

(1954) 02 PAT CK 0012

In the Patna High Court

Case No : A.F.O.O. No. 237 of 1951 and Civil Revision No. 641 of 1951

Babi Dheraj Kuari

APPELLANT

Vs

Lal Tribhuban Nath Sah Deo and Others

RESPONDENT

Date of Decision : 12-02-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5

Citation : AIR 1954 Patna 357 : (1954) 2 BLJR 221

Hon'ble Judges : Imam, C.J.; Das, J

Bench : Division Bench

Advocate : L.K. Choudhary, for the Appellant; B.N. Mitter, A.K. Mitter and Ganesh Prasad Sinha, for the Respondent

Judgement

Das, J. :

1. Mr. B.N. Mitter appearing for the respondents in Miscellaneous Appeal No. 237 of 1951 has taken the preliminary point that no appeal lies. We are satisfied that no appeal lies from the order complained of. The miscellaneous appeal is, therefore, dismissed with costs.

2. It is necessary to deal with the application in revision.

3. The material facts are the following. The decree-holder is the petitioner before us. As plaintiff in Title Suit No. 27 of 1943 the petitioner asked for a declaration of her title and for recovery of possession in respect of certain properties situate in three villages. The suit was decreed. The defendants Judgment-debtors, opposite party before us, preferred an appeal to this Court. This was First Appeal NO. 214 of 1945.

On 24-8-1949, there was a compromise between the parties to the appeal. It is not necessary to state other terms of the compromise except the term under which the present petitioner was given certain properties described in a particular schedule; it was stipulated, however, that if the petitioner did not get the lands described in the schedule free from all defect of title, then the

petitioner would be entitled to get Rs. 2000/- per acre, the area of the lands being in the neighbourhood of 17 acres. The case of the petitioner was that he did not get the lands free from all defect of title and he executed the decree and asked for about Rs. 35,000/-. This was in execution case No. 2 of 1950.

On 3-3-1950, the executing court held that the present petitioner was entitled to about Rs. 35,000/-.

In the meantime, during the period when the claim of the present petitioner was under investigation in the executing court, the defendants judgment-debtors had put in a sum of Rs. 6,700/- as security for a stay of execution with regard to the attachment of other moveable and immoveable properties. On 27-3-1950, a payment order was passed in favour of the present petitioner allowing the petitioner to withdraw the sum of Rs. 6,700/- which had been deposited by the defendants judgment-debtors, in part satisfaction of the sum of Rs. 35,000/- which the decree-holder petitioner was held to be entitled to.

On 4-4-1950, the defendants judgment-debtors made an application to the court presided over by Mr. J.C. Sinha, Subordinate Judge, that payment of the sum of Rs. 6,700/- should be withheld inasmuch as the defendants judgment-debtors had preferred an appeal against the order of the learned Subordinate Judge, dated 23-3-1950, holding that the petitioner was entitled to a decree for Rs. 35,000/-. The defendants judgment-debtors further submitted that they had asked for an order of stay from this court and in support of their claim they filed a telegram received from their Advocate intimating that an appeal with a prayer for stay of execution had been filed in this Court.

The learned Subordinate Judge refused to grant the prayer of the defendants judgment-debtors. He expressed the view that as he had already passed orders on the application for a payment order he could not stay the payment of the money. On the next date, namely, 5-4-1950, the defendants judgment-debtors filed another application and annexed a copy of a letter dated 4-4-1950, and of a telegram of the same date, showing that this Court had, by an order dated 4-4-1950, stayed the execution of the decree for Rs. 35,000/-. The defendants judgment-debtors again prayed that payment of Rs. 6,700/- to the decree-holder should be stayed and pointed out that the payment order had not actually been made over to the decree-holder but was still under scrutiny in the Accounts office of the District Judge.

The learned Subordinate Judge again rejected this application. He again took the view that as the payment order had already been passed by him, it was not open to him to stop payment of the money to the decree-holder. It is worthy of note that on the 5th of April, 1950, the decree-holder was also present and knew of the order which had been passed by this Court. On 6-4-1950, the Subordinate Judge received the order of this Court dated 4-4-1950, by which the execution of the decree except the decree for costs, was stayed. Even on that date the defendants judgment-debtors made an application to withhold payment and they

said that the payment order was still in the Accounts office. The learned Subordinate Judge disposed of this application by stating that it was not moved and that, so far as he was informed, the payment order had already been made over to the decree-holder.

With regard to the order of this Court the learned Subordinate Judge took the view that the order passed by this Court amounted to staying any further execution of the decree and did not therefore affect the payment order which had already been passed. On the 16th of May, 1950, and then again on the 27th of March, 1951, the defendants judgment-debtors filed applications praying that in view of the order of stay passed by this Court, the decree-holder should be asked to redeposit the sum of Rs. 6,700/-.

By that time Mr. J. C. Sinha, the learned Subordinate Judge who had passed the orders up to 6-4-1950, had been transferred. The applications, therefore, were dealt with by his successor, Mr. S. K. Ray.

This latter officer found that the payment order was actually delivered to the decree-holder on 6-4-1950, in direct violation of the order of this Court, dated 4-4-1950, by which this Court had passed an order staying execution of the decree. He further found that the decree-holder was aware of the stay order. In these circumstances he came to the conclusion that the payment of the sum of Rs. 6,700/- to the present petitioner, who was the decree-holder, having been made in contravention of the order of this Court, the decree-holder should be asked to redeposit the amount. He accordingly passed an order directing the present petitioner to redeposit the sum of Rs. 6,700/- within one month from the date of the order. This order was passed by the learned Subordinate Judge on 9-7-1951.

4. It is against this order that the appeal and the application in revision are directed. I have already stated that no appeal lies from the order. As to the application in civil revision, Mr. L.K. Choudhury has taken the point before us that, whether Mr. J.C. Sinha was right or wrong, it was not open to his successor in office, Mr. S.K. Ray, to recall the order which his predecessor had passed. In my opinion, there is no merit in this contention.

It is clear that Mr. J.C. Sinha allowed payment of Rs. 6,700/- to the present petitioner in disregard of the order of this Court. The view that he could not do anything about the matter after having passed the payment order is manifestly wrong and untenable. It is not seriously disputed that the payment order which Mr. J.C. Sinha had passed was still under scrutiny in the Accounts office, when Mr. J.C. Sinha was informed of the order of stay passed by this Court,

The legal position so far as this Court is concerned is settled by the Special Bench decision in -- "Liakat v. Padampat" AIR 1951 Pat 130 (A). The majority view as expressed in that decision is that an order of stay under Order 41, Rule 5, passed by an appellate court staying execution of a decree appealed from, becomes operative the moment it is made and not after communication to the

subordinate court. Therefore, the order of this Court dated 4-4-1950, staying execution of the decree for Rs. 35,000/- became operative on the very day on which it was passed.

The present petitioner, who was the decree-holder, knew of the order passed by this Court on 5-4-1950. Mr. J.C. Sinha, the learned Subordinate Judge, also knew of that order of 5-4-1950. In spite of that knowledge Mr. J.C. Sinha allowed the payment to be made and the decree-holder actually received the payment order on 6-4-1950, after receipt of the order of this Court by the Subordinate Judge. In this case, therefore, the payment order was made over to the decree-holder even after communication of the order of this Court to the learned Subordinate Judge. I have to say this with regret, but it seems to me that both the learned Subordinate Judge, Mr. J.C. Sinha, and the present petitioner acted in disregard of the order of this Court.

Mr. J.C. Sinha took a view which appears to me to border on perversity; he had no doubt passed the payment order in the sense that he had signed it, but he must have known that it was possible to recall the payment order or to stop the payment order from being handed over to the decree-holder, when on 5-4-1950, he was reliably informed that this Court had passed an order staying the execution of the decree. Mr. J.C. Sinha clearly misread the order of this Court when he said that it amounted to staying "further" execution.

The order was passed on 4-4-1950, by which date no part of the decree for Rs. 35,000/- had yet been executed or satisfied. We have examined the order passed by this Court, and in the clearest terms the order said that execution of the decree was stayed except the decree for costs. I am at a loss to understand how Mr. J.C. Sinha could take that order to mean that part of the decree to the extent of Rs. 6,700/- could be satisfied even after that order and that the order operated as a stay for the rest of the decree only.

5. As to the contention that the successor in office of Mr. J.C. Sinha had no jurisdiction to recall the order passed by his predecessor, or to pass a fresh order directing the decree-holder to redeposit the amount of Rs. 6,700/-, it is sufficient to state that the processes of the court exist for advancing justice and not retarding it. As soon as it was made clear that the order directing the payment of Rs. 6,700/- to the decree-holder was made in direct disregard or contravention of an order of this Court, it was the duty of the learned Subordinate Judge to see that there was no abuse of the processes of the Court to the detriment of a party to the litigation. The Court could certainly right its own wrong, and it is well settled that no party should be allowed to suffer by reason of a wrong perpetrated by the court. I have no doubt in my opinion that the successor of Mr. J.C. Sinha acted properly, and it was his duty to ask the decree-holder to redeposit the sum of Rs. 6,700/- which the decree-holder had taken in disregard of the order of this Court.

6. Mr. L.K. Choudhury has suggested that we should adopt the same procedure

as was adopted by Reuben, J. (as he then was) in the Special Bench case -- "AIR 1951 Pat 130 (A)", and we should not ask the present petitioner to re- deposit the amount of Rs. 6,700/- but should ask the petitioner to furnish sufficient security for restoration of that amount if and when the appeal of the defendants judgment-debtors is allowed. We are unable to accept this suggestion of Mr. Choudhury. I have already pointed out that the petitioner, who was the decree-holder was also in contempt, inasmuch as he withdrew the amount after knowing the order of stay which this Court had passed. To allow the decree-holder to retain the sum of Rs. 6,700/- in these circumstances would, in my opinion, be putting a premium on intentional disregard of the Court's orders.

7. For these reasons I hold that the application in revision is completely without merit and must be dismissed with costs. In the circumstances of this case I think heavy costs should be given, I would accordingly fix the hearing fee at Rs. 64/- only. There will be one hearing fee for the appeal as well as the application in revision.

Imam, C.J.

8. I agree.