

Present: Garvin and Drieberg JJ.

RAMBUKPOTA v. JAYAKODDY.

101—D. C. Kurunegala, 12,914.

*Injunction—Prayer in plaint—Affidavit—Civil Procedure Code, s. 662.*

Where the plaint in an action includes a prayer for an interim injunction, the application for the injunction must be supported by an affidavit.

**A** PPLICATION to revise an order of the District Judge of Kurunegala.

Hayley, K.C. (with Weerasooriya), for applicant.

H. V. Perera, for respondent.

May 26, 1928. DRIEBERG J.—

The respondent brought this action on January 27, 1928, for a declaration of title to a portion of land an acre in extent and part of his estate, which he said the petitioner had taken forcible possession of. He alleged that through this portion ran his estate road, and that the petitioner had blocked up this road and prevented his use of it. In addition to the usual relief of declaration of title, ejectment, and damages, he prayed for an injunction restraining the petitioner from preventing his use of the road until the decision of the action. When presenting the plaint the respondent's proctor moved for an interim injunction on the petitioner. The Court allowed summons for February 10, but summons was not taken out until February 6, on which day a notice was also issued to the petitioner to show cause on February 10 against the issue of the injunction.

Appearance was entered for the petitioner on February 10, and time was extended to February 24, on which day the petitioner's proctor took the objection that the notice had issued without proper material as there was no petition and affidavit by the respondent. The learned District Judge over-ruled the objection, holding that the proceedings were in order, the provisions of section 662 of the Civil Procedure Code being complied with, and fixed a day for inquiry. Before this day the petitioner applied to this Court that this order be dealt with in revision and set aside, and asked for a stay of proceedings in the District Court, which was allowed.

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.

1928

DRIEBERG  
J.*Rambukpota*  
*v.*  
*Jayakoddy*

An interim injunction may be applied for in the plaint, or it may be made in the course of the action though not asked for in the plaint. The only difference in the procedure to be followed in the two cases is this: Where the interim injunction is not prayed for in the plaint a petition is required by section 662 of the Code, but this section says that a petition is not necessary where the injunction is prayed for in the plaint. In both cases, however, an affidavit is essential, this requirement being imposed by section 662 of the Code.

The meaning of section 662 is open to some contention, but I think the punctuation supports the view that the exception applies to the petition only and not to the affidavit.

A plaint need do no more than set out the right on which the plaintiff claims his cause of action against the defendant and the relief claimed; but a party has to place more material than this before a Court to entitle him to an injunction, and the party noticed is entitled to know what this material is and who deposes to its truth.

The order of the District Court of February 24, 1928, is set aside. If the respondent desires to proceed with his application for the injunction he must file an affidavit setting out the circumstances on which he claims to be entitled to it.

The respondent will pay to the petitioner the costs occasioned by the application in the District Court and the costs of the proceedings in this Court.

GARVIN J.—I agree.

*Set aside.*

