

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM :

The Hon'ble MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.2285 of 2017

Rasu @ Vellingiri

.. Appellant/Petitioner

-vs-

1.Arukkaniammal

2.Renugadevi

.. Respondents/Respondents

Appeal filed under Order 43 Rule 1 (r) of CPC against the order dated 12.08.2016 made in I.A.No.96 of 2015 in I.A.No.1044 of 2014 in P.O.P.No.373 of 2014 on the file of Principal District Judge, Coimbatore.

For Appellant : Mr.C.Deivasigamani

For Respondents : Mr.S.Mukunth

for M/s.Sarvabhauman Associates

* * * * *

J U D G M E N T

This appeal has been filed against an order dismissing an application in I.A.No.96 of 2015 in I.A.No.1044 of 2014 in Probate O.P.No.373 of 2014.

2.I.A.No.96 of 2015 has been filed under Order XXXIX Rule 2A of the Code of Civil Procedure (CPC) complaining breach of the order of injunction granted by the trial Court on 21.02.2015, which was extended till 26.02.2015. It is contended that on 21.02.2015, the respondents in I.A.No.1044 of 2014 had, in breach of the order of injunction, prevented the appellant and his employees from doing their work in the industry and had sent them out by threatening them. Therefore, according to the appellant, the order of injunction, which was in force, has been violated by respondents 1 and 2. This application has been dismissed by the learned District Judge on the ground that the main application for injunction in I.A.No.1044 of 2014 was dismissed.

3.Mr.C.Deivasigamani, learned counsel appearing for the appellant, would contend that an application under Order XXXIX Rule 2A CPC cannot be dismissed on the ground that the main application for injunction has been dismissed. The Court must have gone into the fact as to whether there was a violation of the order of injunction or not. If the Court finds that there

was violation of order of injunction, then consequently, proceedings under Order XXXIX Rule 2A should have been followed.

4.Per contra, Mr.S.Mukunth, learned counsel appearing for the respondents would contend that in view of the fact that the trial Court had concluded that the provisions of Order XXXIX Rules 1 and 2 CPC itself could not be invoked in a probate proceedings, an application under Order XXXIX Rule 2A CPC cannot be maintained for breach of an order of injunction which has been granted by the Court without jurisdiction.

5.I am unable to agree with the contention of the learned counsel for the respondents. Once the Court grants an order of injunction, it is for the parties to obey the order of injunction. They may apply to the court for vacation of the same. That does not mean that the parties can disobey an order of injunction claiming that the Court had no jurisdiction to grant an order of injunction. Therefore, the learned District Judge was not right in dismissing I.A.No.96 of 2015 as a consequence to the dismissal of I.A.No.1044 of 2014.

6.Therefore, the order of the learned District Judge dismissing I.A.No.96 of 2015 is set aside and the same is remitted to the trial Court, namely, Principal District Judge, Coimbatore, with a direction to hear the application on merits and dispose of the same in accordance with law.

This Civil Miscellaneous Appeal is, accordingly, allowed. There shall be no order as to costs. Consequently, C.M.P.Nos.12240 and 12241 of 2017 are closed.

sra

28/08/2017

सत्यमेव जयते
For being mentioned

This Civil Miscellaneous Appeal having been listed on under caption for being mentioned on 05.09.2017 pursuant to the order of this court dated 05.09.2017 and made herein in the presence of the aforesaid counsel on the either side the court made the following order:-

This appeal has been disposed of by me on 28.08.2017 on the premise that the appeal is directed against the order passed in an application filed under Order XXXIX Rule 2A of the Code of Civil Procedure.

2.Subsequently, it was brought to my notice that the order impugned in this appeal is not the one made in an application filed under Order XXXIX Rules 1 and 2A of the Code, but a consequential order dismissing the application seeking a decision on the preliminary issue in I.A.No.1044 of 2014, as a consequence to the dismissal of I.A.No.1044 of 2014. Hence, the matter was directed to be listed today under the caption "for being mentioned".

3.Mr.C.Deivasigamani, learned counsel appearing for the appellant would submit that a mistake had crept in and hence, he would like to withdraw the appeal and he has also made an endorsement to that effect.

4.In view of the submission of the learned counsel for the appellant, the earlier order passed by me on 28.08.2017 is hereby recalled and this Civil Miscellaneous Appeal is dismissed as withdrawn. No costs. Consequently, connected miscellaneous petitions also stand dismissed.

05/09/2017

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

sra/dsa

1 The Principal District Judge,
Coimbatore.

+1 C.C. to M/S.C.Deivasigamani Advocate SR.NO.64836

+1 C.C. TO M/S.M/S.SARVABHAUMAN ADVOCATE SR.NO. 64048

C.M.A.No.2285 of 2017

NMI (CO)
T.R (05/10/2017)