
PATHIRANA
VS
GERTI AND OTHERS

COURT OF APPEAL.
WIMALACHANDRA, J.
RANJITH SILVA, J.
CA (REV) 3/2006.
DC ANURADHAPURA 15708/L.

Civil Procedure Code-Sections 622, 627, 839 Judgment entered - Appeal-District Court functus - Appeal pending - The respondents obtained interim injunction - Legality -Judicature Act - Section 54(3) - Court functus ?

HELD :

- (1) The District Judge has no power to adopt the procedure laid down in Sections 622-627 after the entering of the judgment especially when an appeal is taken against the judgment and the appeal is pending.
- (2) To obtain an interim injunction the case must be pending and judgment has not still been entered - Section 54(3) Judicature Act. No interim injunction could be granted after the final judgment.

Per Ranjith Silva. J

"In a fit case the District Judge can make orders to remedy injustice invoking its inherent powers under Section 839, as Section 839, is not only intended to repair errors committed by the Court itself but also extended to repair injuries done to a party by another party to the action but it does not mean that the District Judge can invoke the powers given to him under Section 54 of the Judicature Act subsequent to the entering of the judgment in a case".

APPLICATION in revision from an order of the District Court of Anuradhapura.

Cases referred to :

1. *Edward vs. De Silva* - 46 NLR 342 at 343, 344

2. *Pathma Chandri Kulatunge vs. Katuwewakge Lucie Pieris* — 2002 – 1SRL in 357
3. *T. W. U. Seneviratne vs. Francis Fonseka Abeykoon* - 1986 - 2 Sri LR 1.

D. K. Dhanapala for petitioner
Respondent absent and unrepresented.

Cur. avd. vult.

17th November, 2006.

RANJIT SILVA, J.

The Plaintiff Respondent Petitioner (who shall hereinafter be referred to as the Petitioner) instituted action bearing 15708/L in the District Court of Anuradhapura on 17th June 1996 against the 3rd Defendant Petitioner Respondent (who shall hereinafter be referred to as the Respondent) and four others praying *inter-alia* for a declaration that the petitioner is the licensee of the land more fully described in the 2nd schedule to the Plaint (hereinafter referred to as the Land), for the ejectment of the Respondent and the other Defendants from the said Land, for vacant possession of the said Land and for damages.

The Petitioner in his plaint alleged that the government agent of Anuradhapura by permit No. 11/9/3/728 dated 03.08.1983 allotted to the Petitioner a plot of land (described in the 1st schedule to the plaint) and that he permitted the Respondent and the other Defendants, upon their request to put up a temporary shed and occupy a portion of the said land which is described in the 2nd schedule to the plaint (referred to as The Land) on the understanding that the Defendants will vacate the said land at the request of the Petitioner and that the Respondent and the Defendants failed or neglected to vacate the same on being requested by the Petitioner to vacate the said Land.

After trial the learned Judge delivered his judgment on 02.03.2005 in favour of the petitioner granting relief prayed for in paragraph (a), (b) and (d) c. the prayer to the plaint. Aggrieved by the said judgment the Respondent appealed to the Court of Appeal and that appeal is presently pending in this Court which has been assigned the number C.A.78/05 F.

On 18.03.2005 whilst the said appeal was still pending in this Court the Respondent filed an application in the District Court by way of petition and affidavit along with several documents alleging that the petitioner forcibly entered the Land he was in occupation (land described in schedule 2) and started to construct a building, taking the law into his own hands without following the proper procedure as spelt out in the Civil Procedure Code praying *inter-alia* for an enjoining order and interim injunction. The application for interim relief by way of an enjoining order and interim injunction was made after the judgment in the main case was delivered and that is quite a significant feature that should be remembered and taken into account in disposing of this application for revision.

On 30.03.2005 the learned Judge issued an enjoining order against the petitioner as prayed for in the petition and after a purported inquiry on 12.09.2005 delivered his order allowing the application made by the Respondents in which he confirmed the enjoining order and issued an interim injunction against the Petitioner. Here it must be noted that the parties had stipulated that the inquiry into the issuance of the interim injunction as prayed for in the petition of the Respondent should be disposed of by way of written submissions.

It is against that order dated 12.09.2005 made by the learned District Judge of Anuradhapura issuing an interim injunction, the petitioner seeks to invoke the revisionary powers of this court to revise or set aside the said impugned order.

The ordinary rule is that once an appeal is taken from the judgment and decree of an inferior court, the jurisdiction of that court in respect of that case is suspended, except of course, in respect of matters to be done and directions to be given for the perfecting of the appeal and for the performance of other administrative actions. The competency or the jurisdiction of the court as the court appointed to try and determine the case ends once the judgment is entered in that case ; in other words the court becomes functus with regard to that particular case in the absence of any special provision or procedure empowering that court to act (*eg. writ pending appeal*). The effect of a right of appeal is the limitation of the jurisdiction of one court and the extension of the jurisdiction of another. The necessary corollary that follows is

when an appeal is taken from a judgment the original case should be maintained *in statu quo* till the appellate court has dealt with it and given its decision. (*vide Edward vs. De Silva* ⁽¹⁾ at 343 and 344).

The appellate Court shall have the power to grant interim relief in a fit case although it does not have the power to grant stay orders. An average interim order granting interim relief should be distinguished from interim orders in the nature of stay orders which tend to stay the execution of judgments and orders of inferior tribunals. In *Pathmachanddri Kulatunge vs Katuwawalage Lucie Peiris*⁽²⁾ The Supreme Court held that the Court of Appeal had the power to restrain a party from destroying the subject matter of the action and also to authorize a party to take necessary steps (subject to such terms and conditions as the court may prescribe) to preserve the subject matter.

In a fit case the District Judge can make orders to remedy injustice invoking its inherent powers under Section 839 of the Civil Procedure Code as Section 839 of the Civil Procedure Code is not only intended to repair errors committed by the Court it self but also extended to repair injuries done to a party by another party to the action. If a Plaintiff, pending appeal, evicts the Defendant, taking the law into his own hands the District Judge should have the power to issue a writ to restore the Defendant to possession even without a decree for possession. (*Vide. T. W. U. Senaviratne Vs Franis Fonseka Abeykoon*⁽³⁾). But that does not mean that the District Judge can invoke the powers given to him under Section 54 of the Judicature Act subsequent to the entering of the judgment in a case. The District Judge has no power to adopt the procedure laid down in Sections 622-627 after the entering of the judgment especially so when an appeal is taken against the judgment and the appeal is pending.

The learned district judge when he made the impugned order dated 12.09.2005 granting an interim injunction acted out side his jurisdiction and therefore the said order is an absolute nullity as he patently lacked jurisdiction to hold an inquiry to decide on the question of issuing an interim injunction after the judgment in the case was entered. What is more when there is an appeal pending in this court against the judgment entered in the District Court.

There is another reason why the impugned order cannot be allowed to stand. The said order is illegal as there is no provision to issue enjoining orders or interim injunctions after judgment is entered in a case. At this stage I would like to analyse the relevant provisions of the Judicature Act dealing with this subject.

According to Section 54 (3) of the Judicature Act an interim injunction could be granted restraining the Defendant or any other person until the hearing and decision of an application for an injunction. A plaintiff or a Defendant who set up a claim in reconvention in his answer and demands an affirmative judgment against the Plaintiff can ask for a permanent injunction or an interim injunction and/or an enjoining order until the application for an interim injunction is disposed of. The procedure is laid down in the Civil Procedure Code. (*Vide*. Sections 662-667). According to Section 54(1) (a), (b) and (c) such an injunction could be obtained only during the pendency of the case that is before the judgment is entered in the case. On a perusal of the wording of the provisions of this section it makes it abundantly clear, that to obtain an interim injunction the case must be pending and judgment has not still been entered. The relevant portion of Section 54(3) reads as follows ;

54(3) "such injunction may be granted to accompany the summons, or at any time after the commencement of the action and before final judgment,".

Therefore it is crystal clear that no interim injunction could be granted after the final judgment and thus the impugned order dated 12.09.2005, since it was made after the final judgment in this case dated 02.03.2005 was entered, is one made without jurisdiction and therefore an absolute nullity.

For the aforesaid reasons I have referred to on the applicable law I find that it would be redundant to refer to the facts of this case. Accordingly application for revision is granted. I set aside the order made by the learned District Judge of Anuradhapura dated 12.09.2005 with costs fixed at Rs. 5,000.00 to be paid to the petitioner by the Respondent. This order shall not be construed as a license granted to

the Petitioner to take possession of the subject matter (The Land) without resorting to due process of law.

Application for revision is allowed.

WIMALACHANDRA, J. — I agree.

Application allowed.
