

PEIRIS AND ANOTHER
v.
PERERA AND ANOTHER

COURT OF APPEAL
UDALAGAMA, J., AND
NANAYAKKARA, J.
CALA NO. 26/2001
DC PANADURA NO. 2794/SPL
JULY 19, 2001

Mandatory Injunction to remove obstructions of access – jurisdiction of District Court – Civil Procedure Code s. 662 and s. 664 (1) – Judicature Act, No. 2 of 1978 – s. 54 (1).

The District Court issued a mandatory injunction to remove an obstruction of access to the plaintiff-respondent's premises and issued a further order to demolish a wall constructed to prevent access of the plaintiff-respondent to her premises.

It was contended that the District Court had no jurisdiction to issue a Mandatory injunction, as the ownership of the land in dispute and the rights of title ought to be decided after trial.

Held:

- (1) Acts which tend to make a restraining order nugatory must necessarily be prevented especially when an act appear to be of a recent origin which compels a party to seek such relief. Interim relief is equitable relief. Delay would defeat equity.
- (2) Mandatory injunctions demanding a positive act mandated only as a necessary ancillary to an injustice aimed at the protection or prevention of the subject in the same condition it was when the cause of action arose.

Per Udalagama, J.

"With today's improved technologies in the field of construction such obstructions by way of a cement block wall could come up in hours. In such

instances before an injunction could issue to restrain someone from doing something the mischief complained of could well have been done.

Although injunctions are normally granted directing that something should not be done, exceptions could arise where something has been done to alter the *status quo*. In which event courts should as far as reasonably possible intervene to undo it even by the grant of mandatory relief."

APPLICATION for leave to appeal from the order of the District Court of Panadura.

Cases referred to:

1. *Redland Bricks Ltd. v. Morris* – 1969 – 2 ALL ER 575.
 2. *Tudor v. Anulawathie and Others* – 1999 2 SLR 235.
- V. *Kulatunga* for 3rd and 4th defendants-appellants.
- C. *Prematilake* for plaintiff-respondent.

Cur. adv. vult.

August 27, 2001

UDALAGAMA, J.

The defendants-petitioners, *vide* their petition dated 30. 01. 2001, ¹ prayed for leave to appeal against the orders of the learned District Judge dated 19. 01. 2001 and 24. 01. 2001. The petitioners also prayed to stay proceedings in DC Panadura case No. 2794/spl. On the petitioners' application made *ex parte*, this Court on 31. 01. 2001 granted a stay order but on 06. 04. 2001 refused to extend same as the dispute concerned a right of way.

The facts briefly appears to be as follows : The learned District Judge by his order of 19. 01. 2001 issued a mandatory injunction to remove an obstruction of access to the plaintiff's premises in ¹⁰ accordance with paragraph (b) of the plaint and on 24. 01. 2001

issued a further order to demolish a wall constructed to prevent access of the plaintiff to her premises.

The basis of this application of the petitioners to set aside the impugned order appears to be that the learned District Judge had no jurisdiction under section 664 (1) of the Civil Procedure Code or section 54 (1) of the Judicature Act of 1978 to issue a mandatory injunction. As conceded by the petitioners the ownership of the land in dispute and the rights of title ought to be decided by the District Court after trial.

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In no case has it been said that courts cannot issue mandatory injunctions. Section 54 of the Judicature Act together with sections 662 and 664 of the Civil Procedure Code empowers court to issue interim injunctions. Operational word in the provisions of the above is "restrain". I am of the view that in certain instances restrain envisages a positive act, for example, for removing of an obstruction to a road by a recently erected fence. Any restraining order could not be made nugatory by some act of the defendants. Acts which tend to make a restraining order nugatory must necessarily be prevented especially when an act appears to be of a recent origin which compels a party to seek such relief. Interim relief is an equitable relief. Delay would defeat equity. Mandatory injunctions demanding a positive act is so mandated only as a necessary ancillary to an injunction aimed at the protection or prevention of the subject in the same condition it was when the cause of action arose.

I am inclined to the view that an interim injunction restrictive in nature can be supplemented by a mandatory one in order to make it effective.

However, as stated by Lord Upjohn in *Redland Bricks Ltd v. Morris*⁽¹⁾ "the grant of a mandatory injunction is, of course, entirely 40

discretionary and unlike a negative injunction can never be "as of course". Every case must depend essentially on its own particular circumstances".

Even though in England and in India legislation to meet specific instances where mandatory injunctions could be granted is in place, no such special discretion exists in Sri Lanka. However, in particular circumstances when justice demand, I would hold that courts are not precluded from granting such relief of a mandatory nature.

As stated by Justice Gunawardana in the course of his judgment in *Tudor v. Anulawathie & Others*⁽²⁾ "nor is there a prohibition either 50 against the Court exercising such a power". The above decision concerned an order under the provisions of the Primary Courts Act where the learned Primary Court Judge ordered a demolition of a construction. Gunawardana, J. went on to say – "but the Courts are not to act on the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the Code". The analogy of that decision could apply to a situation as has arisen in the instant case. I would also hold that in the instant case as seen by the 60 photographs filed on behalf of the respondent a gate admittedly constructed by the latter has been completely obstructed by a "cement block" wall, also admittedly constructed by the petitioner. With today's improved technology in the field of construction such obstructions by way of a cement block wall could come up in hours. In such instances before an injunction could issue to restrain someone from doing something the mischief complained of could well have been done. Although injunctions are normally granted directing that something should not be done, exceptions as in this instance could arise where something has been done to alter the *status quo*. In which event Courts 70 should as far as reasonably possible intervene to undo it even by

the grant of mandatory relief. In the instant case, as stated above, by the observance of the photographs filed shows a blatant violation of respondent's rights when a gate to the respondent's premises had been obstructed by obviously a recently built wall of cement blocks depriving the respondent of any access to her partly built premises.

I am of the view that the learned District Judge was correct to issue the impugned orders dated 19. 01. 2001 and 24. 01. 2001 and would not venture to interfere with the learned District Judge's order whereby a mandatory injunction was warranted considering the 80 peculiar circumstances of this case.

Leave to appeal is refused with costs fixed at Rs. 5,250.

NANAYAKKARA, J. – I agree.

Application dismissed.