

(1959) 07 AHC CK 0011
In the Allahabad High Court
Case No : F.A.F.O. No. 1 of 1953

Mohammad Ibrahim Khan

APPELLANT

Vs

Pateshwari Prasad Singh

RESPONDENT

Date of Decision : 29-07-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, 107

Citation : AIR 1960 All 252 : (1960) 30 AWR 108

Hon'ble Judges : V.D. Bhargava, J; R.A. Misra, J

Bench : Division Bench

Advocate : N.D. Srivastava, for the Appellant; S.M. Fakhruzzaman, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Bhargava, J.—This is an appeal from order against an order refusing to issue a temporary injunction pending the disposal of a suit. The plaintiff, early in 1951," brought a suit against Maharaja Sri Pateshwari Prasad Singh, defendant respondent, for a declaration that he was an under-proprietor of certain plots in dispute. On 7-1-1952, an application was moved for injunction praying that during the pendency of the suit the respondent be restrained from alienating the property in dispute.

This application was considered by the learned Civil Judge and he, on 12-11-1952, dismissed the application. He held that there was a prima facie case of the plaintiff but he found that there was no likelihood of any irreparable loss and, therefore, the injunction was refused. Aggrieved by that decision the plaintiff filed this appeal against that order.

2. During the pendency of this appeal an application was moved in this Court by the appellant for issue of an ad interim injunction pending the disposal of the appeal. An ex parte order of injunction was issued but later on when that application was contested, the opposite party respondent offered to place out of

the proceeds obtained by him a sum of Rs. 90,000/- to be held in deposit by this Court so that if the Court came to the conclusion that any rights of the plaintiff had been interfered with, compensation may be made to him from this sum.

That offer of the opposite party was accepted by the Court and he was directed to deposit the sum of Rs. 90,000/- when he was to sell the property. In case the opposite party failed to deposit the amount, a right was given to the applicant to bring that matter to the notice of the Court.

3. The suit ultimately was dismissed on 14-1-1956. Thereafter a regular first appeal against that decision was filed in this Court on 15-3-1956, which is First Appeal No. 19 of 1956 and is pending in this Court. Along with the appeal, an application under Order XLI, Rule 5 and Section 151 of the CPC was filed for the stay of the sale of the land in suit and the stay of the execution of decree for casts.

That application was rejected by this Court on the ground that even if the sale takes place, the doctrine of *lis pendens* will apply to it and the interest of the appellant would not, in any way, be jeopardised, since whoever would purchase the property would be bound by the result of the appeal in this Court. In the circumstances this Court thought no reason to stay the sale of the property. This order was passed by the Court on the 20th March, 1956.

4. After the dismissal of the suit, a sale deed dated the 4th February, 1956, was executed which was registered on the 27th February, 1956, and it purported to be of 13 Bighas 11 Biswas and 14 Biswansis pukhta land in village Dogawan, pargana and tahsil Lucknow, in favour of the Governor of Uttar Pradesh for a consideration of Rs. 2,31,172-8-0.

An application was moved in this Court by the appellant on the 2-3-1959, to the effect that the opposite party had failed to deposit the sum of Rs. 90,000/-, as he had undertaken and, therefore, he should be suitably dealt with. A counter-application to that application has also been filed in this Court. We have at the present moment two matters for our disposal. The first is the appeal itself and the second is the application moved by the opposite party purporting to be under Order XXXIX, Rule 2 (3) of the CPC read with Section 151 of the Code.

5. So far as the appeal itself is concerned, in our opinion it has become infructuous. This was an appeal against an order refusing an *ad interim* injunction during the pendency of the suit. Even if we had accepted the appeal and allowed the order, it could ensure for the benefit of the plaintiff only during the pendency of the suit itself. In the application for injunction dated 7-1-1952 filed in the trial court, it was clearly prayed that the opposite party be restrained from transferring the land in suit till the decision of the suit.

The suit having been decided, no order at the present moment can be passed. It was open to the appellant to move an application for injunction in the appeal filed in this Court, against the dismissal of the suit and actually he did try for

such an order but he failed.

6. It was argued on behalf of the appellant that an appeal is a continuation of the suit and even if the suit is dismissed, this appeal should be deemed to be the continuation of the suit and, therefore, an order can still be passed for the benefit of the plaintiff. We are unable to agree with this contention. After the dismissal of the suit no ad interim injunction under Order XXXIX, Rule 1 purporting to be for the benefit of the suit itself could be passed.

7. There is another ground on which this appeal is not entertainable. The suit was for declaration only and we are of opinion that in a suit for a mere declaration no ad interim injunction can be passed. If the plaintiff himself is in possession of the property, as he has contended, and is exercising complete control over it, even if the sales are effected by some persons who have no right, his rights can in no way be affected; and in case he is not in possession, then he should have filed a suit for possession also.

In case, though he was in possession, he did apprehend any interference from the defendant, then in that case along with the declaration his consequential relief should have been for mandatory injunction restraining the defendant from interfering with the possession of the plaintiff. If there was no such apprehension, the plaintiff cannot now say that he is being affected by the alienation by the opposite party. We are definitely of opinion that in a suit for a declaration simpliciter such injunctions should not be issued.

8. Even on the merits of the case, we do not think that the order of the learned Civil Judge could be challenged. The plaintiff had brought a suit for a declaration that he was under-proprietor of certain plots of land. Both the parties, the plaintiff and the defendant, actually want to sell the land and the plaintiff even if his suit is decreed can well be compensated by money and in all cases when a party can be compensated by money, no injunction can be given.

Under Section 54 of the Specific Relief Act an injunction can be granted to the plaintiff when the invasion is such that pecuniary compensation would not afford adequate relief. In cases where pecuniary compensation could be granted, the general rule is that no injunction should be granted.

9. Therefore, considering the merits of the case, the appeal having become infructuous and also that no injunction can be given in a declaratory suit, this appeal has no force and is accordingly dismissed with costs.

10. The second matter before us is the application of the applicant for taking action against the opposite party for not having complied with the order of this Court dated 1-5-1953. On behalf of the opposite party a counter-affidavit has been filed and it has been alleged that there had been no sale before the disposal of the suit. The sale was made after the suit had been dismissed and the plaintiff's right in the property was negated.

Under the circumstances it was urged that the opposite party was fully

authorised to sell. Secondly, it was urged that this Court had only accepted the offer of the defendant to deposit the sum of Rs. 90,000/- by sale and in case the defendant failed to deposit this sum, the matter was to be brought to the notice of this Court and, therefore, technically, it was argued, it did not amount to an order of injunction and there is no disobedience and that in any event if there has been a non-compliance with the order of this Court, it was a bona fide mistake and an error of judgment on the part of the defendant and no particular action is called for, especially in view of the fact that now the suit of the plaintiff has been dismissed and the plaintiff has not suffered in any way.

11. Learned counsel for the opposite party, contended that his client was entitled to sell the property and has relied on two decisions. The first is the case of Ram Chand v. Pitam Mal ILR 10 All 506, and the second is the case of Madho Prasad and Others Vs. Draupadi Bibi, . In our opinion the facts of both the cases are different.

12. In the former case an attachment had been made during the pendency of the suit. After the decision of the suit no fresh attachment had been made and property was sold. An objection was taken that the property had been sold without a proper attachment and this Court held that there had been no attachment. There the attachment was made by the trial Court itself and that was to last during the pendency of the suit.

After the suit, there should have been another attachment, otherwise that attachment would have come to an end, but in the present case the appeal, during which the order was passed, was still pending. It is true that the suit had been disposed of and in effect that order of this Court at the time of the disposal of the suit would have been ineffective, yet there was a subsisting order of this Court which should have been obeyed.

13. In Madho Prasad's case, the order of injunction had been finally passed by the appellate court and that was to last till the decision of the suit and after the decision of that suit that order was to have no effect. If we had disposed of this appeal and maintained that order till the disposal of the suit, or even if we had not mentioned till the disposal of the suit, the order would have been effective only till the disposal of the suit.

In the present case, however, the appeal had not been finally disposed of and, therefore, this order was still subsisting till the disposal of the appeal. In our opinion there has been only a technical breach of the order of this Court, which has not affected the rights of any of the parties and on that ground we do not think that any action is called for. We are inclined to accept the argument of the counsel for the respondent that after the dismissal of the application of stay by this Court in the regular first appeal the defendant honestly believed that he was entitled to make the sale.

Actually there was no restraint on the sale itself. He was only directed to deposit the money and in case we thought that there was no reason for not depositing

the money we would have directed the respondent to deposit the money now; but in the circumstances mentioned above we do not think that any action is called for and the application of the plaintiff-applicant dated the 2nd March 1959, is dismissed.