
(2008) 07 PAT CK 0107
In the Patna High Court
Case No : C.R. No. 1095 of 2007

Vijay Bahadur Singh

APPELLANT

Vs

Chandra Mani Tiwary and Others

RESPONDENT

Date of Decision : 17-07-2008

Acts Referred:

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

Citation : (2008) 07 PAT CK 0107

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the petitioner and counsel for the sole opposite party. The petitioner is aggrieved by an order dated 30.4.2007, whereby and whereunder, the Munsif, Bhabua in Title Suit No. 4 of 1998 had issue certain directions to the Officer Incharge, Bhabua Police Station to get the suit Hasta free from any impediment or encroachment and to impeditment the order of the court by restraining the defendant-petitioners from raising any further hindrances on the suit land till pendency of the suit, in terms of the order of injunction dated 27.8.2004 passed by the District Judge, Kaimur in Misc. Appeal No. 5 of 2004.

2. Mr. Kamal Nayan Choubey, learned Senior Counsel appearing on behalf of the defendant-petitioner has made a very short but an attractive submission. He submits that the impugned order which has been passed by the court below (Munsif) on an application filed by the sole opposite party was itself not maintainable, in as much as, the order of injunction was passed by the appellate court, the Court of District Judge, Bhabua in Misc. Appeal No. 5 of 2004 and as such in terms of Order XXXIX Rule 2A of the Code of Civil Procedure, even if the allegation of violation of the injunction order was to be looked into for any purpose whatsoever, it could be done by the Court of the District Judge, Bhabua who alone could have entertained such plea of the opposite party.

3. On the other hand, Mr. Omprakash Upadhayay, learned counsel appearing on behalf of the sole opposite party submits that as nothing was pending before the District Judge after disposal of the miscellaneous appeal, the question of violation of injunction order passed by the District Judge could have been gone into by the Court of Munsif itself who was in seisin of the matter, i.e., Title Suit No. 4 of 1998.

4. Having given anxious consideration to the aforementioned submissions, this Court is of the view that entire process adopted in relation to violation of injunction order of the court was contrary to the provisions made in the Code of Civil Procedure. Order XXXIX Rule 2A of the C.P.C. lays down the manner in which such complaint regarding violation of an order of injunction has to be brought. Order XXXIX Rule 2A of the C.P.C. reads as follows:--

"2A. Consequence of disobedience or breach of injunction.--(1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, 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 for a term not exceeding three months, unless in the meantime the Court directs his release."

5. From the reading of the aforementioned provisions it would become clear that the matter relating to disobedience or breach of order of injunction has to be brought to the notice of the court which granted injunction order or any court to which the suit or proceeding is transferred and only that court may pass order for attachment of property or to be detained the person concerned in civil prison. Apparently, the District Judge while granting injunction and passing the order in Misc. Appeal No. 5 of 2004 did not transfer the suit to the Munsif and the Munsif, Bhabua cannot be a transferee court under Order XXXIX Rule 2A of the C.P.C. That would leave the matter regarding disobedience or breach of the injunction order to be brought only before the court who has granted injunction order or has made such order. On the own showing of the opposite party, such prayer for injunction was in fact refused by the Munsif, Bhabua and in fact his order was set aside while granting injunction by the District Judge in Misc. Appeal No. 5 of 2004.

6. In that view of the matter, any allegation as has been sought to be pressed by the opposite party in his application as contained in Annexure-2 to this Civil Revision Application could have been filed before the District Judge, Bhabua and not before the trial court, i.e., the Court of Munsif, Bhabua.

7. The aforesaid view of this Court also gets supported by the judgment of the Apex Court in the case of "High Court of High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others, . While considering the power of the High Court under Article 215 of the Constitution of India the Apex Court has made the following observation:--

"...In such cases where the subordinate courts working at these centres consist of only one Presiding Judge the applications under Order 39, Rule 2A C.P.C, will have to be filed in the very same court and would go to the same Judge or his successor-in-office...."

8. The matter can be even viewed yet again from another angle. The court below, namely, the Court of Munsif after receipt and entertaining an application in terms of Order XXXIX Rule 2A of the C.P.C. could not have passed an order for enforcing the order of injunction by taking recourse to help of police. The order of injunction, if made, has to be complied by the parties and any party who has not complied such order has to suffer the rigours in terms of Order XXXIX Rule 2A of the C.P.C- by way of attachment of his property or by being detained in the civil prison, in terms of Order XXXIX Rule 2A of the C.P.C. the court cannot get the order of injunction complied by taking recourse to help of police. That at least is not permissible within the scope of Order XXXIX Rule 2A of the C.P.C. As a matter of fact when contemnor is called for explaining his conduct and it is found by the court that the contemnor actually has violates the order of injunction, the court may direct for attachment of his property or detaining him in custody or may even take corrective action for implementation of the injunction order but it cannot take recourse to a police help., which is not envisaged in the scope of Order XXXIX Rule 2A of the C.P.C. It was not a case of delivery of possession where the legislature itself had provided the mode and means in which such delivery of possession even with the help of police has to be effected. Therefore, taking police help for implementing an order of ad interim - injunction is not at all envisaged under Order XXXIX Rule 2A of CPC itself.

9. In that view of the matter, the court below has obviously committed a patent jurisdictional error in entertaining the application filed by opposite party No. 2 and passing the impugned order. Consequently, the impugned order is set aside.

10. The opposite party, however, will have liberty and if still he feels that the order of injunction of the District Judge has been violated, he may file an appropriate application before the District Judge. It is expected that the District Judge will pass appropriate order on the application in accordance with law. With the aforesaid observations and directions this application is allowed.