

Equivalent citations: AIR 1959 MP 275

Bench: P Dixit

Sitaram Madan Ahir vs Rajkunwarbai And Ors. on 28/2/1959

ORDER

P.V. Dixit, J.

1. The facts of this revision petition are that the applicant instituted a suit against the opponents for a permanent injunction restraining them from interfering with the plaintiffs possession of certain lands as an Inam tenant. After the filing of the suit, the plaintiff applied for a temporary injunction. A notice of this application was given to the defendants. In response to this notice, the opponents appeared on 14-8-1957 and asked for time to file their reply to the plaintiff's application for temporary injunction.

The trial Court granted them time till 21-8-1957. On this date the defendants again asked for time which was refused. The lower Court then made an order of temporary injunction prohibiting the defendants from disturbing the plaintiff's possession. No appeal was filed by the defendants against the order of the trial Court granting ad-interim injunction.

On 23-8-1957, the defendants made an application under Order 39, Rule 4, C. P. C., for discharging the order of temporary injunction. This application was rejected by the trial Court on the ground that the defendants had not been able to point out any new circumstance or matter necessitating discharging the order. The defendants then appealed to the District Judge of Mandleshwar. The learned Additional District Judge, who heard the appeal, set aside the order of the trial Court rejecting the defendants' application under Order 39, Rule 4, C. P. C., with the direction that the defendants' application should be disposed of on merits. The plaintiff has now filed this revision petition.

2. This petition must be accepted. The opponents sought to have the order of injunction made earlier in the suit discharged on the grounds that the land in suit had never been let out to the plaintiff; that he had no right to remain in possession of it; and that he was not likely to suffer any loss if the injunction were refused. These are all grounds which were available to the defendants and which they could have urged when a notice of the application for injunction was given to them and when they asked for time for filing their reply to that application.

The defendants did not file any reply and urge any substantial grounds, opposing the plaintiff's prayer for an order of injunction. That order of injunction having been made after giving to the defendants an opportunity of being heard could not be discharged or interfered with except on the presentation of new matter not available when the original order was passed.

When the defendants by their own laches omitted to file their reply to the plaintiffs application for a temporary order of injunction at the original hearing, they could not later on move the court under Rule 4 and have the case re-opened and reheard under that Rule on the grounds and material which were available to them at the original hearing. Order 39, Rule 4, C. P. C., can be invoked only when an urgent order ex parte has been passed under Rule 3 or when an injunction order already in force has owing to fresh circumstances become inappropriate.

It does not empower the Court to interfere with an injunction already made when each side has had an opportunity of being heard and no grounds other than those available at the original hearing are urged by the party seeking the discharge or variation of the order. As pointed out by the Madras High Court in Govinda Ramanuja v. Vijiamaramaju, AIR 1929 Mad 803

"Rule 4 is not intended to set at nought the ordinary *cursus curiae* that, once a Court has decided a matter after giving each side an Opportunity of being heard, its order is final and binding on itself as much as on the parties, and cannot be re-opened except on the presentation of some new matter not available when the original order was passed."

3. In the present case, it is clear that by applying under Rule 4, the defendants only sought to get over the omission on their part to put forward their case at the original hearing and to urge grounds which they could have taken at that time in opposition to the plaintiff's prayer for a temporary order of injunction. This they cannot be allowed to do under Order 39, Rule 4, C. P. C.

4. For these reasons, the order dated 25-3- 1958 of the Additional District. Judge of Mandle- shwar is set aside and the defendants' application under Order 39, Rule 4, C. P. C., is rejected. The applicant shall have his costs throughout.