
(1945) 07 PAT CK 0002
In the Patna High Court

Sita Ram Sahu

APPELLANT

Vs

Lachmi Narain Sah and Others

RESPONDENT

Date of Decision : 27-07-1945

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 82, 36

Citation : AIR 1946 Patna 47

Hon'ble Judges : Manohar Lall, J;Das, J

Bench : Full Bench

Judgement

Manohar Lall, J.—This is an appeal by defendant 2, Sita Ram, who has been ordered to be put into civil jail in that he deliberately disobeyed the injunction order issued by the learned Subordinate Judge in connexion with a partition suit pending before him in the following circumstances. On 15th November 1943, the plaintiffs, who are the minor sons-of defendant 1, and plaintiff 3 filed a petition supported by an affidavit that they apprehended that the defendants would remove the crops standing on the land and if they removed them the plaintiffs would be put to great loss and inconvenience and they prayed that a pleader commissioner be appointed with direction to proceed at once to make an estimate of the probable produce. The contesting defendants other than defendant 1, who is the father of the plaintiffs, as I have just stated, are the step-brothers of plaintiffs 1 and 2. On 26th November 1943, the plaintiffs put another petition stating that defendant 1 is an old man and is under the clutches of defendants 2 and 3 who are putting all sorts of difficulties in the way of the plaintiffs and have stopped all rations and expenses and therefore they prayed that the commissioner be directed to get the paddy crops harvested and thrashed and to deposit the same in Court so that there may be no difficulty to the plaintiffs to get their share of the produce, otherwise they will starve. A few days later on 30th November the plaintiffs filed another petition stating that it is apprehended that the defendants will cut away the standing paddy crops and prayed that injunction be issued restraining the defendants from cutting the paddy crops until further orders. After hearing the plaintiffs the Court was

satisfied that as the season for cutting the paddy crops had already come it was necessary to restrain the defendants from cutting paddy until further orders were passed by the Court. Accordingly he issued an injunction restraining the defendants from cutting paddy until further orders of the Court. This injunction order was served upon the defendants on 3rd December 1943.

2. Thereafter the plaintiffs put another application on 14th December 1943, stating that notwithstanding the issue of the injunction order the defendants have reaped, the crops of 8 bighas of land situated in one place. On 16th December 1943, defendants 2 to 4 put in a petition stating that they are ready to offer security to the extent of the value of the share claimed by the plaintiffs and prayed that the produce be released on taking security from them. On 17th December, the learned Subordinate Judge after hearing the parties thought that it was just, and proper to allow the defendants to take the whole of the produce if they gave security of Rs. 1000 for the plaintiffs' share and Rs. 300 for the share of defendant 1 and ordered that after executing the security bonds the defendants could take the whole of the produce.

3. On subsequent dates the proposed draft was approved by the learned Subordinate Judge and he directed that the duly executed document should be filed by the defendants by 22nd December 1943. On that date the security bond was not filed by the defendants, but on the other hand the plaintiffs filed a petition stating that the defendants have cut away all the crops standing on all the areas, that is to say from 8 bighas they had already cut as stated in the earlier petition which has been referred to by me and from the other areas between 19th and 20th December, and, therefore, it was prayed that defendants 2 and 3 having deliberately disobeyed the orders of the Court should be proceeded against in accordance with law. The Court by Order No. 24 states that the execution of the bond now is not necessary when the paddy has been stated to have been cut away. On 15th January 1944, having heard the plaintiffs the Court was satisfied that a prima facie case for disobeying the order of injunction and contempt of Court had been established and therefore he directed the defendants to come and show cause. On 14th March 1944, the plaintiffs put in another petition supported by an affidavit that the rabi crops are ready for harvesting and the defendants are making endeavour to harvest the same and, therefore, they prayed that this produce, i.e., the potatoes, etc., should be attached by the Court and the defendants should be restrained from harvesting them. The Court issued an interim injunction restraining¹ the defendants from harvesting this produce.

4. Defendants 2 to 4 put in a number of petitions challenging the correctness of the statements made on behalf of the plaintiffs and suggested that it was defendant 1 himself who in collusion with the plaintiffs had removed the paddy produce and that the allegations against the defendants were false. It was also suggested that defendant 2 was in Darbhanga on the dates on which the crops were said to have been removed and defendant 3 was in Nepal. The parties

adduced oral evidence in support of their contentions. The plaintiffs examined six witnesses, and the defendants examined five witnesses. Defendant 1 stated in his petition that it has been falsely stated by the defendants that he removed any of the crops in collusion with the plaintiffs. The learned Subordinate Judge on a consideration of the entire evidence upon the record has believed the case of the plaintiffs and has disbelieved the case set up by the defendants. He has come to a clear finding that the crops were removed by the defendant Sita Ram in violation of the order of injunction issued by the Subordinate Judge which had been served upon him. Having regard to the nature of the disobedience the learned Subordinate Judge directed that Sita Ram should be put in civil prison under Order 89, Rule 2(3), Civil P.C., for a period of three weeks. Hence the appeal to this Court.

5. Mrs. Dharamshila Lal in support of the appeal raised an important question of law in that she suggested that as the order of injunction was passed under Order 39, Rule 1, the disobedience of that order can never be punished under Order 39, Rule 2(3). A Division Bench decision of this Court in Jang Bahadur Singh v. Chhabila Koiri AIR 1936 Pat. 23 is directly in point and is against the contention raised by the learned Counsel. In that case it is clearly decided that Order 39, Rule 2(3) applies to disobedience generally if an injunction is granted by the Court and the words "in case of disobedience" of that clause are wide enough to cover breaches of injunctions issued under Order 39, Rule 1. A number of cases were examined by this Court in that decision and the case in Sukhdeo Rai and Others Vs. Ram Narain Rai and Another , was dissented from. The learned Judges also made an observation in the judgment that it would appear desirable to redraft Rule 2 perhaps by replacing Rule 2(3) with such modifications as may be required by a new Rule 2A. It is regrettable that notwithstanding that observation the rule has not been redrafted. We would like to endorse the observation made by the learned Judges in that case and would direct that the papers be placed before the Hon''ble the Chief Justice so that if he thinks fit suitable action may be taken in the matter.

6. The learned Counsel for the appellant drew our attention to the case of the Allahabad High Court in Dulhin Janak Nandini Kunwari Vs. Kedar Narain Singh, in support of the contention that disobedience of an order under Order 39, Rule 1 cannot be punished under Order 39, Rule 2. In the course of the argument I asked the learned Counsel to point out any other provision of law under which disobedience of an order under Order 39, Rule 1 could be punished. The learned Counsel suggested that the remedy was under Order 21, Rule 32, Civil P.C. She also drew our attention to Section 36, Civil P.C. But in my opinion none of these provisions of law has any relevancy. If the order passed by the Subordinate Judge under Order 39, Rule 1 has been disobeyed, there is nothing further which can be done by the executing Court. Therefore, it seems to me that the only solution of the problem is that if the order of the learned Subordinate Judge under Order 39, Rule 1 has been disobeyed, it must be punished under Order 39, Rule 2(3). The two rules must be read together, and it is an ordinary principle of

interpretation of statutes that all the parts of the statute should be so construed so that they do not run counter to each other and so that the very object, of the enactment is not frustrated. If the argument of the learned Counsel was accepted every litigant would be free to disobey an order of injunction obtained under Order 39, Rule 1. That could not be the meaning of the" provisions and the Legislature, in my opinion, when they provided a remedy by inserting Rule 2(3) intended to cover cases under Order 39, Rule 1 also. It is unnecessary for me to consider the correctness of the decision of the Allahabad High Court, but it is enough to state that the circumstances which arose for consideration in that case were entirely different, and in any event we are conclusively bound by the Division Bench decision of this Court. I would accordingly overrule the first contention.

7. The learned Counsel then took us through the entire oral evidence in the case. Her chief comment was that in the evidence of the plaintiffs" witnesses no date has been" stated as to when either of the crops, that is to say crops from the eight bighas and the crops from the other area in village Potga, was removed. On a perusal of the evidence of both sides and the applications filed on behalf of the plaintiffs and the defendants it is clear that it was the admitted case of everybody that the produce had been removed after 3rd December and before 22nd December. I have again perused the evidence of the witnesses on behalf of the defendants. They have stated in some places that the crops were removed on 4th or 5th of Aghan and in some places on a later date. The parties were really at variance on the question as to whether the produce had been removed by defendants 2 and 3 or whether they had been removed by defendant 1. Plaintiffs 2 and 3 are minors and could not possibly join in the removal of the crops. This contention also fails.

8. The evidence of the plaintiffs" witnesses is of a higher order as has been pointed out by the learned Subordinate Judge, and in particular he places great value on the statement of the daffadar. The evidence of the plaintiffs" witnesses is consistent and in accord with the probabilities of the case and the circumstances disclosed in the various petitions from time to time. Having perused the evidence I am unable to reach any other conclusion than that which was arrived at by the learned Subordinate Judge who had the additional advantage of hearing and seeing the witnesses before him. In my opinion the learned Subordinate Judge's view must be affirmed. I would, therefore, dismiss this appeal.

9. It was suggested that the punishment ordered by the learned Subordinate Judge was somewhat severe, but having regard to the manner in which the defendants were bent upon harassing the plaintiffs I am unable to take a lenient view of the matter. Litigants ought to realise that when an injunction order is issued by a Court it must be obeyed even though the order may be wrong. In one place it was suggested that as the defendants themselves were in possession of the land they were the owners thereof and the plaintiff's had no right

whatsoever to any share in the crop. But this is a question which is absolutely foreign to the scope of the injunction order. When an injunction order has been issued, whether it is right or wrong, it must be obeyed, and the only remedy of the aggrieved party is to come up in appeal to a superior Court to have the order vacated. So long as the order stands and its operation has not been suspended by another Court or by the Court which passed the order itself, it will not be tolerated that the litigants would disobey that order. I am unable to accede to the prayer that the sentence should be reduced.

10. The result is that the appeal fails and must be dismissed with costs. Hearing fee two gold mohurs.

Das, J.

11. I agree and would like to add a few words. Order 21, Rule 82 speaks of a decree for an injunction. I find it rather difficult to understand how an order of injunction passed under Order 89, Rule 1, Civil P.C., could be treated as a decree for injunction. If such an order is not a decree for injunction, Order 21, Rule 82, Civil P.C., would obviously not apply. I am further of the view that disobedience of an order of injunction passed under Order 39, Rule 1, Civil P.C., can be punished by the High Court as a contempt of Court. Under the Contempt of Courts Act the High Court has now power to punish contempts committed in a Court Subordinate to the High Court. The power of the High Court to punish contempts committed in a Subordinate Court does not, however, affect the question of the power of the Court whose order has been disobeyed.

12. The expression "in case of disobedience" occurring in Clause (8) of Order 39, Rule 2, Civil P.C., is wide enough to cover all cases of disobedience, and the point is settled, so far as this Court is concerned, by the decision in Jang Bahadur Singh v. Chhabila Koiri AIR 1936 Pat. 23. I would like to repeat the observations made in that case to the effect that it would be better to place the matter beyond all doubt by amending Rule 2 of Order 39, Civil P.C. The matter may be placed before my Lord the Chief Justice for consideration of the question by the Rule Committee, if he thinks fit.