

SUPREME COURT OF INDIA

Shahzadi Begum

Vs.

Badrunnissa Begum

C.A.No.2405 of 2000

(G. B. Pattanaik, R. P. Sethi and Shivaraj V. Patil JJ.)

05.04.2000

ORDER

1. Leave granted.

2. This appeal is directed against the observations made by learned Single Judge of Andhra Pradesh High Court while entertaining an appeal under Order 43, Rule 1 C.P.C. against the order of the learned trial judge vacating the ad interim order of injunction passed in favour of the plaintiff. The plaintiff had filed a suit for declaration of title and an application for ad interim injunction had also been filed. Initially an ex-parte ad interim injunction had been granted which later on stood vacated. Against that order the plaintiff had approached the High Court.

3. The High Court, peculiarly, in disposing of the appeal, came to hold that the suit itself filed by the plaintiff was not maintainable, but notwithstanding the same, directed that the plaintiff should be given an opportunity to file a third claim in the executing court and the executing court shall decide the same on merits without deciding that the third claim petition is barred by res judicata as earlier two claim petitions were not decided on merits. Plaintiff as well as the defendant were also allowed to lead evidence in this matter. The High Court also directed that the status quo as on date should be maintained. It is this direction which is the subject matter of challenge in this appeal at the instance of the defendant.

4. It may be stated that the present appellant filed a suit for possession and the suit was initially dismissed by the trial judge, but was decreed by the lower Appellate Court. The said decree was put to execution in E.P. No. 94. In the execution proceedings an application under Order 21, Rule 97 C.P.C. had been filed which stood dismissed and against the said order of dismissal, an application in revision had been filed before the High Court which stood dismissed. A review application filed, also stood dismissed.

5. A second round of application under Order 21, Rule 97 had been filed after the execution petition was transferred and renumbered as E.P. No. 53/ 95. That application was dismissed by order dated 11.3.1995. Both these orders of dismissal have attained finality. It is thereafter only the present suit was filed in which the plaintiff applied for ad interim injunction as already stated.

6. Mr. Reddy, the learned senior Counsel appearing for the defendant-appellant contends that the High Court has no jurisdiction to issue the impugned directions while entertaining an appeal against

the order of the trial judge vacating the ad interim order of injunction and, therefore the directions should be annulled.

7. Mr. Nageswara Rao, learned Counsel appearing for the respondents, on the other hand, submitted that the High Court having thought it fit that interest of justice demands to give an opportunity to the plaintiff, the same should not be interfered with.

8. Having heard the learned Counsel for the parties, we are of the considered opinion that the High Court was totally devoid of jurisdiction to issue the direction which are sought to be assailed in this appeal. On the question of legality of the order, passed by the trial judge vacating an ad interim injunction the Appellate Court could decide the question as to whether, in the facts and circumstances, the plaintiff would be entitled to an ad interim injunction during the pendency of the suit. That not having been done and the impugned direction is indeed, not germane to the subject matter of challenge before the High Court in appeal. In this view of the matter, we set aside the aforesaid direction of the High Court.

9. Mr. Nageswara Rao appearing for the respondent, has submitted that the High Court was not entitled to make the observation about the maintainability of the suit which is still pending. The said observation can be held to be for the limited purpose of deciding the limited question of injunction and not final opinion on merits and, therefore, not with standing the said observation the suit will proceed and will be disposed of in accordance with law.

10. This appeal is accordingly allowed.