

(1998) 02 PAT CK 0072
In the Patna High Court
Case No : Civil Revision No. 1659 of 1997

Kamleshwar Singh, Darbhanga University and Another	APPELLANT
Vs	
Bhola Prasad Yadav and Another	RESPONDENT

Date of Decision : 05-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Specific Relief Act, 1963 — Section 34

Citation : (1998) 2 BLJR 1390 : (1998) 3 CivCC 342 : (1998) 1 PLJR 640

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioners, namely, the Kameshwar Singh Darbhanga Sanskrit University and its Vice-Chancellor have filed this Civil Revision application against the order dated 18th April. 1996 passed in Title Suit No. 17 of 1996 by which the learned Munsif granted temporary injunction by invoking the provision of Section 151 of the Code of Civil Procedure.

2. The plaintiff-Opposite Party No. 1 filed the aforementioned suit in the Court of Munsif, Khagaria for a decree of permanent injunction restraining the defendants from removing the plaintiff from the membership of the Committee of Awadh Bihari Sanskrit College, Rahimpur (hereinafter referred to as "the college"). The College was started by late Awadh Bihari Singh, who donated considerable property for running the affairs of the College. Later on the College was taken over and made constituent. The petitioner-University from time to time constituted land management committee by nominating different members. At later stage, in one of the Committee the plaintiff was also nominated as one of the members and Convenor of the Committee. However, the University without any rhyme and reason removed the plaintiff from the Convenor and lastly from the membership. The plaintiff's case is that the University did not issue any show cause before his removal from the membership nor any opportunity was

given before removing him. The plaintiff, therefore, filed the aforementioned suit for a decree of permanent injunction and a separate application was filed under Order XXXIX, Rules 1 and 2 read with Section 151 of the C.P.C. On being, noticed, the petitioner-University filed its show cause and opposed the prayer to the grant of injunction. According to the University, the property of the College vested in the University and the same are managed by the University since long. Normally the University constitutes a Committee for the Management of the landed properties and one of the members of the Committee is appointed as a Convenor. On 23.2.1996 the University constituted another Committee wherein name of the plaintiff was not included. According to the University, it has got absolute prerogative to constitute the Committee from time to time by including and excluding the name of members. No person can forced the University to include him as a member of the Committee. The Court below after hearing the parties held that no case has been made out for grant of injunction under the provision of Order XXXIX, Rules 1 and 2 C.P.C. However, in the ends of justice, it is a fit case where a temporary injunction should be granted u/s 151 C.P.C.

3. I have heard Mr. P.N. Jha, learned Counsel appearing on behalf of the petitioner-University and Mr. Asghar Hussain, learned senior Counsel appearing for the plaintiff-Opposite Party.

4. After having heard learned Counsel for the parties and also going through the facts of the case, only question falls for consideration is whether the Court below was justified in granting injunction under its inherent power.

5. From perusal of the plaint it is evident that in the suit only relief claimed was for grant of permanent injunction restraining the defendants permanently from removing the plaintiff from Convenorship and from the membership of the Committee of the College. Moreover, it was admitted in paragraph 11 of the plaint that the plaintiff was removed from Convenor and from the membership of the Committee before the institution of the suit. Nowhere in the body of the plaint the plaintiff has claimed his right to continue as Convenor or member of the Committee. Moreover, no relief for declaration of his status as Convenor and membership of the Committee has been claimed. Prima facie, therefore, suit appears to be barred under the provision of Section 34 of the Specific Relief Act. So far as the relief of permanent injunction and temporary injunction is concerned, the said relief is not available to the plaintiff for the sole reason that admittedly the plaintiff was removed from the Convenorship and membership of the Committee prior to the institution of the suit.

6. Coming back to the impugned order it appears that the Court below has passed the impugned order on extraneous consideration and has travelled beyond the limit of its jurisdiction while deciding the question of grant of temporary injunction. Although the Court below has come to the conclusion that the necessary ingredients like balance of convenience and irreparable injuries are not available to the plaintiff, but the Court below has granted injunction under its inherent jurisdiction. It appears that the Court below has completely

misconstrued and misinterpreted the ratio of the case decided by the Supreme Court in the case of Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, .

7. As noticed above, before the institution of the suit, the plaintiff was permanently removed from the Committee and even assuming that the removal was illegal, the mischief was already committed and in such circumstance, relief of temporary injunction or even permanent injunction is not available to the plaintiff, particularly when no declaration of his legal status and character has been claimed in the suit. The Court below has not considered any point discussed herein above and has exercise its power illegally and with material irregularities without going into the question as to whether the suit is barred under the provision of the Bihar Universities Act or any other law, I am of the definite opinion that it is not a fit case at all where the plaintiff is entitled to grant of injunction or any relief as granted by the Court below.

8. For these reasons, this revision petition is allowed and the impugned order passed by the Court below is set aside.