

T. ARIVANDANDAM

V.

T.V. SATYAPAL & ANOTHER

October 14, 1977

[V.R. KRISHNA IYER AND JASWANT SINGH, JJ.]

*Civil Procedure Code (Act V. 1908), Section 35 A, Order VII, Rule 11 and 10 –
Karisu leitaba amasung maram chadaba ground da tharakpa cases singbu toubada
thingnaba Court ki tougadaba thabak shing.*

Respondent No. 2 amadi mahakki minor son ga punduna petitioner asina landlord – respondent No.1 na partnership firm na leiriba mapham adugi yumpham aduda eviction petition filed tourakkehiba adugi mayokta tharakpani amadi trial, appellate, revisional stages dasu yadaduna maithikhrabani. High Court na hairiba mapham asibu hanghannaba gi tha taruk (6 months) ki matam pikhi. Madugi matungda, petititoners na Fourth Additional First Class Munsif, Bangalore da suit ama filed touraduna, eviction gi order, High Court phaobada yakhraba amadi second respondent na masang pumnamakta yettuna lakkehiba eviction gi order adubu namthak touduna amadi phattaba wakhal sijinnaduna loukheiba order ni haiduna phongdokpinaba amadi eviction order pangthokpagi mayokta injunction lounaba hotnakhi. Respondent no.2 na mapham adubu hanghannabagi matam khara pibinaba haijabagi hearing chatthaba matamda, High Court ki learned Judge na, tenant adugi khalladuna landlord ta mapham adubu hanghanbagi matam khara pinanaba haikhi, amadi hairiba ashi petitioner na nouna amadi wakhal phattana file tourakkehiba adubu handokkani haikhi. Loinanana tha manga gi matam sangdoknaba pikhi. Adubu, petitioner na attopa anouba suit ama amuk hannagi ariba plaint adugi carbon copy louraduna attoppa Munsif ki mammangda file toukhi amasung ex-parte injunction loukhi, adumakpu, konnathangda Respondent No.1 na vacate toukhi. Hairiba order adugi appeal da maithiraba tungda, petitioner na ngamnamak High Court ta revision chattuna amukka hanna ex-parte injunction lounaba hotnakhi. Respondent No. 1 na tharakkehiba temporary injunction louthokpinaba application gi hearing da, petitioner na wapham thamkhi madudi hairiba learned Judge asina mamanggi revision case ta warepkheiba maramna petition asibu hearing chatthabagi hak leite, plea of bias lei hairaduna affidavit file toukheiba amada palladuna petitioner na haikhi. Adumakpu, learned Judge aduna arguments adubu taraba matungda, matik chaba achumbada yenglaga revision adubu kakthatkhi.

Special leave ki petition adubu kakthatladuna, Court na haikhi,

HELD : (1) Karigumba maramleina-formal natabada- plaint adubu paba matamda, taseng tasengna mawong chadaba amadi matik chadaba oiraba, haibadi sue toubagi marik chumba wapham mayek sengna phongdoktrabaddi , mahakna (Munsif) na mahakki power ashi C.P.C gi Order VII rule 11, sijinnaduna palliba ground sing adubu matik chana

pangthoklabra haibadu yengsingadabani. Amasung, yamna hei singba matouna tourakpa drafting na cause of action da chamamnaba thokhallabadi, first hearing da party adubu C.P.C gi Chapter X gi makhada phajana examine touraga file tourakliba plaint adubu kakthatkadabani. Maram chadaba law suits tharakpaga paokhumdi matik-magun leiba Judge amana pigadabani. Trial Court nasu tangai phadana party adubu first hearing da examined phajana touhougadabani, maduna sasinnaba litigation tharakpa matamda stage nouringeida kakthat houba yai. Penal Code (Chapter XI) asisu matang ashida asigumba meei thengnabada matik chana sijinnaba yarabani.

Houjikki case asida, First Munsif's Court, Bangalore gi mamangda leiriba loisandriba suit ashi law bu lanna sijinnabana maram oiraga, plaint tubu hingduna thambagi kannaba leitabana, Court na Trial Court ta athubada parties ki wa taraga khudakta disposed tounaba yathang pikhi amadi karigumba litigation aduna aranba wakhl ga loinanana maram chadana thaba thengnarabadi, C.P.C, gi section 35A adubu ningshingladuna khudakta thingnaba thabak loukhathougadabani.

Observation:

Ahenba litigation mayam ama thabagi heinabi ashina leibak ashigi leita lairada mang-takhanbagi machak ama oihalle amasung Bar gi thoudangsi ashigumba manghannabagi mashak oiriba parties ki maram chadaba cases tharakpaga heinabi ashibu toudanaba yengshinbani. Heithoi singthoiraba amadi namthak touba legal practice na court ki process pu apangba gumna uhallaga amadi judicial gi seals yaoraba decree amabu kannadabagum oihalle. Cause of justice tadi hairiba heithoi singthoiraba matou ashibu yamna mamal leiraba tengbang ama oiba yai karigumba counsel na maram chadaba litigation sing phajana yengshinduna client ki namthak touba mawong adubu natheiraga amadi advocate amanasu ningshinggadabasi advocate ashi justice ki officer ni aduna mahak ashi society da maram chadaba thabakshing ashida keidoununga touroidabani.

(Court na thajaba phongdokkhi madudi Bar Council of India na hairiba ashi thoupam thokpa mathouni khanna pangthoklakkani.)

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 4483 of 1977.

From the Judgment and Order dated 19-7-1977 of the Karnataka High Court in Civil Misc. Petition No. 943 of 1977

P.R. Ramasesh for the Petitioner.

The Court ki Order ashi asumna haidok e –

KRISHNA IYER, J. Ahenba litigation mayam ama thabagi heinabi ashina leibak ashigi leita lairada mang-takhanbagi machak ama oihalle amasung Bar gi thoudangsi ashigumba manghannabagi mashak oiriba parties ki maram chadaba cases tharakpaga heinabi ashibu toudanaba yengshinbani.

Mapham ashidasu yamna thouna phana engineer amana tharakliba application ashi High Court na thokkhiba injunction gi interlocutory application da thokkhiba order gi mayokta special leave to appeal pibinaba tharakpa sasinnaba litigation amani. Petitioner ashi 2nd Respondent gi macha nupa oibada nattana, mahakki heithoi singthoiraba legal practice na court ki process pu apangba tahanduna amadi judicial gi seals yaoraba decree amabu karisu leitana uhalle. Pangal leikhraba law na mashigumba sashinnaba litigative ashibu amuk hanna toudanaba mangakta thadattuna athingba thamduna community ashigi judicature da leiriba thajaba amadi ekai khumnaba ashi manghalloidabani. Court amagi contempt power haibasi houjikki petitioner gumba meei ashida sijinnagadabani. Eikhoina ashigumba action ashi loudabagi maramdi counsel Sri Ramasesh gi maramchaba mawong mathou ashidani.

Petitioner gi yamna phatkhidraba thouna ashi karino? Learned Judge na, minungshi amaga loinana, lishang shitna mathang manao chattharakkhiba legal proceedings gi wari adubu nungaitaba mawongda phongdokladuna petitioner gi mapana matou karamna eviction proceedings adubu mayoknakhiba, maithikhiba, appeal amuk toukhiba, amuk hanna maithikhiba, adudagi revision oina chtlubada ekhang khanghoudana High Court na summary rejection oina tourakkhiba. Adumakpu, thoujal heiba Judge aduna yamna thamo chaona yumpham adubu hanghanbada tha tarukki matam pithokkhi. Kannaba sing ashibu nungaithokpa loiraba matungda, matik chadaba, heisingba watpa party ashina yumpham hanghanbagi matam kharaga amuk sangdokpinaba haijakhi. Hairiba proceedings mayam ashi petitioner gi mapa 2nd respondent na chatthaba ngaktani. Court ki minungshi chaoba matou adubu lanna sijinnathokpa loiraba matungda, 2nd respondent amadi macha nupa petitioner na court ki process adu lanna amuk sijinnaraduna yamna hei singba thouwong ama amuk pangthoknaba thourang toukhi. Petitioner na *Fourth* Additional First Class Munsif, Bangalore da suit ama filed toukhi. Hairiba suit ashi, eviction gi order, High Court na phaoba confirmed oikhraba amasung 2nd respondent na matam pumnamakta thingduna lakkhiba adubu phattaba wakhl ga loinanana namthak touduna loukhibani haiduna phongdoknaba filed toukhibani. Eviction order adubu pangthokpagi mayokta injunction ama loukhi. Hairiba thoudok sing ashibu High Court ta yumpham hanghanbagi matam kharaga sangdokpinaba haijabagi chatthariba hearing da pukhatlakpa matamda, makhoigi namthak touba matoududa saobagi mahutta, learned judge na tenant ta minungshi utpiduna landloard ta nouna amadi wakhl lanna filed touriba suit adubu petitioner da handokhallage haiduna, yumpham adu hanghanbagi matam khara amuk sangdoknaba haikhi. Matou asumna tha manga amuk sangdoklaba matungda, mapa machana learned judge ta amuk oidaba ngangladuna litigative gi changyeng adubu loisalladabani haina khankhi, adumakpu ningjaba asha pumnamak laina mangkhigani karigumba matamda mahakna sannariba meei adusu khoichatnaba oiramlabadi.

Petitioner amadi mahakki mapana dukan adubu namduna makhoigi oinabagi damakta lounam touduna amadi court ki process pu namduna singnaraduna mathanggi mayon ollakpa hourakkahi. Makhoigi tousinnaba matou adudi attoppa Munsif amada ariba plaint mannaba carbon copy ama semlaga amasung anouba Munsif aduda namthak touduna sannaraga ex-parte injunction lounaba anouba suit ama thakhi. 1st respondent na appear touraktuna, petitioner amadi 2nd respondent na court ta namthak touduna sannariba tat adubu meemang

phongdokkhi. Madugi matungdadi, Munsif na hanna pithokkhiba injunction gi order adubu louthokkhi amadi appeal adusu mai pakpa ngamkhide . Maithibagi thoudok mayam ama thokkrabas, akiba amata phaodanana, petitioner na High Court ta revision chatkhi amasung amuk hanna injunction lounaba hotnakhi. 1st respondent na khongyang thuna temporary injunction adubu kakthatnaba che tharakkhi aduga petition adubu Mr. Justice Venkataramayya gi mammangda hearing gi thoklakpa matamda, petitioner gi counsel na wapham thamkhi madudi mahakna case ashigi hearing toupham thokte. Matang ashida touriba tat ashidi, affidavit ta judge ashigi maming palladuna, mamangda toukhiba proceedings adubu sandokna takkhi. Pendraba Judge aduna mahakna tenant adubu mateng pangnaba landlord ta haiduna hotnakhiba sing adubu, mangondadi yamna henna thajaba manghanba oikhi. Mahakna case adubu mathanggi numitta yeithokkhi. Mangonda case ashigi matangda awabagi masak oihankhi haibasi mahak masagi order gi wapham phongdokkhibada uba phangkhi :

“Ngarang ahing eihak mitkap ama phaoba tumdana lenkhi”

Laibak phabadagi, mathanggi numitta wakhal leitaraduna arguments adubu petitioner amadi advocate ki tousinnaba chumdaba matou adubu natheiraduna hearing phajana chatthakhi. Mahakna matik chaba achumbada leptuna, revision adubu dismissed toukhi. High Court ki mahei yandraba proceedings ashina petitioner da kihanba amadi khamba leitana sigi Court ashida yamna thouna leina special leave to appeal gi che tharakkhi. Eikhoidadi petitioner na hanjin-hanjinna court ki process ashibu lanna sijinnariba amadi nungaitaba ekaiba machet ama phaoba phaodaba ashibu, khajikta phaoba chingnaba leitana mahakki thouwong ashibu aranbani haina eikhoina phongdokli. High Court ki judgment ta phangliba achumba warol sing adubu yenglurabadi yamna marik chumna khngle madudi First Munsif's Court, Bangalore gi mamangda loisandana leiriba suit ashi phattaba mawongda law ashi lanna sijinnare. Learned Munsif na ningshinggadabadi, karigumba maram leina- formal nattabida- plaint adubu paba matamda, taseng tasengna oidaba amadi matik chadaba haibadu oirabadi , haibadi sue toubagi wapham mayek sengna phongdoktrabadi, C.P.C. gi Order VII R.11 power ashi sijinnaduna maru oiba ground sing adubu yaorabara haina yengshingadabani. Aduga, yamna hei singba matouda draft touraga cause of action da chamamnaba thoklabadi, C.P.C gi Order X gi makhada party adubu phajana examined touraga first hearing maktada kakthathougadabani. Maram chadaba law suits tharakpagi paokhumdi matik-magun leina Judge amana pigadabani. Trial Court na first hearing maktada party adubu munna thijilhougadabani, maduna sashinnaba litigation tharakpa matamda, nouringeigi phibhamda kakthathouba yanaba. Penal Code (Ch.XI) asihu matang ashida ashigumba meei thengnabada matik chana sijinnaba yarabani. Houjikki case ashidasu, learned Judge na, George Bernard Shaw na Mahatma Gandhi lonna hatkhibagi matangda thamkhiba wapham adubu mayek sengna khanghoure:

“Yamna phamallabasu khudong thiba haibado thokkani”

Houjikki case ashida, Trial Court na C.P.C Sec. 35-A adubu ningshingjaraduna amadi litigation adubu aranba wakhal ga loinana maram chadana tharakpa tarabadi, khudakta khamhounaba thoudang loukhatkadabani. Heeram khudingmakta, suit ama tharibadugi

kannaba leitrabadi, yamna thuna parties adugi hearing chatthaduna khudakta disposed touthokkhigadabani.

Eikhoidasu, meenungshi yaodaba party gi matouna, High Court ki learned Judge na thengnariba awabagi masak oiriba akanba changyeng ashigi damakta nungaitaba phao e. Matang ashida eikhoina henna nungaitribadi, party ashina lawyer amadagi amada, case ashibu Court ta present tounaba tat sijinnaduna asengba lotsinduna, henna phattaba mawongda sijinnaba ashibuni. Masigi matangshida, cause of justice ta yamna mamal leiba tengbang ama oiramba yabani karigumba counsel na client ki chingnaba yaba matouda namthak touduna thariba litigation adubu yaramdrabadi. Amadi, ningshinggadaba amana, advocate haibase justice ki officer ni aduna mahak ashi society da phattaba thabak toudaba haibase mahakki mathoudangni. Eikhoina thajei madudi Bar Council of India na hairiba mathou ashibu pangthoklakkani haina. Eikhoisu masigi observation ashi toudaba yadaduna tourabani aduna eikhoina thajei madudi Bar na khutsamnaduna Bench ta soidamakki thamlakkani madudi judicial da matam sijinnabada matik chaba disputes ta matam thadabiraga amadi tat toubu, wakhal choithokkadaba litigation adubu natheibiba, samna hairabada eikhoina houjik disposed touriba case ashigumba. Mashigumba maram chadaba litigation mayam ama thajallakpigi matangshida attoppa tamhouba yaba, achum aranda mari leinaba hairagadi , namthak lounam touduna ex parte order pikhiba ashina courts ta erai laina litigation gi sannapham oihalli haibasini. Judge amana matik chadaba case amada ex parte order gi pressure gi lang da thukhrabadi, judicial process amagi mamal hanthahalli. Eikhoina Sri Ramasesh pudi mahakki pukchel sengba matou amadi achumb advocacy adugi damakta mahakpu thak wangna thampham thok e.

S.R.

Petition Kakthatle