstructive or dilatory action in court of law is one instance; where a party should be held to be

guilty of an abuse of the multiplicity of proceedings for one's own aggrandisement is yet another instance where a party could be said to have

committed an abuse of the process of the court.

(iv) Rameshwari Devi and Others Vs. Nirmala Devi and Others, :-

52.....

A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial

judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits

are filed.

B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Code. If this

exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at truth of the matter and doing

substantial justice.

C.....

D.....

E. The courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders. Ordinarily short notice should be

issued to the defendants or respondents and only after hearing concerned parties appropriate orders should be passed.

F. Litigants who obtained ex-parte ad interim injunction on the strength of false pleadings and forged documents should be adequately punished.

No one should be allowed to abuse the process of the court.

G.....

H.....

I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing

both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.

J....

8.6. This is a case where it is alleged that the learned District Munsif has exercised the jurisdiction in a manner not permitted by law and that it has

resulted in failure of justice.

9. When the materials produced before the Court show that (a) ex parte mandatory injunction has been given dispensing with notice to the statutory

authority (b) that the order of injunction has been granted against the averments stated in the plaint, in such a way that it would enable the plaintiff

to show that the averment in the plaint is correct only because of the subsequent placement of idol inside the temple using the interim order of

injunction as a tool (c) that the injunction petition has not been disposed of within the period prescribed, (d) the injunction order has been made

absolute for the non-filing of counter (e) where the order of the High Court directing disposal of the injunction petition within 21 days has not been

complied with in substance but, only technically, then it is not open to the plaintiff to contend that the remedy open to the defendant is only to

approach the same Court or to file the appeal. If this is not a fit case to invoke the supervisory jurisdiction under Art. 227 of Constitution of India,

one cannot understand what would be more fit case to invoke the said jurisdiction.

9.1. These decisions would go to show that, when the initial order of injunction passed was illegal and also that when the discretion has been

exercised in a manner not known to law, this court should invoke the supervisory jurisdiction.

9.2. No doubt the right to worship is not only a civil right but a constitutional right. But the question is where was the idol available to claim the right

to worship. The inconsistency between the pleadings and the relief granted itself would go to show that the discretion has not been exercised

properly. The non-consideration of the material point, namely the existence or otherwise of the idol vitiates the exercise of jurisdiction vested under

Rule 2 of Order 39 of the Code of Civil Procedure and therefore, the order under challenge cannot be allowed to remain

9.3. Further, this court has called for explanation from the Court below and the said explanation is not satisfactory. The reason stated for

adjournment, i.e., the general elections has nothing to do with the court proceedings.

10. If a subordinate court commits an abuse of the process of the Court, a superior court has the power, nay the duty to prevent the said abuse

becoming perpetual by interfering with the proceeding.

11. In the result, this Civil Revision Petition is allowed, with costs throughout. The fair and decreetal order, dated 16-6-2014 is set-aside. The case

is transferred to the learned Principal District Munsif, Tindivanam, and the learned District Munsif is directed to hear both sides on the

maintainability of the suit and if the court comes to the conclusion that the suit is maintainable and then to take up the injunction application for

hearing.