

(1957) 08 AHC CK 0008

Allahabad High Court

Case No: Second Appeal No. 842 of 1950

Chiranji Lal

APPELLANT

Vs

Behari

RESPONDENT

Date of Decision: Aug. 21, 1957

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 32(1), Order 39 Rule 2(3), Order 39 Rule 2(4)

Citation: AIR 1958 All 326

Hon'ble Judges: R.N. Gurtu, J

Bench: Single Bench

Advocate: S.B. Jouhari, for the Appellant; S.B.L. Gaur, for the Respondent

Final Decision: Allowed

Judgement

R.N. Gurtu, J.

This is a second appeal by the plaintiff in the suit and arises in the following circumstances :--

2. The plaintiff had brought a suit No. 361 of 1946 in the Court of II Munsif, Bulandshahr on the allegation that he was a Khudkasht-holder of six plots, four of which had been taken possession of by the defendant and in regard to two of which there was an apprehension that the defendant would interfere with the plaintiff's possession. The suit was for possession and for an injunction restraining the defendant from interfering with the plaintiff's possession qua the two plots.

3. After filing the above suit, the plaintiff obtained an interim injunction directing the defendant to refrain from interfering with the said two plots.

4. Subsequent to the issue of the interim injunction, the plaintiff moved the learned Munsif that there had been a disobedience of the interim injunction order.

5. The learned Munsif accepted the allegation of the plaintiff and, acting under Order XXXIX, Rule 2 (3), C. P. C., attached some property belonging to the defendant. The attachment subsisted for a period of six months whereafter it was taken off presumably because the disobedience had come to an end.

6. Then the plaintiff filed the present suit No. 103 of 1947 in the Court of the Additional Munsif. His allegation was that the defendant, by preventing him from cultivating the two plots in respect of which the interim injunction had been issued and by disobedience of that interim injunction, had caused a loss of Rs. 200/- to him.

7. The defendant resisted the plaintiff's claim] on the ground that the suit was not maintainable and that the amount of damages claimed was excessive.

8. The learned Munsif held that the suit was not maintainable. He, however, assessed the damage caused at Rs. 75/-.

9. There was an appeal to the Court below which also held that the suit was not maintainable. On the question of damages there is no finding of the Court below reversing the assessment made by the learned Munsif.

10. The Court below was of the view that the plaintiff's remedy against the defendant's disobedience of an injunction order was provided for under Order XXXIX, Rule 2 (3), C. P. C., which empowered the Court to deal with the person who had disobeyed the injunction order by attaching his property or detaining him in civil prison and that there was no other remedy available in respect of any damage which the plaintiff may have sustained as a result of the action of the defendant in preventing him from cultivating the two plots in Question.

11. This is an appeal by the plaintiff and it is submitted that the view of the Court below cannot be sustained and that the plaintiff had a right to recover damage from the defendant by means of a suit.

12. There are some sections in the CPC which are relevant in considering whether such a suit, as has been filed by the plaintiff, would lie.

13. Section 94 of the Code runs as follows : "In order to prevent the ends of justice from, being defeated the Court may, if it is so prescribed-

(a) issue a warrant to arrest the defendant and bring him before the Court to show the cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as appear to the Court to be just and convenient." Section 95 of the Code is as under :

"(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section

(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds; or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same, the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him;

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction."

Order "XXI, Rule 32 of the Code runs as follows:--

"(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced (in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction) by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where an attachment under Sub-rule (1) or Sub-rule (2) has remained in force for one year if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree."

Order XXXIX, Rules 1, 2 and 3 of the Code run as under :--

"Rule 1. Where in any suit it is proved by affidavit or otherwise----

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree or

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to defraud his creditors, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

Rule 2 (1). In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either, before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) In the case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property

attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

Rule 3. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite-party."

14. The Allahabad High Court has deleted Sub-rules (3) and (4) of Rule 2 and has added the following as Rule 2A :--

"2-A (1) In the case of disobedience to an injunction issued under Rule 1 or Rule 2, Sub-rule (2), or of breach of any terms of any such injunction, the Court in which the suit is proceeding may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(2) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto."

15. In this judgment, I shall refer to Order XXXIX, Sub-rules (3) and (4) of Rule 2 old, because the additions made by the Allahabad High Court are not one of substance but are merely in the nature of drafting amendments.

16. It will be observed that Section 94 empowers a Court in order to prevent the ends of justice from being defeated and, if it is so prescribed, to grant a temporary injunction and, in case of disobedience, commit the person guilty thereof to the civil prison and order that his property be attached and sold.

17. Order XXXIX, Rules 1 to 5 prescribe that temporary injunctions may be issued and give the mode of enforcing them. The mode of enforcement is that the property of a person guilty of disobedience would be attached and the person is to be detained in the civil prison for a term not exceeding six months unless in the meantime the Court directs his release. It is open to the Court to choose the alternative. The attachment may last for one year and at the end of that period, if the disobedience still continues, the property is to be sold and out of the proceeds, the Court may award such compensation as it thinks fit.

18. Section 95 of the Code enacts that where a temporary injunction has been obtained on insufficient grounds or if the suit of the plaintiff has failed and it appears to the Court that there was no reasonable or probable ground for instituting the same, the Court may, upon application of the defendant, award

against the plaintiff by an order such amount not exceeding Rs. 1,000/- as the Court deems to be a reasonable compensation to the defendant for the expense or injury caused to him. The limit of the amount awarded is controlled by the pecuniary jurisdiction of the Court in addition to the upper limit of Rs. 1,000/-. It is provided by Section 95, Sub-section (2) of the Code that an order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

19. It will thus appear that the defendant, against whom an unjustified interim injunction has been claimed, can be compensated in the terms of Section 95 and in no other way. If an order is passed under that section a suit for compensation is expressly barred. There is no such bar in any of the provisions relating to interim injunctions as will appear from the sections already quoted, so far as the realisation of damages arising out of the disobedience of interim injunctions is concerned. The party, which has obtained the injunction and has been damnified by its disobedience and by the conduct of the defendant so far as any express provision in the Code is concerned, is not prevented from filing such a suit.

20. The question, however, remains as to whether there is a prohibition by implication. No doubt Order XXXIX, Sub-rules 3 and 4 of Rule 2 provide a mode for dealing with the disobedience of an interim order and one of the provisions of that Order is that, in the circumstances Indicated therein, the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled to it i.e. the balance of the sale proceeds of the property which has been directed to be attached and which has then been sold because the disobedience has continued even after the lapse of one year.

21. These provisions in Order XXXIX, C.P.C. seem, however, to be of a punitive character. The object of these provisions partly is to punish the disobedient party. This is done by attachment and by imprisonment. If the disobedience or breach continues for more than a year then and only then out of the proceeds of sale of property, compensation may be awarded. The provisions do not contemplate the award of compensation unless the contingency indicated above occurs. Therefore, in a case where the contingency contemplated, namely a continuance of the breach or disobedience did not occur, the plaintiff who stands damnified by the conduct of the defendant, cannot under the section, get any compensation.

It would thus appear that it could not be concluded that by way of implication, the right of suit had been denied to a party which has suffered damages at the hands of a defendant, who has disobeyed an injunction, and when the damages flow from such disobedience. At best, it may be said that in a certain contingency, the plaintiff could recover some damages, but then again the awarding of the same is at the option of the Court under the Code. No doubt, if the Court does award some damages and a plaintiff sues subsequently, the compensation already awarded would be taken into consideration in fixing the further damages, if any, to be

granted by the decree in the suit.

22. The Court below has relied upon the case of *Jawitri y. H. A. Emile* ILR All 98 (A), in support of its view that this suit does not lie.

23. That was a case where the defendant having built a wall on the plaintiff's land, the plaintiff brought a suit in which he asked for damages for the trespass, and an injunction, and a decree was passed for damages and for a mandatory injunction directing the defendant within two months to remove the wall, and to restore the plaintiff's premises to their former condition. Two years subsequently, the plaintiff brought another suit for damages alleging his cause of action to be the defendant's disobedience of the mandatory injunction and, proving as damages that people were deterred from becoming his tenants because of the fear that, owing to the defendant's previous action, the hillside on which the plaintiff's premises were situate, was likely to fall. There was no structural or other damage done to the property other than that which was done prior to the commencement of the previous suit. It was held that the suit would not lie for damages for non-compliance with the mandatory injunction, to compel the performance of which the plaintiff had remedy in execution.

24. It is to be noted that the case cited is not a case which relates to an interim injunction. It is a case which relates to a mandatory injunction granted by the decree. As already indicated, a decree for injunction can be executed, at least if it is of a mandatory character as in the case relied upon, by the procedure laid down in Order XXI, Rule 32 of the Code and, therefore, it was rightly held that the decree-holder could have executed his decree and could have had the wall removed. It is to be pointed out that in this cited case it was not clearly indicated that if by reason of the original acts of the defendant, structural or other damages had happened to the plaintiff's property subsequently, whether the plaintiff would have any remedy or not.

It is being admitted in the case that there were no structural or other damages done to the plaintiff's property other than that which was done prior to the commencement of the previous suit, it is evident that no fresh cause of action accrued to the plaintiff. The only allegation was that people were deterred from becoming his tenants fearing that, owing to the defendant's previous action the hillside on which the plaintiff's premises were situate, was likely to fall. No damage subsequent to the passing of the decree, which granted an injunction, was alleged to have taken place in respect of the wall in question. The suit was, therefore, rightly dismissed. In my view, therefore, the case cited by the Court below is not of any real help.

25. Another case referred to by the Court below is that of the *Delhi and London Bank Ltd. v. Ram Narain* ILR All 497 (B). That was a case wherein an interim injunction had been granted preventing the defendant from transferring certain

property and from cutting down certain trees; nonetheless the property was transferred; It was held that the effect of a temporary injunction granted u/s 492 (b) of the CPC is not to make a subsequent mortgage or transfer of the property in question, in the teeth of the injunction order, illegal and void within the meaning of Section 23 of the Contract Act No. IX of 1872. This was a case under the old Civil Procedure Code. The point decided, in my view does not touch the question in hand.

26. In *Angad v. Madho Ram* AIR 1938 All 4J6 (C), the difference between a mandatory injunction and a prohibitory injunction has been brought out and it has been pointed out that whereas a mandatory injunction can be enforced by execution of the decree under Order XXI, Rule 32, Sub-rule (5), a prohibitory injunction cannot be enforced by way of execution under that rule and it is clear that the Court was of the view that in the case of a prohibitory injunction, the mode of enforcement thereof was not by way of execution. This case is no doubt a case in which the injunction was embodied in the decree itself and is not a case of an interim injunction but it is to be noted that even in the case of a prohibitory injunction, which was ordered by the decree itself, the mode of enforceability is stated to be a suit and not by way of execution.

27. It is to be noted that even under Order XXI, Rule 32, Sub-rule (1), C. P. C., there is a right to get a mandatory injunction enforced by means of an attachment of property or by a detention in the civil prison as in the case of an interim injunction; nonetheless, the Courts have recognised the right to get relief, by means of a suit in the case of a prohibitory injunction (See [Nari Chinnabba Chetty Vs. E. Chengalroya Chetty and Others](#), . In that case, a prohibitory injunction was sought to be executed by an application made under Order XXI, Rule 32, Sub-rule (5) of the Code and it was pointed out that no such application could be made under that sub-rule.

The request for the application to be allowed to be converted into a suit was refused on, the ground that the appellants could obtain a relief by way of a suit without it being necessary to convert the pending application into a suit

28. In my view, therefore, the Courts below were wrong in dismissing the plaintiff's suit and the plaintiff could sue to recover the damages that he had sustained as a result of the defendant stopping him from cultivating the two plots, despite the prohibitory "interim injunction issued and that he was not confined" to the remedy afforded by Order XXXIX of the Civil Procedure Code.

29. The trial Court has assessed the damages in this case at Rs. 75/-. The Court below has not interfered with that finding. Since there is no examination of the question it appears to me that the figure found by the trial Court was accepted. There is no one appearing on the opposite side. In the circumstances, I do not think that it is necessary to ask the Court below to record a fresh finding on the question of the damages suffered, particularly, as I do not think that the value fixed by the learned trial Court is incorrect. The plaintiff and his witnesses placed the value of the

crop at a figure roundabout Rs. 200/- and, in the circumstances of the case, I think that the learned trial Court was right in adopting the figure of Rs. 75/-.

30. Accordingly, I allow this appeal, set aside the judgments and decrees of the two Courts below and decree the plaintiff's suit for Rs. 75/- only with proportionate costs in the two-Courts below. There will be no order as to the costs of this appeal.

31. In this case, Sri Suresh Bahadur Jouhary has addressed a well-thought out and cogent argument.