

(1975) 05 PAT CK 0004
In the Patna High Court
Case No : Civil Revision No. 1312 of 1972

Nawal Kishore Singh and Others

APPELLANT

Vs

Rajendra Prasad Singh and Others

RESPONDENT

Date of Decision : 09-05-1975

Acts Referred:

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

Citation : AIR 1976 Patna 56

Hon'ble Judges : H.L. Agarwal, J

Bench : Single Bench

Advocate : Bindeshwari Pd. Sinha, for the Appellant; Rama Kant Varma, Ambika Kant Sinha and Krishna Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Agarwal, J.—This application in revision by the plaintiffs arises out of a proceeding under Order 39, Rule 2 (3) of the CPC (hereinafter referred to as the Code) which was taken against the defendants opposite party in the following circumstances:--

The plaintiffs instituted a title suit in the court of the Subordinate Judge, Biharsharif, for declaration of title and possession with respect to certain properties described in the plaint. On the 6th February, 1968, they filed a petition for issue of a temporary injunction restraining the defendants from changing the status quo with respect to Schedule II properties in any way and simultaneously applied for appointment of a pleader commissioner for local inspection of the physical features of the properties in question as they then existed. The learned Subordinate Judge granted both the prayers of the plaintiffs. An order of ad interim injunction was granted against the defendants restraining them from making any change in the existing condition of the disputed properties. The pleader commissioner made local inspection and submitted his report regarding the existing conditions of Schedule II properties. On 19-12-1968, the plaintiffs filed a petition in the trial court alleging that the defendants first party had

deliberately disobeyed the order of ad interim injunction and were making a new construction on the land in question. Another pleader commissioner was appointed to find out the correctness of the allegations and the pleader commissioner who was appointed, confirmed the allegations of the plaintiffs. It is not necessary to state all the other questions which were raised in the court below for answering the main question that has been raised before me for my decision. The trial court found on the materials in the inquiry that he held in the matter, that the defendants first party, five in number, had violated the order of ad interim injunction and were guilty of disobedience of the said order. It accordingly ordered them to be detained in civil prison for 15 days. The said defendants filed an appeal against the order of the trial court challenging the order on merits. Their plea was that the order of ad interim injunction was not served upon them. The learned Additional District Judge, however, confirmed the finding of the trial court against the defendants on merits and also came to the conclusion that some new constructions were made by these defendants first party on plot No. 719 after the order of ad interim injunction was served on them; on 11-2-1968, and thereby, they disobeyed the court's order. He, however, set aside the order of the trial court in regard to the civil detention of the defendants concerned and instead, passed an order of attachment of the property in question, which, according to him, was sufficient to meet the ends of justice in the circumstances of the case. Simultaneously, he also directed the defendants to remove the new constructions within two months of the order failing which steps under Order 39, Rule 2 (4) of the Code, was to be taken. It is against this part of the judgment of the learned Additional District Judge that the plaintiffs have moved this court in revision.

2. Learned counsel appearing on behalf of the petitioners raised two questions (i) that it was mandatory for the court to punish the defendants by detention in civil prison in view of the finding of disobedience of the order of ad interim injunction and (ii) that the attachment of the property could not be of the property in the suit itself.

3. I shall take up first the contention raised first. Sub-rule (3) of Rule 2 of Order 39 of the Code which provides for taking of action against the person disobeying the order of injunction provides that "the court granting 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....." Reading the relevant provision of Sub-rule (3), in my opinion, it is difficult to accept this contention raised on behalf of the petitioners that in case of a disobedience, it is always mandatory for the court to order for detention of the guilty person in civil prison. As a matter of course, the first punishment or the direction that has been indicated in Sub-rule (3) for the disobedience in question is the attachment of the property of the guilty person. The order of detention in the civil prison is intended to be passed in addition to the attachment of the property of the guilty person. Learned counsel, however, placed reliance on a decision of a learned Single Judge of the Allahabad High Court in *Niranjan Shukla v. Shanker Shukla*

AIR 1672 All 556 . This decision is not an authority for the proposition that has been raised. It has been held that the nature of punishment will depend upon the nature of the breach. The violation of an order of injunction is a civil wrong and it is discretionary with the court not to award any punishment when the breach is of a minor nature. Reading the scheme of Sub-rules (3) and (4) of Order 39, Rule 2 of the Code, it appears to me that the emphasis is on getting the order of injunction acted upon and if there has been a contravention of the same by any person, any advantage derived by him on breach of the order of injunction to the prejudice of the other party has got to be brought back to a position where it originally stood, directing him to desist from continuing the breach or restore the status quo ante. The punishment for disobedience to be imposed upon the guilty person by an attachment of his property is to remain in force for a period not more than one year at the end of which time, the property may be sold only in the case if the disobedience and breach continues. In that event, the aggrieved party may be awarded appropriate compensation out of the sale proceeds of the properties which may be sold in case the disobedience or the breach continues. It is true that attachment of property of the guilty person is effected to ensure award of compensation whereas detention in civil prison intends to check the infringement and disobedience as such and punishes the person committing the disobedience or breach of the order of injunction. The court is, however, left with the discretion in this regard. In *Thazath Suppi v. Alabi Kunhi Koya* AIR 1917 Mad 448 it has been very clearly observed that a court can, in its discretion, order either arrest or attachment of property and is not bound, in the first instance, to attach the property and then only order imprisonment. There is, however, sufficient judicial authority in support of this proposition that while ordering punishment for disobedience or breach, the punishment of attachment of the property need not precede the other punishment, namely, detention in civil prison. The court is not obliged to order an attachment of the property in the first instance before passing the order of detention.

4. The disciplinary actions provided in Order 39, Rule 2 (3) of the Code, namely, the attachment of property or detention, the two modes of punishments are only alternative which can be awarded to the contemner according to the discretion of the court. This view is fully supported by a Bench decision of this Court in *State of Bihar Vs. Rani Sonabati Kumari*, .

5. In this case, the court of appeal below has not thought it proper in its discretion to punish the defendants by detaining them in civil prison. Sitting in revision, I do not think it desirable to interfere with the discretion of the learned Additional District Judge on this account and examine the propriety of the exercise of that discretion by him. He has, however, directed the defendants concerned to remove the new constructions within two months of his order. In the event of the failure of the defendants to have removed the offending construction, it would be open to the court below to exercise the powers conferred upon it under Sub-rule (4) of Order 39, Rule 2 of the Code i.e. selling the property and awarding appropriate compensation to the plaintiffs therefrom.

6. Mr. Bindeshwari Prasad Sinha, learned, counsel, has further raised a contention and that seems to me to have some force is that the property that should be attached must be of the person guilty of disobeying the order of injunction. The property, therefore, should have been of the defendants first party. The learned Additional District Judge has however, ordered the attachment of "the property in question", perhaps, thereby meaning the suit property. It is not clear to me from the facts stated in the judgment as to whether "the property in question" can be sold in case the contingency contemplated in Sub-rule (4) of Order 39, Rule 2 arises as the property of the defendants concerned and out of the sale proceed any compensation could be given to the plaintiffs. The trial court will examine this aspect of the matter and if the property in question cannot answer the properties as belonging to defendants 1 to 5, it will take steps for attachment of such property.

7. Save and except this modification in the order of the court of appeal below, I do not find any merit in this application and would accordingly dismiss the same, but without costs.