

RAMA SHENOI
v.
HALLAGNA.
—
SESHAGIRI
AYYAR, J.

Consequently the mere fact that a judgment is wrong in law is not enough. There must be something in the procedure anterior to the judgment which is repugnant to natural justice. That cannot be said of the present case. Further as pointed out by Lord CHELMSFORD in *Liverpool Marine Credit Co. v. Hunter*(1), a mere incorrect view of law by a foreign Court would not give jurisdiction to our Courts to say that the judgment is opposed to natural justice: see also per COCKBURN, J., in *Imrie v. Castrique*(2) and *Scott v. Pilkington*(3), Mr. Anantakrishna Ayyar drew our attention to *Messina v. Petrococchino*(4). In that case it was pointed out that unless there was a manifest error or fraud in the proceedings of the judgment the British Court should give effect to it. A wrong view as to onus does not render a judgment erroneous on the face of it. Moreover having regard to *Liverpool Marine Credit Co. v. Hunter*(1), we are unable to hold that a mistake as to law which is all that can be alleged against the decision in the present case, would be sufficient to vacate a foreign judgment. For these reasons, we think the decision of the Courts below is right and we dismiss the second appeal with costs. The Letters Patent Appeal follows.

S.V.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Srinivasa Ayyangar.

M. KANDASWAMI CHETTY (DEFENDANT), APPELLANT,

v.

P. SUBRAMANIA CHETTY (PLAINTIFF), RESPONDENT.*

Injunction—Temporary injunction in mandatory form—Power of Indian Courts to grant under Order XXXIX, rule 2, Civil Procedure Code (Act V of 1908).

Courts in India can under Order XXXIX, rule 2, Civil Procedure Code, issue temporary injunctions in a mandatory form.

Israil v. Shamser Rahman (1914) I.L.R., 41 Cal., 436, and *Champsay Bhimji & Co. v. Jamma Flour Mills & Co.* (1914) 16 Bom. L.R., 566, referred to.

The view of BEAMAN, J., in *Rasul Karim v. Pirmbhai Amirbhai* (1914) I.L.R., 38 Bom., 381, not followed.

(1) (1868) L.R., 3 Ch. App., 479.

(2) (1860) 8 C.B. (N.S.), 405; s.c., 141 E.R., 1222.

(3) (1862) 2 B. & S., 11; s.c., 121 E.R., 978.

(4) (1872) 4 L.R.P.O., A.C., 144.

* Appeal Against Order No. 64 of 1917.

APPEAL against the Order of C. R. THIRUVENKATA ACHARIYAR, KANDASWAMI
the City Civil Judge of Madras, in Civil Miscellaneous Petition ^{v.} SUBRAMANIA.
No. 1652 of 1916 in Original Suit No. 460 of 1916.

The following facts are taken from the judgment of the lower Court :—

“This is an application for a temporary injunction, under Order No. 39, rule 2 of the Civil Procedure Code, praying for the removal of an obstruction which had been put up by the defendant shortly before the suit which prevents the flow of light and air through a window in the second compartment of plaintiff's house.

“The suit itself is brought for the purpose of establishing an easement of light and air in respect of plaintiff's house through the said window and for a permanent injunction restraining the defendant from obstructing the flow of air and light through the said window. The plaintiff in the alternative prays for damages which he assesses at Rs. 500.

“On behalf of the defendant, two contentions have been pressed, viz., (1) that the Court has no jurisdiction to direct the removal of the obstruction on an application for an interim injunction, in other words, there is no power to pass an interim mandatory injunction, (2) that the inconveniences to which the defendant and his people would be put by the window being open are far more serious than the inconveniences which would be caused to the plaintiff by the closing of the window.

“As regards the first contention I am of opinion that the Court has power in granting an interim injunction to direct the removal of any obstruction which, in its opinion, was quite recently made by the defendant in spite of the plaintiff's objection and which has led to the institution of the suit.

“The next question is whether, in the circumstances of the case, such an interim injunction ought to be granted. . . . There will be an interim injunction as prayed directing the defendant to remove the obstruction which he has placed against the window in question and restraining the defendant from, in any manner, interfering with the access of light and air through the said window pending the disposal of the suit. Costs of this petition to be costs in the cause. Execution of this order will be stayed till 7th March 1917.”

The defendant preferred this appeal to the High Court.

T. R. Venkatarama Sastriyar, V. S. Govinda Achariyar and V. S. Kullabhiran Ayyangar for the appellant.

O. Thanikachalam Chettiyan for the respondent.

KANDASWAMI
v.
SUBRAMANIA.
—
SPENCER AND
SRINIVASA
AYYANGAR,
JJ.

JUDGMENT.—Upon the question whether Courts in this country have the power by virtue of Order XXXIX, rule 2 of the Code of Civil Procedure, to issue temporary injunctions in a mandatory form, we are not prepared to adopt the opinion expressed by BEAMAN, J., in *Rasul Karim v. Pirubhai Amirbhai*(1). The description of temporary injunctions in section 53, Specific Relief Act, does not exclude injunctions of a mandatory nature, and in *Isra'il v. Shamser Rahman*(2), upon an application for an interim injunction, pending the disposal of a suit it was ordered that defendant should not only be restrained from further erection of a building but that he should pull down so much of it as he had erected after he became aware of the institution of the plaintiff's suit. We also may observe that SHAH, J., did not agree with the opinion of his learned brother in *Rasul Karim v. Pirubhai Amirbhai*(1) and that two other Judges of the Bombay High Court took a different view from BEAMAN, J., in *Champsey Bhimji & Co. v. Jamna Flour Mills & Co.*(3)

On the merits, however, we are of opinion that the present was not a case of such urgency as to make it necessary for the protection of the plaintiff's rights that the defendant should be made to remove the screen put up by him before the rights of the parties were heard and determined in the regular suit which was filed for this very purpose. The facts of this case resemble those of *Bonner v. Great Western Railway Company*(4) in which a temporary injunction was disallowed.

The question of what rights the plaintiff possessed to light and air through the window which the defendant blocked by his screen might very well have been left to be decided in the suit without anticipating the results of it. We allow the appeal. Each party will bear his own costs in this Court.

N.R.

(1) (1914) I.L.R., 38 Bom., 381.

(2) (1914) I.L.R., 41 Cal., 436.

(3) (1914) 16 Bom. L.R., 566.

(4) (1883) 24 Ch. D., 1.