

JUDGMENT

This is an appeal filed under Order 43 Rule 1(r) of the Code of Civil Procedure. The events that have led to this appeal are as follows:

2. Original Suit 246/2014 was instituted by the respondent in the court of Additional Civil Judge, Tarikere. It was a title suit based on a registered will dated 19/10/2011 executed by C.C Laxmanappa. In the suit, an order of temporary injunction was in force till its disposal restraining the appellant from interfering with respondent's possession of suit property. The appellant herein challenged the order of grant of temporary injunction by preferring an appeal and it was dismissed. Then on conclusion of trial the suit came to be dismissed. Therefore, the respondent preferred an appeal under section 96 read with Order 41 Rule 1 CPC to the court of Senior Civil Judge, Tarikere. In the appeal respondent filed an

application for temporary injunction and since by order dated 13/12/2021, the application came to be allowed, the appellants have preferred this appeal.

3. It is not necessary to deal with the factual aspects since Sri Madhusudhana Rao for the appellants and Sri R Vijay Kumar for the respondent raised legal issues while arguing. It was the argument of Sri Madhusudhana Rao that the learned Senior Civil Judge, while deciding the application for temporary injunction should have considered the evidence of the witnesses to arrive at a conclusion whether there was a case for grant of temporary injunction pending disposal of the appeal or not. He argued that the suit was for declaration of title of the respondent/plaintiff over the suit property. As the trial court has held that the execution of will was not free from suspicious circumstances for dismissing the suit, the first

appellate court should have considered the evidence as also the findings of the trial court while deciding the application for grant of temporary injunction during pendency of the appeal. Instead, it is erroneously held by the Senior Civil Judge that the appellants have not disputed the testamentary capacity of Laxmanappa and since an order of temporary injunction was in force till disposal of the suit, the interest of the appellant would not be affected in any way if the order of temporary injunction is granted in the appeal also. Sri Madhusudhana Rao argued that the court below has thus committed an error in exercising discretionary power.

4. But Sri Vijaya Kumar argued that order of temporary injunction which was in force till disposal of the suit had been confirmed by the appellate court also. The respondent might have lost the suit but if he sought temporary injunction

in the appeal preferred by him against the decree, and if the appellate court found it appropriate to continue the order of temporary injunction till disposal of the appeal, it was a wise and proper exercise of discretionary power in order to protect the respondent's possession over the suit property. Reiterating the established principles to be considered for grant of temporary injunction, Sri Vijay Kumar argued that while deciding an appeal preferred against an order of temporary injunction the appellate court will normally not interfere with the trial court's order if the discretionary power is properly exercised by the trial court. Even if another view is possible to be taken on facts, the appellate court will not interfere. With regard to argument of Sri Madhusudhana Rao that the appellate court should look into the evidence, Sri Vijay Kumar argued that it is left to the court whether to look into evidence or not, and in case this court were to

come to conclusion that the first appellate court should have considered the evidence, the matter may be remanded to the court below for disposal of the application for temporary injunction afresh by referring to the evidence. In support of his argument, he has placed reliance on certain decisions which will be referred to later.

5. Therefore, from the arguments advanced by the learned counsel, the following two points may be formulated for discussion:

- (i) When an application for temporary injunction is filed in an appeal preferred under section 96 read with Order 41 Rule 1 of CPC against the decree of the trial court, is it necessary for the appellate court to consider the evidence on record for deciding the application?

- (ii) Can the appellate court allow the application for temporary injunction merely for the reason that order of temporary injunction was in force till disposal of the suit?

6. The above points can be discussed together. In the beginning itself a fine distinction between an appeal preferred under Order 43 Rule 1 of CPC against an order either granting or refusing to grant injunction, and an application for temporary injunction preferred in an appeal under section 96 read with Order 41 Rule 1 of CPC against judgment and decree of trial court, can be made. The points that Sri Vijay Kumar argued pertain to the power of the appellate court which decides an appeal filed under Order 43 Rule 1 of CPC. The court of first instance while deciding an application for temporary injunction should

exercise discretion having regard to prima facie case, balance of convenience and irreparable injury. In the appeal against such an order, the scope is limited in the sense that if the appellate court finds that discretion is properly exercised and that the findings are not capricious or arbitrary, the appellate court should not interfere with such an order. Even if the appellate court comes to conclusion that another view is possible to be taken, it cannot substitute its views to reverse the order passed by the court of first instance. This is a well established principle and in fact this principle is reiterated in the decision of this court in the case of ***Lalithakshi Annadanagowda vs Sadashivappa Basappa and Another [1983(2) Kar.L.J. 289]***, a judgment cited by Sri R Vijay Kumar. But if temporary injunction sought in an appeal preferred against decree, the position is slightly different. As is in this case, the plaintiff lost the suit and therefore

preferred an appeal against the decree. If he seeks temporary injunction pending disposal of the appeal, in my opinion, the appellate court need not decide such an application in the manner the appellate court decides the appeal preferred under Order 43 Rule 1 of CPC. Whether to grant injunction or not pending disposal of the appeal lies within the prudence of the appellate court having regard to the facts and circumstances of the case on hand. The purpose of granting temporary injunction is to preserve the status and nature of the property until the dispute is decided on merits. Sri Vijay Kumar has placed reliance on a judgment of a Division Bench of Madhya Pradesh High Court in the case of ***Durg Transport Company Private Limited, Durg vs Regional Transport Authority, Raipur and Others (AIR 1965 MP 142)*** where it is held;

"4. The principle that a stay order or an ad interim injunction is issued to maintain and

preserve the status-quo existing at the time of the institution of the proceedings cannot be doubted. The real point, which has to be decided when an application for stay or for a temporary injunction is made, is not how the question ought to be investigated; but it is whether the matter should not be preserved in status-quo until the question can be finally disposed of. A stay order or an order of injunction is not granted to disturb the status-quo. It is no doubt granted to restore the status-quo. It is never granted to establish a new state of things differing from the state which existed at the date when proceedings were instituted. If any authority is needed for the proposition, we need only refer to the decision of the Calcutta High Court in Nandan Pictures Ltd. v. Art Pictures (S) AIR 1956 Cal 428, where it has been emphasized lucidly, if we may say so with respect to the learned Judges of the Calcutta High Court, that it is only in very rare cases that a mandatory injunction is granted on an interlocutory application and instances where such an injunction is granted by means of an ad-

interim order pending the final decision of the application itself are almost unknown.”

(emphasis supplied)

7. This being the purpose of granting temporary injunction, a question would obviously arise as to why the appellate court should disturb the status that the trial court has found to be maintained or preserved. Appeal is a continuation of suit and therefore depending on facts and circumstances of each case, the appellate court may decide to grant or refuse injunction. In the case of ***Ratnavati vs Munda Belchada and Others [1974 (1) Kar.L.J. 252]***, it is held :

“The learned Civil Judge rejected that application on the ground that this Court in 1971 (1) Mys. L.J. Notes of Recent Cases, Item No.165, has held that where the trial Court dismisses the suit, the appellate Court is not entitled to make an order of temporary injunction. The learned Civil Judge has read the decision

as laying down that under no circumstances an order of temporary injunction can be made by the appellate Court when the trial Court dismisses the plaintiff's suit. That is not the correct view of the law. Ordinarily, where the original Court after trial records a finding that the plaintiff is not in possession and the suit is dismissed on that ground, it would not be a fit case for ordering temporary injunction by the appellate Court during the pendency of the appeal. There may however be exceptional circumstances justifying the appellate Court in making an order of temporary injunction. It is not possible to lay down all the circumstances under which an order of temporary injunction can be made. Each case has to be dealt with on its own merits. If before the trial Court the plaintiff had the benefit of an order of temporary injunction until the disposal of the suit and before the appellate Court, he is able to show that irreparable damage would be caused to him if the order of temporary injunction is not

continued, the appellate Court may grant an order of temporary injunction if the equities of the case warrant the making of such an order. While making such an order the appellate Court may impose terms on the appellant to safeguard the interests of the respondent if the appeal ultimately fails. The order of the Court below, therefore, is clearly erroneous and cannot be sustained”.

8. Ordinarily the appellate court should not disturb the status ordered to be maintained by the trial court. In order to take a different view, the appellate court must find an exceptional circumstance.

9. There is no hard and fast rule that the appellate court should not refer to the evidence of the witnesses and the findings given by the trial court while deciding the application for temporary injunction. If the appellate court feels that the evidence has to be looked into, it should be for the

limited purpose of forming an opinion regarding the nature or status of the property. For instance, if a suit for bare injunction is dismissed holding that plaintiff is not in possession of the property, in the appeal, that finding has a significant effect; de hors that finding, the appellate court cannot grant an order of temporary injunction in favour of the appellant. But in other types of suits, decision whether an order of temporary injunction is to be granted or not during pendency of the appeal has to be taken based on all attending circumstances. If the trial court has not given clear finding as regards possession, it is better to grant an order of temporary injunction if it was in operation till disposal of the suit.

10. Here in this case, it is not in dispute that order of temporary injunction was in force till disposal of the suit and it had been confirmed in the appeal also. This aspect has been noticed by

the appellate court. In addition to this, the appellate court has also held the testamentary capacity of the testator has not been objected by the appellant and what requires to be examined is findings of the trial court about the execution of the will under suspicious circumstances. As regards possession, the trial court has held that because PW1 has failed to prove the title, it is not possible to accept his plea of possessing the suit property. It is held that Ex.P3 and Ex.P5 are not enough to infer the plaintiff's possession. But, the trial court has also observed that question of dispossessing the plaintiff does not arise because DW1 has stated that each of them, including the plaintiff is in possession of 15½ guntas of land. This finding is not clear. The first appellate court has to give a clear finding as to possession also, but till then there is no good reason to disturb the status that was ordered to be maintained till disposal of the suit. There are no grounds to

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interfere with the impugned order. Hence, appeal is dismissed.

**Sd/-
JUDGE**

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