

1962 Present: H. N. G. Fernando, J., and T. S. Fernando, J.

D. S. DISSANAYAKE, Appellant, and AGRICULTURAL AND INDUSTRIAL CREDIT CORPORATION and others, Respondents

*S. C. 73 Inty.—D. C. Colombo, 802/Z.*

*Injunction—Power of Court to issue an interim injunction—Scope—Agricultural and Industrial Credit Corporation Ordinance, s. 80—Civil Procedure Code, s. 667.*

In an application for an interim injunction the proper question to decide is “whether there is a serious matter to be tried at the hearing”. If it appears from the pleadings already filed that such a matter does exist, the further question is whether the circumstances are such that a decree which may ultimately be entered in favour of the party seeking the injunction would be nugatory or ineffective if the injunction is not issued.

Where property mortgaged to the Agricultural and Industrial Credit Corporation is sold by the Corporation in pursuance of statutory powers conferred on it, and the mortgagor institutes an action for a declaration that the sale was void on the ground of material irregularity, the mortgagor may apply for an interim injunction restraining the Corporation from confirming the sale.

<sup>1</sup> (1959) *Scot's Law Times* 161.

<sup>2</sup> (1959) 17 *D. L. R.* 178 at 192.

## APPEAL from an order of the District Court, Colombo.

*G. T. Samerawickreme*, with *K. Palakidner*, for the Plaintiff-Appellant.

*H. W. Jayewardene, Q.C.*, with *N. E. Weerasooria (Jnr.)*, for the 1st Defendant-Respondent.

*Cur. adv. vult.*

April 2, 1962. H. N. G. FERNANDO, J.—

The first Defendant, the Agricultural and Industrial Credit Corporation, was the mortgagee of a certain land belonging to some of the other Defendants, and the Plaintiff-Appellant was a secondary mortgagee of the same land. In pursuance of statutory powers conferred on the Corporation, the land was sold for the recovery of moneys due to the Corporation on its mortgage and purchased by the second Defendant.

The Plaintiff thereupon instituted this action for a declaration that the sale was void on the ground of material irregularity, namely that the sale had been held prior to the advertised time, and elsewhere than at the advertised place. The Plaintiff also applied for an interim injunction enjoining the Corporation from confirming the sale. This application was obviously intended as a means of averting the operation of the statutory provision that the validity of such a sale cannot be challenged after the issue of a certificate of sale to the purchaser. (Section 80 of Chapter 402.)

The learned District Judge issued notice of the application to the Defendants, but also issued at the same time an enjoining order effective "until this case is decided", meaning thereby in the context until the application is determined. Both notices were returnable on a date fixed by the Judge. Thereafter, the Corporation filed proxy, and was given time to file Answer as well as Objections to the application, both of which were duly filed. The matter of the objections was then fixed for inquiry. But when this "inquiry" was held, there was actually (save for the absence of formally-framed issues) a full-scale trial of the substantive dispute in the action, at which each party led evidence with the object of proving when and where the sale had taken place, and after which the Judge delivered an "order" which has all the characteristics of a judgment upon the substantive question. In fact the only matter discussed in the order is the time and place of the sale, and on this matter the Judge reached a conclusion strongly adverse to the Plaintiff's allegations in his plaint. Holding for this reason that the Plaintiff's objections to the confirmation were frivolous, he dismissed the application for the injunction.

The proper question for decision upon an application for an interim injunction is "whether there is a serious matter to be tried at the hearing" (*Jinadasa v. Weerasinghe*<sup>1</sup>). If it appears from the pleadings already filed that such a matter does exist, the further question is whether the circumstances are such that a decree which may ultimately be entered in favour of the party seeking the injunction would be nugatory or ineffective if the injunction is not issued.

The matter in dispute in the present case is a serious one, for the sale, which according to the plaint was not validly conducted, would nevertheless extinguish the Plaintiff's mortgage. He alleged that if the sale had been duly held he would have bid for the land at its true value, and that in the circumstances he was prevented from doing so. The issue by the Corporation of the statutory certificate of sale during the pendency of the action would have been fatally prejudicial, for in that event success in the substantive claim would secure no benefit for him. This is not therefore a case of the kind referred to by Dalton J., in the decision I have cited, where the facts stated in the plaint show that there is no ground for an injunction.

The learned Judge thought on the evidence that this was a case where the Plaintiff could not succeed in his substantive action. But that opinion, by itself, is not a ground for refusing an interim injunction. The Legislature has not been unmindful of a situation where a party who puts forward a futile claim harasses his opponent by securing an injunction. If the action is ultimately dismissed, compensation for damage which may have resulted from the grant of the injunction can be awarded under Section 667 of the Code.

The plaintiff is chiefly to blame for his failure to make the appropriate submission to the Court as to the proper scope of the inquiry, or to move that the trial be held expeditiously, which could quite obviously have been done. But since his application has been dismissed on grounds which are not relevant, the order of dismissal must be set aside.

The District Judge will issue an interim injunction as prayed for in the plaint. But I trust that a very early date will be fixed for the trial of the action. The costs of the past proceedings in the District Court will abide the ultimate event. I would make no order as to the costs of this appeal.

T. S. FERNANDO, J.—I agree.

*Order set aside.*

<sup>1</sup> (1929) 31 N. L. R. 33.