

Yashpal Singh

Vs

VIII Addl. District Judge and Others

Civil Appeal No. 4533 of 1990

(M. M. Punchhi, K. Jayachandra Reddy JJ)

12.03.1992

ORDER

1. This appeal by special leave concerns a Police Sub-Inspector who in the discharge of his duty was about to attract an order under Order 21 Rule 32 CPC as also the prospect of getting his property attached.

2. Respondent 3 obtained a decree for permanent injunction against the Forest Department of the State of U.P. and State of U.P. injuncting them from interfering in the rights of respondent 3 and obtained an interim injunction restraining respondent 3 from cutting and removing trees standing on her plot under the guise of the injunction obtained by him in the earlier suit. Having obtained a temporary injunction she reported disobedience thereof to the Senior Superintendent of Police, District Gorakhpur soliciting help towards obedience of the injunction. It appears that the appellant herein who was the Station House Officer of Police Station, Paniar, Distt. Gorakhpur was asked to take up the matter in hand. As a remedial step he seized certain logs of wood said to have been cut and removed from the plot of land of Smt. Lagan Devi and stopped their movement. Terming the stoppage of movement of logs of wood as defiance of the injunction granted in favour of respondent 3, the said respondent moved the Executing Court under Order 21 Rule 32 CPC complaining obstruction and necessary orders in that regard. He arrayed the SSP and the SHO as respondents. They filed objections before the Executing Court. The objections were dismissed by the Executing Court directing that the property of the appellant and the SSP Gorakhpur be attached ad prayed for. On revision to the district Judge (such revision being competent under a State Amendment) the order was modified to the extent that the SSP was absolved of the obstruction. The appellant on whom came the brunt moved the High Court by means of a writ petition unsuccessfully and this has brought him to this Court.

3. We are told at the Bar by Mr. Bharat Sangal, learned counsel for the appellant that since long the appellant stands transferred to another District and now he is in a promotional post. It is otherwise the admitted position that thus far the property of the appellant is no longer present in the District to obstruct or continue obstructing the legal process, it is idle to contend that the order of the Executing Court in the changed circumstance shall remain sustained. These supervening facts must obviously have an impact in moulding the relief. In the second place, it is difficult to uphold the view of the Courts below that the appellant was a person who could be brought within the grip of Order 21 Rule 32 CPC. The said provision in an extracted form can be re-written as follows :

"E. 32(1) Where the party against whom a decree for injunction has been passed has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for an injunction by his detention in

the civil prison, or by the attachment of his property, or by both."

It is significant and patent that this provision is applicable to a party against whom a decree for injunction had been passed. Admittedly, the appellant was not a party to the suit in which the injunction was granted. It may be true that the Forest Department of the State of U.P. and the state of U.P. were parties and being an employee of the State of U.P. the appellant is in an indirect way bound by the injunction but it cannot be said that he was passed. The word 'party' cannot be constructed so liberally so as to include each and every employee of the State of U.P. to have been a party to the suit in which the injunction was passed. The intention manifested in the provision seems to confine the rigour to the party who had contested the suit and had suffered the decree and it is that party when obstructing is liable of being detained in the civil prison, or suffer attachment of his property, or both. Thus we are of the considered view that on either count the appellant need not suffer action under Order 21 Rules 32 CPC or to remain under threat of attachment of his property, or to expose his property to such supposed attachment.

4. For the reasons recorded above the appeal is allowed. The impugned orders of the High Court as well as that of both the Civil Courts against the appellant are set aside. No order as to costs.

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