

1974

Present : Tennekoon, C.J., Wijesundera, J.,
and Perera, J.

S. THAMBIPILLAI and 2 others, Appellants, and S. THAMBU-
MUTTU and another, Respondents

S. C. 9-10/72—D. C. Batticaloa, 2073/Misc.

Injunctions—Perpetual injunction issued by a District Court—Disobedience to it—Not punishable by the District Court as contempt of Court—Patent want of jurisdiction of a Court—Not curable by consent of parties—Civil Procedure Code (Cap. 101), ss. 662, 663, 792 et seq.—Courts Ordinance (Cap 6), ss. 57, 62 to 67, 71, 87.

In an action for trespass instituted by a District Court the plaintiffs-respondents obtained a "permanent" injunction restraining the defendants-appellants from entering a land belonging to the plaintiffs. About a year later the plaintiffs complained on 5th August 1970 that the defendants had acted in disobedience of the permanent injunction issued by the Court and moved under Chapter 65 of the Civil Procedure Code that contempt proceedings be taken by the Court against the defendants. At the commencement of the inquiry, Counsel for the defendants stated that he agreed with the submission of Counsel for the plaintiffs that disobedience to a permanent injunction is punishable as a contempt of Court under Chapter 65 of the Code. The Court thereupon, after inquiry, convicted the defendants of the offence of contempt of the District Court.

Held, that, assuming, without so holding, that disobedience to a perpetual injunction is an act or omission done or committed in the course of an act or proceeding in a Court, there is no provision of law which makes such disobedience punishable "as a contempt" within the meaning of section 57 of the Courts Ordinance. Therefore, the District Court had no "jurisdiction" to take contempt proceedings against the defendants. Section 662 of the Civil Procedure Code is applicable only to interim and interlocutory injunctions and not to perpetual injunctions.

Held further, (i) that the fact that the defendants agreed in the District Court that contempt proceedings could in law be taken against them could not estop them from contending in appeal that the District Court had no jurisdiction. The lack of jurisdiction in the District Court was, here, a patent lack of jurisdiction and as such could not be cured by acquiescence.

(ii) that where the lack of jurisdiction of a District Court is patent, the provisions of section 71 of the Courts Ordinance are not applicable.

A PPEALS from a judgment of the District Court, Batticaloa
A. Mahendrarajah, with S. Mahenthiran, for the defendants-
appellants.

P. Nagendran, for the plaintiffs-respondents.

Cur. adv. vult.

March 13, 1974. TENNEKOON, C.J.—

The plaintiffs-respondents sued the defendants-appellants and another in the District Court of Batticaloa for damages caused by the latter to a certain land owned by them and *inter alia*

for a “permanent” injunction restraining the defendants from entering the said land and committing acts of mischief, trespass, damage and nuisance. (The plaintiffs-respondents and the two defendants-appellants will hereinafter be referred to as “respondents” and “appellants” respectively.) The respondents, after trial, succeeded in their action and an injunction was issued on the appellants in terms of the prayer to the plaint. The injunction was served on them on the 24th of August 1969. The respondents, on the 5th of August 1970, filed petition and affidavit under Chapter LXV of the Civil Procedure Code and moved that contempt proceedings be taken by the District Court against the appellants. The complaint of the respondents was that the appellants had acted in disobedience of the permanent injunction issued by Court in that they had on or about the 30th of June 1970, entered the land in the occupation of the respondents with intent to intimidate the respondents and to commit acts of mischief, damage and nuisance.

The appellants appeared in Court on summons and at the commencement of the inquiry, Counsel appearing for the appellants stated that he agreed with the submission made by Counsel for the respondents to the effect that disobedience to a permanent injunction is punishable as a contempt of Court in accordance with the procedure set out in Chapter LXV of the Civil Procedure Code. The learned District Judge after inquiry convicted the appellants of the offence of contempt of the District Court of Batticaloa and sentenced the appellants to undergo a term of three months’ rigorous imprisonment.

The present appeal is from the conviction and sentence pronounced by the learned District Judge.

Counsel for the appellants submitted that the convictions and sentences should be quashed for the reason that the District Court had no jurisdiction to punish for contempt when there is disobedience to a perpetual as opposed to an interlocutory injunction issued by a District Court.

His submission further is that it was only the Supreme Court established under the Courts Ordinance that had jurisdiction in such a case prior to 1st January, 1974. Section 57 of the Courts Ordinance provided that every District Court, Court of Requests and Magistrate’s Court shall have a special jurisdiction to take cognizance of, and to punish every offence of contempt of Court—

“committed in the presence of the Court itself, and all offences which are committed in the course of any act or proceeding in the said Court respectively, and which are declared by law for the time being in force, to be punishable as contempts of Court”.

It is not contended that the alleged offence of contempt was in this case committed in the presence of the Court. Thus, for the District Court to have jurisdiction it must be established that,

(i) it was an offence committed in the course of an act or proceeding in the Court *and*,

(ii) that such offence is declared to be punishable as a contempt.

Counsel for the appellants submits that there is no law which declares disobedience to a perpetual injunction to be punishable "as a contempt". As against this, Counsel for the respondents contends that section 663 of the Civil Procedure Code declares disobedience to all injunctions, whether they be interlocutory or perpetual to be punishable as contempts. I am unable to see any merit in this contention; I find myself in agreement with the analysis of Section 662 made by Driberg, J. in the case of *Rambukpotha v. Jayakody*,¹ 29 N. L. R. 383. Driberg, J. said in that case—

"The provisions of Section 87 of the Courts Ordinance and of Chapter XLVIII of the Civil Procedure Code apply only to interim and interlocutory injunctions and not to perpetual injunctions, which can be ordered only in the final decree in an action."

Thus when Section 663 (appearing in Chapter XLVIII) of the Civil Procedure Code enacts—

"An injunction granted by the Court *on any such application* may in case of disobedience be enforced by the punishment of the offender as for a contempt of Court",

it is dealing only with disobedience to interim or interlocutory injunctions and not disobedience to perpetual injunctions. Assuming, then, but without so holding, that disobedience to a perpetual injunction is an act or omission done or committed in the course of an act or proceeding in a Court, there does not appear to be any provision of law which makes such disobedience punishable "as a contempt" within the meaning of Section 57 of the Courts Ordinance. I conclude therefore, that the District Court of Batticaloa had no "jurisdiction" to take contempt proceedings against the appellants.

There are two further matters that call for examination in this case. Having regard to the fact, that the appellants through their Counsel, can be said to have acquiesced, in the District Court

¹ (1928) 29 N. L. R. 383.

proceeding to hear and determine the application for contempt proceedings being taken against the appellants in the District Court, the question arises whether such acquiescence estops the appellants from now contending that the District Court had no jurisdiction. It is sufficient to say that acquiescence cannot enlarge the jurisdiction of a Court granted by a statute. The lack of jurisdiction in the District Court was, here, a patent lack of jurisdiction and as such could not be cured by acquiescence. As was said by Sansoni, J. in *Kandy Omnibus Company Ltd. v. Roberts*¹—56 N. L. R. page 293 at 304,

“It is not open to a person to confer jurisdiction by consent and no amount of acquiescence confers jurisdiction upon a Tribunal or Court where such jurisdiction did not exist.”

Justice Sansoni in this case went on to hold that where there is a total want of jurisdiction, and not merely a case of irregularity or want of contingent jurisdiction, the fact that a party waived objection to the jurisdiction of the Tribunal and took part in the proceedings thereafter, could not disentitle him despite his acquiescence to object later that the order made by the Tribunal was void.

The second matter is the effect of the provision contained in Section 71 of the Courts Ordinance. It reads—

“Whenever any defendant or accused party shall have pleaded in any cause, suit, or action, or in any prosecution brought in any District Court, without pleading to the jurisdiction of such District Court, neither party shall be afterwards entitled to object to the jurisdiction of such Court, but such Court shall be taken and held to have jurisdiction over such cause, suit, action or prosecution.”

This section to my mind can be availed of only in those cases where it can be said that although the particular District Court was without jurisdiction, the cause, suit, action or prosecution was within the general jurisdiction of some District Court. Under section 62 of the Courts Ordinance it is enacted that—

“Every District Court shall be a Court of record and shall have original jurisdiction in all civil, criminal, revenue, matrimonial, insolvency, and testamentary matters, save and except such of the aforesaid matters as are herein, or by virtue of the provisions of the said Criminal Procedure Code or any other enactment for the time being in force, exclusively assigned by way of original jurisdiction to the Supreme Court, and shall also have jurisdiction over the persons and estates of persons of unsound mind, minors, and

¹ (1954) 56 N. L. R. 293 at 304.

wards, over the estates of cestuis que trust, and over guardians and trustees, and in any other matter in which jurisdiction has heretofore been, is now, or may hereafter be given to District Courts by law.”

Sections 63 to 67 while setting out certain matters within the substantive jurisdiction of each District Court also confine the jurisdiction in such matters territorially. The want of jurisdiction in a particular District Court arising out of a latent factual situation may be cured under Section 71 by failure to object to jurisdiction, but it is difficult to imagine that the legislature intended that District Courts of this country should have jurisdiction even in respect of those matters exclusively assigned to the Supreme Court when a party defendant or accused fails to object to the District Court exercising jurisdiction. Such matters would be patently outside the jurisdiction of any District Court. The words in Section 71,

“ but such (District) Court shall be taken and held to have jurisdiction over such cause, suit, action or prosecution ”,

are indicative of an intention on the part of the legislature to bring within that Section only those matters in which there is a contingent lack of jurisdiction which a party may well decide to ignore but not those in which the want of jurisdiction is substantive or patent.

This being a case in which the District Court of Batticaloa suffered from a patent lack of jurisdiction for the reason that punishment for disobedience to a perpetual injunction is a matter exclusively assigned to the Supreme Court, the provisions of Section 71 of the Courts Ordinance cannot be availed of by the respondents.

The District Court of Batticaloa being thus wholly without “ jurisdiction ” to punish for contempt of the perpetual injunction, which it had earlier issued, the convictions of the appellants and the sentences passed on them are quashed.

WIJESUNDERA, J.—I agree.

PERERA, J.—I agree.

Appeals allowed.