Paramasothy

v.

Nagalingam

COURT OF APPEAL.
SOZA, J., AND L. H. DE ALWIS, J.
C. A. APPLICATION NO. 807/80.
OCTOBER 22, 1980.

Primary Courts Procedure Act No. 44 of 1979, sections 66, 67, 72—Breach of the peace threatened or likely—Objection that failure to consider such requirement deprived court of jurisdiction—Opportunity to lead evidence—When necessary—Discretion of court—Requirement that objection to jurisdiction be taken at earliest opportunity—Judicature Act, No. 2 of 1978, section 39.

The petitioner moved to have an order made in the Primary Court under Part VII of the Primary Courts Procedure Act, No. 44 of 1979, revised. It was submitted on his behalf that :

(a) the court had failed to clothe itself with jurisdiction in that it had not considered whether on the police report a breach of the peace was threatened or likely ; and

(b) the learned judge of the Primary Court had failed to give the petitioner an opportunity to led evidence although such an application was made.

Held

(i) By virtue of the provisions of section 39 of the Judicature Act it was incumbent on any party who objects to jurisdiction to do so at the very first opportunity. In this case the court inspected the site in dispute on the invitation of parties and the order was made after hearing submissions. The petitioner was therefore not entitled to complain on the ground of jurisdiction. The court had plenary jurisdiction and unless the objection was raised the court must be deemed to have jurisdiction.

(ii) Sections 72 of Act, No. 44 of 1979 leaves the question of permitting evidence to be led to the discretion of court and the scheme of these provisions is to prevent long drawn out inquiries. The court had inspected the land and heard the parties and no prejudice had been caused. Accordingly there was no necessity to grant the petitioner's application to lead evidence.

APPEAL from the Primary Court, Velanai.

S. Navaratnam, for the petitioner.
S. C. Dickens, for the 1st respondent.

October 22, 1980.

SOZA, J.

This is an application for revision of the order of the Judge of the Primary Court, Velanai made under the provisions of the Primary Courts Procedure Act, No. 44 of 1979. Two main points have been argued, namely, that the Primary Court had failed to advert its attention to whether on the police report a breach of the peace was threatened or likely. Accordingly, it is submitted that the court had failed to clothe itself with the necessary jurisdiction.

In this connection it is only necessary to refer to section 39 of the Judicature Act, No. 2 of 1978. By virtue of the provisions of this section it is incumbent on any party who raises an objection to jurisdiction to do so at the very first opportunity. In this case the parties have invited the court to inspect the site in dispute and the order was made after hearing the submissions. Having participated in the proceedings it does not lie in the mouth of the petitioner to complain that the learned Judge of the Primary Court has not clothed himself with the necessary jurisdiction to hear this case by forming an opinion in regard to the likelihood whether a breach of the peace was threatened or likely. The court had plenary jurisdiction to hear this matter and therefore unless objection was raised the court must be deemed to have jurisdiction. Hence the first objection fails.

In regard to the second question that there was no proper inquiry, our attention has been drawn to section 67 and section 72 of the Primary Courts Procedure Act, No. 44 of 1979. Section 67 stipulates that inquiry should be held in a summary manner and concluded within three months of the commencement of the inquiry. This stipulation shows what the legislature has intended, the inquiry should be held summarily and concluded speedily. Learned counsel for the petitioner complains that the Judge of the Primary Court had failed to give him an opportunity to lead evidence although such an application was made. Section 72 of the Primary Courts Procedure Act, No. 44 of 1979, leaves the question of permitting evidence to be led to the discretion of the court. The entire scheme of the new provisions is to prevent long drawn out inquiries where evidence is led on both sides. In the present case the court had inspected the land and heard the parties and no prejudice has been caused. There was no compelling need for evidence. Section 72 (*b*) and (*c*) are so drawn up as to leave to the discretion of the court the question of permitting written or oral submissions. These are not imperative provisions requiring the court to call for evidence to be led. In our view there was no necessity to grant the application of the petitioner to lead evidence. We see no ground on which we can interfere with the order of the learned Judge.

The application is dismissed with costs.

L. H. DE ALWIS, J.—I agree.

Application dismissed.