
(1965) 06 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 29 of 1965

Allam Bhat and Others

APPELLANT

Vs

Rasool Bhat and Others

RESPONDENT

Date of Decision : 03-06-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Criminal Procedure Code, 1898 (CrPC) — Section 145, 561A

Citation : (1965) 06 J&K CK 0002

Hon'ble Judges : J.N. Bhat, J

Bench : Single Bench

Advocate : A.N Raina and J.L. Chowdhry, for the Appellant; Sat Pal Vohara and Sudershan Kaul, for the Respondent

Judgement

J.N. Bhat, J.—This revision application is directed against an order of the City Munsiff Srinagar dated 3-5-1965 for setting aside the same

2. The facts of the case have been narrated before me at length by the counsel for the parties and are as follows :

3. A big tract of land measuring 888 Kanalas and 8 Marias under different survey numbers in village Brain, Chamashai and Asthal belonged to the

late His Highness Maharaja Hari Singh. Under the Big Landed Estates Abolition Act, the late His Highness lost his ownership in these lands. The

land was given under the Grow More Food Scheme to a set of people who are the Petitioners in this case. Some other people tried to forcibly

eject them, whereupon the Petitioners started proceedings u/s 145 Code of Criminal Procedure about this land before the City Magistrate Srinagar

as far back as the year 1957 The City Magistrate attached the entire land and later on these proceedings were transferred to the Court of the

Magistrate Judge Small Causes Srinagar who by means of his order D/ 8.8.1960 declared that the Petitioners before me were in possession of this

land at the time of attachment and were, therefore, entitled to its possession.

The Petitioners before me tried to claim possession of the lands the orders of the Magistrate Judge Small Causes Court, Srinagar. but it is admitted

till this date, they have not been put in actual possession thereof When the Petitioners were thwarted in being restored possession of the land, they

moved the High Court in the year 1964 and a division bench of this Court on, 12th October 1964 directed the learned Judge Small Causes Court

Magistrate Srinagar to call the collector and examine him and take steps for the implementation of the order passed by him on 8-8-1960 It seems

that the Collector, was examined and later Judge Small Causes Court Magistrate ordered that possession of this land be delivered to the

Petitioners in pursuance of the order of the same Court dated 8,-8-1960

A revision was filed before the Sessions Judge Srinagar by the opposite party which was rejected by him on 11-1-1965. On 31-12-1964, a new

set of persons numbering 264 brought a suit for' injunction with respect to this land against the present Petitioners and the non-applicants in

proceedings u/s 145 of the Code of Criminal Procedure before the Judge Small 'Causes Court Magistrate Srinagar (making them pro forma

Defendants) with a prayer for restraining the present Petitioners who are 155 in number from interfering with their possession of the land. When the

suit was presented before the Sub-Registrar Munsif Srinagar, the same day an application supported by an affidavit for the issue of temporary

injunction was put in by the Plaintiffs in the suit The Sub-Registrar, Munsiff, Srinagar on this application issued a temporary injunction against the

Defendants restraining them from taking possession of the lands in dispute.

When this temporary injunction was issued, the present Petitioners presented an application for the vacation of the temporary injunction in the

Court of the Sub-Registrar Munsiff Srinagar on 1-2-1965. This application was posted to 8-2-1965 The Sub-Registrar adjourned the case and

the application for vacation of the temporary injunction came up before him five times up to 26-3-1965. On that date the Sub-Registrar Munsiff

wrote a letter to the District Judge Srinagar, that he had been approached by the parties in this case and, therefore, he could not decide the matter

with an open mind and the case be transferred to some other Court. The learned District Judge on receipt of this letter, without notice to either

side, transferred the case to the Court of the City Munsiff, Srinagar. The City Munsiff Srinagar called the case on 1-4-1965.

He adjourned the case to 3rd April 1965, when the counsel for the Respondent, the Plaintiffs in the original case (who will be designated as

Respondents set No 1) and the remaining Respondents will be designated as Respondents set No 2 In this case, appeared in the Court of the City

Munsiff. Srinagar and reported no instructions and requested the Court to summon the original Plaintiffs that is Respondent set No 1 The trial

Court did not accede to this request and dismissed the case for default of the Plaintiffs in presence of the counsel for the Defendants Restoration

application was moved by the Respondent set No 1 on 7-4-1965 Objections to this were filed by the Petitioners and a date was fixed in the

restoration application.

On 3-5-1966, Respondent set No. 1 put to an application supported by an affidavit requesting the Court of the City Munsiff Srinagar to pass an

order maintaining status quo at the site and not allowing the Respondents from being ejected, from the lands The City Munsiff without, notice to the

other side passed the order under revision which purports to have been passed u/s 151 of the CPC In this order, the Munsiff has directed status

quo to' be maintained with respect to the suit property till further orders.

4. In this revision application; I have heard the detailed arguments of the learned Counsel for the parties. I should say that the disposal of this

revision application is within a short compass but the learned Counsel for the parties argued almost the whole case in detail before me. In view of

the magnitude of the land involved and the number of persons interested in this litigation, I gave full opportunity to the learned Counsel to argue the

case. The learned Counsel appearing for the Petitioners have argued as under:

(a) The proceedings with respect to this land u/s 145 Code of Criminal Procedure, were started as far back as 1957. They culminated in an order

favorable to the Petitioners on 8-8 1960. This order directed that the Petitioners be put in possession of these lands From 8-8-1960 rather from

the year 1957. the Petitioners have been deprived of their possession and of usufruct of the lands due to dilatory tactics used firstly by

Respondents set No 2 and subsequently by the Respondents jointly: though the learned counsel for Respondents set No. 2 more than once have

given assurance in this Court that they would not remove the crops of the land

The Petitioners in their despondency moved the High Court u/s 561A of the Code of Criminal Procedure for giving effect to the order of the Judge

Small Causes Court Magistrate Srinagar passed by him in the year 1960 A Division Bench of this Court on 12-10-1964 directed the trial Court of

the Judge Small Causes Court Magistrate Srinagar to look to the implementation of its order dated 8-8-1960 The trial Court examined the

Collector and then ordered restoration of possession to the Petitioners A revision against this order was unsuccessful before the Session Judge.

Srinagar

(b) To set at naught all these orders of the competent Courts including this Court, Respondent set No 1 in collusion with Respondent set No. 1

managed to bring the present suit for injunction in the Court of the Sub Registrar. Munsiff, Srinagar the Sub Registrar. Munsiff without caring to

read either the plaint or the application for the issue of temporary injunction mechanically passed a temporary injunction without notice to the

other side The Sub Registrar took months to consider the application of the Petitioners to set aside the injunction; but ultimately he avoided the

matter and referred the whole case to the District Judge Srinagar for transfer to some other Court.

The District Judge also mechanically without hearing the parties transferred the case to the Court of the City Munsiff Srinagar Before the City

Munsiff, the learned Counsel for Respondent set No 1 reported no instructions and the suit was dismissed for default of the Plaintiffs Later on the

same learned Counsel put in an application for restoration of the suit and when the application on which the present order was given was presented

an affidavit to that effect was sworn in by the same learned Counsel- The City Munsiff also passed the order under revision without notice to the

other side and at a time when there was no suit pending before him. when the suit had been dismissed for default of the Plaintiffs on 3-4-1965.

5. According to the learned Counsel for the Petitioners, there can be no more flouting of the orders of the Courts including this Court and gross

negligence on the part of the officers dealing with the proceedings namely the

Sub Registrar Munsiff, the District Judge and the City Munsiff

Srinagar. The conduct of the Sub Registrar, Munsiff Srinagar and the City Munsiff, Srinagar was in' substance a contempt of this Court.

6. Great injustice has been caused to the successful party, and by the carelessness and negligence (to say the least) of the lower Courts the present

state of affairs, which has made mess of whole thing, had come into being The learned Counsel further argued that there was no case made out for

the issue of temporary injunction abilities by the Sub Registrar Munsiff Srinagar. Further when the suit had been dismissed for default no injunction

could have been passed as there was no suit pending To grant a temporary injunction certain well settled facts had to be proved before it could be

secured by any party A prima facie case, balance of convenience, and irreparable harm to itself had to be established by a party seeking injunction;

In this case according to the learned Counsel for the Petitioners all these factors were in favour of the Petitioners rather than in favour of the

Respondents who were granted this relief. In the City Munsiff's Court the same learned Counsel blew hot and cold; at one time he reported no

instructions and immediately following put in a restoration application and sworn his own personal affidavit in support of the application for

maintenance of status quo. The City Munsiff knew the magnitude of the dispute and the vehemence of the Petitioners in contesting the restoration

application.

The learned Counsel had been appearing before him in the restoration application and he acted with utmost haste and recklessness if not mala fide,

in granting a prayer of Respondent set No 1 without any notice to the other side The counsel could have been informed before the order was

passed. He had no jurisdiction to pass this order when there was no suit pending before him They further stressed that in order to justify an action

u/s 151 of the Code of Civil Procedure, a far stronger case for the Petitioners is necessary than in an application to secure an order under Order

39 of the Code of Civil Procedure.

7. On the other hand, the counsel for the Respondents have argued that the Respondent set No 1 were the persons in actual possession of the

lands No attachment. as a matter of fact had been effected after, the order of attachment was passed by the Magistrate in the year 1957. The

lands continued to be in possession of Respondent set No 1 even before the proceedings u/s 145 of the Code of Criminal Procedure; were

started. They had been in possession throughout and were entitled to retain their possession As they were not party to the proceedings u/s 145 of

the Code of Criminal Procedure, between the other parties to this petition, the order dated 8-8-1960 or the subsequent orders of this Court and of

the other Courts could not be binding upon them.

They further contended that the injunction order and the status quo order had been properly passed by the Sub Registrar and the City Munsiff

respectively. The Respondents set No. 1 could maintain the suit for protection of their interests. Their further argument was that an order had been

passed by the City Munsiff Srinagar to maintain status quo which was an innocent order. The Petitioners could approach the City Munsiff Srinagar

for vacating this order. The trial Court of the City Munsiff Srinagar was vested with discretion to pass an interlocutory order. It had exercised

discretion which should not be set aside in revision. Other matters were also argued by the learned Counsel for the parties, but they are not at all

relevant for the disposal of this revision petition.

8. I am pained to see how this case has been dealt with from time to time. The dispute has been going on between the parties from the year 1957

or even earlier. I am not concerned with the previous history of the case up to the order of the learned Sessions Judge Srinagar dated 11-1-1965

rejecting the revision petition of Respondent set No. 2, and the Respondent set No. 2's trying to obstruct the delivery of possession of the lands in

dispute to the Petitioners. The career of the case even up to that time is regrettable. But what is more regrettable and seriously objectionable is the

attitude of the Sub Registrar Munsiff. Srinagar and that of the City Munsiff Srinagar. Even the District Judge Srinagar cannot escape a blame in this

case in so far as he mechanically transferred the case from the Court of the Sub Registrar Munsiff to the Court of the City Munsiff, Srinagar. I shall

take up the dealing of this case by the Sub Registrar Munsiff and the City Munsiff, Srinagar separately

9. The Sub Registrar Munsiff, Srinagar has acted most negligently and in utter disregard of the provisions of the CPC and instructions conveyed

from time to time and cases decided by this Court on the subject. It seems that

this gentleman has not cared to look at the suit or go through the averments in the plaint. If he had even cursorily' perused the plaint, seen the magnitude of the area involved, the number of persons affected or likely to be affected by his order, the previous history of the case even as given in the plaint, he, I am sure, would not have passed the order of temporary injunction cursorily as he had done in this case. Even the contents of the application for the grant of temporary injunction were sufficient to alert him to be cautious in passing any order in that application. It seems with eyes shut he passed the order without notice to the other side. The conduct of the Sub Registrar is further deplorable and objectionable in adjourning the application for vacating the temporary injunction granted by him a number of times. Certified copies of the different orders of this Court and other Courts were placed on record before him. He has simply put off. the matter from one date to another for five hearings and' then quietly sent the case to the District Judge Srinagar for transfer to some other Court. The ground mentioned in the letter dated 25-3-1965, is also far from satisfactory. It is not unusual in this part of the country for people to try to influence the judicial officers to decide cases in a particular manner. The Judicial Officers should have the strength to decide the cases on their own merits no matter what influences are sought to be brought upon them. Therefore, the conduct of the Sub Registrar Munsiff. Sri' nagar, in this case would call for very great serious comment against him.

10. Then we come to the part played in this case by the City Munsiff, Srinagar. The City Munsiff called the learned Counsel Mr. Kaul for the Respondent set No. 1 and the learned Counsel refused to represent the Plaintiffs, reported no instructions and desired the Court to summon the Plaintiffs themselves. The suit was, therefore, dismissed for default. On restoration application objections were put by the Petitioners and a serious fight was put in by the parties over the restoration application. Then on 3-5-1965 quietly an application supported by an affidavit is presented in his Court, for maintaining status quo. This application is supported by an affidavit (of the same learned Counsel who had reported no instructions earlier in this case.

The learned City Munsiff quietly and without notice to the other side and even

their counsel who were at a distance of a few yards from his Court passed the order under his imagined inherent powers u/s 151 of the Code of Civil Procedure. Before this presiding officer the whole record of the entire cases was present. If he had cared to look at the varied and chequered history of the case, he should not have, I am sure, passed such an order, without hearing the other side. The Munsiff has tried to invoke his inherent powers, which according to him are vested in him to maintain status quo. I would not hesitate to say that he has not used the powers but has abused his position in passing such an order without hearing the parties as there was no suit pending before him.

11. Learned Counsel for the Petitioners have cited AIR 1924 Oudh 345 before me which lays down that once a suit is dismissed for default and a restoration application there of is pending, temporary injunction cannot be granted as there is no suit pending before the Court. The learned Counsel for the Petitioners has further sought to argue as already stated that in order to exercise powers u/s 151 of the CPC the claimant who seeks an injunction must establish far stronger case than he would have to do in an application under Order 39 of the Code of Civil Procedure. For this he has invited my attention to Mallappa Changbasappa Warad Vs. Asian Insurance Co. Ltd. and Others,

12. One of the learned Counsel appearing for the Respondents Mr. Satya Pal drew my attention to a Supreme Court authority reported as Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, from which he tried to convince me that the Court had inherent powers to grant an injunction. In this authority no doubt, their Lordships have laid down that there is an inherent power in the Court to issue temporary injunction apart from the provisions of Order 39 of the Code of Civil Procedure. Their Lordships the same time have observed:

The question of issuing an order to a party restraining him from proceeding with any other suit in a regularly constituted Court of law deserves great care and consideration and such an order is not to be made unless absolutely essential for the ends of justice.

Where a party claims the interference of the Court to stop another action between the same parties, it lies upon him to show to the Court that the multiplicity of actions is vexatious. and the whole burden of proof lies upon him

He does not satisfy that burden of proof by merely showing that there is multiplicity of actions, he must go further.

It is, therefore, clear that the least that was expected of the City Munsiff Srinagar before passing such an order was to hear the parties. As I have

remarked earlier, it has been impressed upon the lower Courts not to pass such drastic orders as those of injunction and appointment of receiver

without hearing both the parties and giving due weight to the circumstances of each particular case except in exceptional cases. The argument of

the learned Counsel for the Respondents that I should not interfere with this order, as it is a discretionary order whereby status quo has been

maintained, does not appeal to me to be at all correct. In the interest of justice I would say that the City Munsiff should deal with this matter but

when status quo in the real sense that, is the condition of the case as it existed on 3-5-1965 is restored. The City Munsiff will definitely hear both

the parties with respect to the passing of an order of status quo as he had put it.

13. This judgment, however should not in any way mean any indication on my part with respect to the fact, whether injunction should be granted or

not; either in the original suit or in the application for restoration. I, therefore, carefully avoided the long discussion and arguments addressed on the

advisability or otherwise of issuing an injunction restraining the Petitioners from getting the possession of the lands under the orders of the Court

14. These are matters that will be decided by the trial Court, but of course, not in a manner as has been done by the Sub Registrar Munsiff or by

the City Munsiff Srinagar at the back of the other party without hearing their objections and without even earing to have a look at the record

before him. A whole host of the authorities has been riled before me by the learned Counsel for the parties, but those authorities mostly pertain to

matters on which I do not want to comment at this stage Though the Sub Registrar Munsiff and the City Munsiff Srinagar who dealt with the case

have been transferred, a copy of this order shall be sent to them for their perusal and future guidance.

15. The result is that, the revision is accepted with costs, and the order under revision is set aside. Counsel-fee in this revision shall be Rs. 150

(One hundred fifty).