
(1973) 09 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous (First) Appeal No. 7 of 1972

Surendra Singh and Others

APPELLANT

Vs

Lal Sheoraj Bahadur Singh and Others

RESPONDENT

Date of Decision : 03-09-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : AIR 1975 MP 85 : (1975) JLJ 140 : (1975) 20 MPLJ 57

Hon'ble Judges : P.K. Tare, C.J;S.M.N. Raina, J

Bench : Division Bench

Advocate : A.R. Choubey, for the Appellant; C.P. Sen, for the Respondent

Judgement

Raina, J.

In Miscellaneous (First) Appeal No. 7 of 1972 a question arose whether a temporary injunction can be issued to restrain a decree-holder from executing his decree against his judgment-debtor. Shiv Dayal, J. who heard the appeal referred the following points for decision by the Division Bench on account of divergent views having been expressed by this Court in different cases:--

(1) Whether in a suit instituted by a judgment-debtor on the ground of fraud or any such other ground, a temporary injunction can be granted restraining the decree-holder from executing his decree against the plaintiff.

(2) When a suit is instituted on the ground that the decree is not binding on the plaintiff and that the execution of the decree will be prejudicial to the plaintiff's right, by a person, who was not a party to the suit in which the decree was passed, can a temporary injunction be issued to restrain the decree-holder from executing his decree against his judgment-debtor.

Shiv Dayal, J. has pointed out that in Miscellaneous (First) Appeal No 84 of 1962 decided on November, 23, 1962, (Madh Pra) Bhargava, J. held that no order of injunction can be made under Order 39, Rule 1 or 2 or u/s 151 of the CPC to

restrain the decree-holder from executing the decree in his favour as long as it stands. In *Jalamsingh v. Smt. Lilabai* 1967 MPLJ 111 Tare, J. (as he then was) drew a distinction between a case where the plaintiff is bound by the decree and one where he is not so bound relying on the decision of Shrivastava, J. in *Firojkhan v. Mumtaj Hussain* 1962 Jab LJ (SN) 247.

Before proceeding to discuss the various authorities cited before us, we would like to observe at the outset that the question whether an injunction can be granted to restrain a decree-holder from executing his decree, can be considered from two aspects, namely, the jurisdiction of the Court to grant an injunction and the propriety of granting such an injunction. We propose to deal with the question of jurisdiction first.

So far as jurisdiction is concerned, the line of reasoning adopted in some cases has been that the Court has jurisdiction to grant a temporary injunction only under Order 39, Rules (1) and (2) and since the execution of a decree cannot be construed as an injury within the meaning of Sub-rule (1) of Rule 2 of Order 39, no injunction can be granted to restrain the decree-holder from executing his decree. In *Abdul Hamid Khan and Others Vs. Tridip Kumar Chanda and Another*, and *Ratanchand Jai Gopal v. Mian Saif Uddin* AIR 1961 J & K 29 it was held that the execution of a decree is in the exercise of a legal right and as such cannot amount to an injury within the meaning of Sub-rule (1) of Rule 2 of Order 39 of the Code of Civil Procedure. It was further held that a Civil Court has no inherent jurisdiction to grant a temporary injunction. This line of reasoning was adopted by the Madhya Bharat High Court in a number of cases, namely, *Ramnarain v. Shrikrishna* AIR 1956 MP 75 and *Firm Lalchand Nathmal and Others Vs. Firm Balaram Rameshwar and Others*, . Following these decisions, Bhargava, J. held in *Abdul Rahim v. Safarmal* 1964 MPLJ (SN) 14 that no order of injunction can be made under Order 39, Rule 1 or 2 or u/s 151 of the CPC to restrain a decree-holder from executing a decree in his favour so long as the decree stands.

It would be pertinent here to mention that T. C. Shrivastava, J. in *Mohd. Feroz Khan v. Mulia Mumtaz Hussain* 1963 MPLJ 24 apparently drew a distinction between a case where an injunction is sought by judgment-debtor and one where an injunction is sought by a third party. It was held that injunction at the instance of a third party could be granted in order to maintain status quo. This approach was developed in 1967 MPLJ 111. It was held in that case that where a person is not bound by an earlier decree or order of a Court or Tribunal an injunction may be granted; but it was further held that if a person is a party to the decree or order he should not be granted an injunction restraining the other party from executing it even though the earlier order may be a summary order. This case seems to deal with the question of propriety of the grant of an injunction in such cases rather than the jurisdiction of the Court to grant it.

In *Ramsingh v. Hardayal* 1972 Jab LJ 104 a distinction was drawn between a decree of a regular civil Court which on the face of it is final and conclusive and one which is subject to a decision in a regular suit. It was held that where a

decree is of a revenue Court or Civil Court in proceedings of a summary nature which is subject to the decision of a civil Court in a regular suit, a temporary injunction may be granted if other conditions justifying the grant of an injunction are fulfilled.

In *Ram Prasad v. Smt. Khursheed Jahan* 1966 MPLJ 14 Naik, J. held that a temporary injunction can be granted against a decree-holder on the ground that the decree is not binding on the plaintiff if prima facie case is made out.

Although grant of perpetual injunctions is regulated by the provisions of Section 38 of the Specific Relief Act, the grant of temporary injunctions pendente lite is governed by the provisions of the Code of Civil Procedure. Clause (c) of Section 94 of the CPC provides that in order to prevent the ends of justice from being defeated the Court may, if it is so prescribed, grant a temporary injunction. Rules 1 and 2 of Order 39 of the CPC Lay down the circumstances in which temporary injunctions may be granted. The expression "if it is so prescribed" in Section 94 of the CPC led to the view taken by some of the Courts that jurisdiction of a Civil Court to grant a temporary injunction is governed entirely by provisions of the said Rules and it is not permissible for the Court to grant an injunction in exercise of its inherent powers u/s 151 of the CPC in cases which do not fall within the purview of the said Rules. This view cannot, however, now be treated as good law in view of the decision of the Supreme Court in *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, . In that case it was held by a majority that it was not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The following observations of their Lordships in paragraph 23 are pertinent:

"The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it."

It is, therefore, clear that the Court is competent to grant injunction in exercise of its inherent powers independent of the provisions of Rules 1 and 2 of Order 39 of the CPC and, therefore, it can grant an injunction even in a case which does not fall strictly within the purview of the aforesaid Rules. It must, however, be borne in mind that the inherent powers are to be exercised by the Court in exceptional circumstances vide paragraph 27 of the Judgment in *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, .

In this connection it would be pertinent to refer to the English Law regarding the jurisdiction of the Court to grant an injunction whether permanent or temporary. In England injunctions had their origin in Equity jurisdiction of the Court of Chancery which was exercised mainly with a view to mitigate the rigours of common law as administered by English courts. The maxim "Ubi Jus Ibi Remedium" forms the rule of equitable decisions.

In India the Courts do not possess Equity jurisdiction independent of their ordinary jurisdiction under the law and the principles of equity can be applied by

the Courts only to the extent they are imported in the statutory law within the scope of which the Courts function. However, the principles of equity are extremely useful for regulating the grant of injunctions whether permanent or temporary.

Since a Civil Court is competent in exercise of its inherent jurisdiction to grant a temporary injunction independent of the provisions of the Rules 1 and 2 of Order 39 of the Code of Civil Procedure, the consideration that the execution of a decree or order does not amount to an injury within the meaning of Order 39, Rule 2 of the CPC is not of much consequence. We may, however, refer to certain decisions in which it has been held that the word "injury" in Sub-rule (1) of Rule 2. of Order 39 of the CPC should be liberally construed and that even the execution of a decree may amount to an injury in certain cases. In *Umapati Choudhuri and Others Vs. Subodh Chandra Choudhuri and Others*, it was held that the Court should give the widest interpretation to the word "injury" and that an injunction can be granted to restrain the decree-holder from giving effect to a decree. In *Kittamma v. B. Subba Rai* AIR 1959 Mys 75 it was held that the word "injury" in Order 39. Rule 2 of the CPC means, any invasion or infraction of a legal right giving rise to a right of action at the instance of the party claiming that right. It was further held in that case that if a person seeks to execute a totally invalid order, the person against whom such execution is sought has the right to say that he shall not be made to suffer the consequences of an invalid order and a temporary injunction can be granted in such a case.

The word "injury" has not been defined in the Code. In legal parlance "injury" means any wrong or damage done to another, either in his person, rights, reputation or property vide *Black's Law Dictionary* Fourth Edition at page 924. In other words it means an act which harms, hurts or damages irrespective of the consideration how the harm, hurt or damage may arise. If "injury" is construed in the sense of harm or damage to the right of a person or property, a decree which prima facie appears to be illegal or void can also be construed as causing injury to him.

It is clear that the Court is competent to grant an injunction to restrain the decree-holder from executing the decree either under Order 39, Rule 2 if the word "injury" is liberally construed or, in any case, u/s 151 of the Code of Civil Procedure. All that we have to consider is the propriety of granting an injunction in a particular case. Granting of an injunction is purely within the discretion of the Court and this discretion should be exercised on sound judicial principles. The object of granting a temporary or interlocutory injunction is to preserve status quo while rights are being litigated, and the onus is on the plaintiff to show his need for the injunction. This does not mean that he has to prove his case before he can claim interlocutory relief. He has only to make out a substantial case to be considered which may very well succeed when it comes to be heard. The principles which govern the grant of a temporary injunction may be summarised as below:

- (i) Whether the applicant has a prima facie case in his favour.
- (ii) Whether an irreparable injury will be caused to the applicant if the injunction is not granted during the pendency of the legal proceedings.
- (iii) Whether the balance of convenience is in favour of the applicant.

It is not necessary to dilate on the aforesaid principles because they are well established. Where a party files a suit to set aside a decree on the ground of fraud or to have it adjudged void and unenforceable on certain grounds and also files an application for a temporary injunction to restrain the decree-holder from executing the decree, the question of prima facie case in favour of the applicant will require serious consideration. Ordinarily a party in whose favour a decree or order has been passed holds a prima facie title to the property or the right which was the subject matter of the decree and very strong evidence would be necessary to rebut the presumption of prima facie title in favour of the decree-holder. Decree-holder should not ordinarily be restrained from enjoying the fruits of the decree obtained by him after a successful litigation. Merely, because a party chooses to file a suit challenging the decree or order on certain grounds, would not suffice to destroy the presumption in his favour and a very heavy burden would lie on the applicant to produce strong and cogent prima facie evidence to satisfy the Court that the grounds on which the decree or order is challenged are fairly strong and that there is a reasonable possibility of the success of such suit. We may illustrate this by an example.

Supposing "A" brings a suit for possession of certain immovable property against "B" describing him as a major and obtains a decree. "B" subsequently files a suit for declaration that the decree is void and not enforceable against him because he was a minor on the date of the suit and was not represented in the suit by any guardian and also seeks an injunction restraining the decree-holder from taking possession in execution of the decree. If in such a suit plaintiff applies for a temporary injunction during the pendency of the suit and tenders ample proof of the fact that he was a minor on the date of the suit by producing his school certificate or entry in the register of births, we are of the view that in such a case temporary injunction can be granted to restrain the decree-holder from taking possession under the decree which prima facie appears to be void and unenforceable.

Similarly in a suit to set aside the decree on the ground of fraud if the fraud is patent or there is a strong prima facie evidence of fraud a temporary injunction may be granted to restrain the execution of the decree during the pendency of the suit to set aside the decree.

We may here observe that since there is an initial presumption of prima facie title in favour of the decree-holder, it would not be proper for the Court to grant a temporary injunction ex parte in such a case without giving the decree-holder an opportunity of being heard unless there are exceptional circumstances to justify it. If after hearing both the sides the Court is convinced prima facie that the

decree or order has been obtained by fraud or is otherwise not binding or enforceable against the applicant, injunction during the pendency of the suit may be granted. We may point out that refusal of an injunction until the decree or order is set aside may cause grave injustice in certain cases. The very object of granting a temporary injunction is to maintain status quo while the rights of the parties are being litigated and thus preventing injustice from being done while the litigation goes on. This object would be defeated if the Court were to shut its eyes to the patent facts brought to its notice by the party seeking the injunction merely because the other party has by hook or crook managed to obtain a decree or order in its favour. The Court may, however, grant an injunction in such cases subject to suitable terms to safeguard the interest of opposite party. We are also of the view that where the decree or order is in summary proceedings which is subject to the decision of a regular suit, it would be open to the Court to grant an injunction in suitable cases to maintain status quo.

To sum up, our conclusions are as under:

- (i) The Court is competent to grant a temporary injunction to restrain the execution of a decree or order in a suit in which such a decree or order is challenged irrespective of the consideration whether the plaintiff was a party to the decree or not.
- (ii) There is a strong presumption that a decree or order is valid and, therefore, the burden will heavily rest on the party challenging the decree or order to adduce strong prima facie evidence to show that it is a nullity or is otherwise vitiated having been obtained by fraud etc. and that he has a prima facie title to the property in dispute.
- (iii) A temporary injunction should not ordinarily be granted in such cases without hearing the other side.
- (iv) It would be open to the Court to impose suitable terms in such cases.

We, therefore, answer the points referred to us as under:--

- (1) In a suit instituted by the judgment-debtor on the ground of fraud or any such other ground a temporary injunction can be granted to restrain the decree-holder from executing his decree against the plaintiff with adequate safeguards if there is ample justification for the grant of such an injunction.
- (2) Where a suit is instituted on the ground that the decree is not binding on the plaintiff and that the execution of the decree will be prejudicial to the rights of the plaintiff who was not a party to the suit in which the decree was passed, a temporary injunction may be issued to restrain the decree-holder from executing his decree against him if the grant of an injunction is otherwise justified.

In the instant case an interim injunction was granted by this Court on 14-8-19-72. The case shall now be placed before the learned Single Judge for disposal of the appeal according to law.