

PEPSU HIGH COURT

Harbhagat Kaur

Vs

Kirpal Singh

Civil Revn. No. 192 of 1950

(Chopra, J.)

31.01.1951

JUDGMENT

Chopra, J.

1. The facts out of which this petn. for revision arises are these : Execution of a decree for possession of certain immovable property including a house was taken out by Amar Singh and Kirpal Singh against their third brother Partap Singh in the Ct. of Sub-Judge, 1st Class, Barnala. In the meantime the petitioner Mt. Harbhagat Kaur, daughter of Partap Singh, brought a suit for a declaration that she was the rightful owner of the house and that the decree to which she was not a party did not bind her or affect her rights in it. The three brothers, who were parties to the prior litigation were impleaded as Defendant in the suit. This was instituted on 20-9-50 in the Ct. of Sub-Judge 2nd Class, Phul and the same day a prayer for staying the execution proceedings pending in the Ct. of Sub-Judge, Barnala was made. The Ct. purporting to act under section 151, Civil Procedure Code issued a temporary injunction restraining the deft. from taking possession of the house in the execution proceedings and ordered the same to be stayed. The two orders were to remain operative till the final decision of the appln. of which notice was to go to the opposite party. On receipt of the stay order, the Sub-Judge of Barnala wrote back to the issuing authority enquiring about the law under which the order was made. The reply to this of the Sub-Judge of Phul was that it was done in exercise of the inherent powers of the Ct. under Section 151, Civil Procedure Code Some authorities in support of the order were also cited and it was clarified that the order related to the stay of the proceedings only with respect to the house which was the subject-matter of dispute in the suit. The Sub-Judge, Barnala without adverting to the stay order and without making any mention of it, ordered processes for delivery of possession of the house to be issued. The present revision petn. is directed against this order of the executing Ct. It may be mentioned here that, as is apparent from a report of the Nazir "dated 14-10-50, the possession has already been delivered to the decree-holder.

2. It is contended by Shri Jagan Nath for the petitioner that the Sub-Judge, Phul was within his powers to order the stay of the execution proceedings and that the order was legal and justified on the facts of the case. Reliance in support of the argument is placed on Section 151, Civil Procedure Code and it is urged that a Ct. is competent to make any order that it considers

necessary for the ends of justice or to prevent abuse of the process of the Ct. so long as it is not expressly or impliedly prohibited by the Code. It is maintained that since there was nothing in the Code to prohibit it, the Sub-Judge, Phul, was within his powers to make the order which he considered necessary for the ends of justice and for the fair trial of the suit before him. In the alternative, it is contended that even if the Ct. was not fully justified in making the order it was not for the executing Ct. to question its validity or to ignore it. The argument is that even if the Sub Judge, Phul had acted wrongly it could not be said that he acted without jurisdiction. The Sub-Judge, Barnala, therefore, ought to have respected and complied with the order given by a competent Ct. The authorities cited in support of the contention that the Ct. was competent to make the order are *Firm Bichchha Ram Babu Ram v. Firm Baldeo Sahai Surajmal*¹, *Jethabhai Versey and Co. v. Amarchand Madhavji and Co*², *Ma Kyw v. Daw Kye U*³, and *Ankalu Reddi v. Chinna Ankalu Reddy*⁴, None of them, however, appears to be applicable to the facts of this case, as they do not relate to an order addressed by one Ct. to another of co-ordinate jurisdiction staying proceedings pending in the latter Ct. In a.i.R. (27) 1940 all. 241, the parties had agreed upon a particular forum to get their disputes settled. Two counter suits relating to the same dispute were instituted in two different Cts. The one that had been agreed upon to be approached, granted an interim injunction restraining the pltf. in the other Ct. to proceed on with his suit. The order was held to be permissible in the exercise of the inherent powers of the Ct. *Jethabhai Versey and Co. v. Amarchand Madhavji and Co*⁵, does not appear to have any bearing. A suit which was being tried by the H. C. in its original jurisdiction was allowed to be withdrawn and in case it was not withdrawn was ordered to be stayed in the exercise of the inherent powers of the Ct. In *Ma Kyaw v. Daw Kye U*⁶, two counter suits were going on in the same Ct. between the same parties. One was ordered to be stayed till the decision of the other. In *Ankalu Reddi v. Chinna Ankalu Reddi*⁷, an order to stay the passing of a final decree was made by the appellate Ct. hearing appeal against the dismissal of an appln. for setting aside the ex parte preliminary decree. Kuppuswami Ayyar J. while holding that the order was within the inherent powers of the Ct. observed that these powers could not be made use of in passing an order which would be inconsistent with or opposed to the express provision of any law, or where there is some specific provision for it in the Code. The learned counsel has expressed his inability to quote any direct authority in support of his contention.

3. It cannot be denied that the Code nowhere in so many words empowers a Ct. to make any such order. Section 94 (c) authorizes the Ct. to grant temporary injunctions in the manner prescribed by the Code itself. Order 39 prescribes the rules governing the issue of injunction. They relate to injunctions restraining individuals to proceed in a particular manner and not to restrain a Ct. from continuing a proceeding pending before it, It is significant to note that section 94 (c) authorizes the Ct. issuing the injunction to take action against the person who disobeys the order by attaching and selling his property or by sending him to civil prison. The Ct. will, however, be helpless in enforcing its order by any such proceeding against the Ct. to which the order is issued in case it is not respected. There would thus be no sanction behind the order and no means to get it enforced. The position of the Ct. making the order would be no better if it has acted under Section 151 of the Code and the difficulty of enforcing the order would in no way be obviated. The argument that an injunction would be valid only if there is some sanction behind it was looked at with approval by a Bench of the Judicial Comrs. in *Badri Nath v. Jiwan Chand*⁸, and it was therein held that an injunction could not be addressed by one Ct. to another for the simple reason that it would not have a binding force". A. D. B. of the Patna H. C. in *Kedar Nath v. Mohmood Ali Khan*⁹, also took a similar view and observed that "one

subordinate Ct. had no right to restrain the action of another subordinate Ct. of co-ordinate jurisdiction by an order or a Robkar". *Ram Keshwardas v. Baldeo Singh*¹⁰, *aHemandra Lal v. Indo Swiss Trading Co. Ltd*¹¹, and *Gopichand v. Habib Gul*¹², are some of the other cases in which these Cts. followed the view that an injunction, if at all found necessary, can only be issued against an individual prosecuting his case in a Ct. and that a Ct. cannot issue an injunction against another which is not subordinate to it.

4. While dealing with perpetual injunctions the Specific Relief Act in Section 56 (b) enjoins that no injunction can be granted to stay proceedings in a Ct. not subordinate to that from which the injunction is sought. I do not think different principles would apply to the issue of a temporary injunction. Again the words 'if so prescribed' in Section 94, Civil Procedure Code indicate that a temporary injunction can be granted if there is any provision for it in the Code. In other words it cannot be granted except under the specific provisions made for it in the Code. Consequently it would not be open to a Ct. to grant an injunction in exercise of its inherent powers under Section 151 in contravention of the provisions of O. 39. The Ct. in issuing any other injunction would be acting against the express provisions of the section. The matter has not been left unprovided for in the Code and the Legislature has considered it and chosen to restrict it to cases which fall under Order 39. There, thus, seems to be an express prohibition on travelling any further, and invoking the help of Section 151 would mean adding to the powers specifically conferred. I am, there, fore, of the opinion that the Sub-Judge, Phul was not competent under the law to make the order he did.

5. Before taking up the next question, how far the Sub-Judge, Barnala, was bound by the order of a Ct. of co-ordinate jurisdiction I cannot fail to note my disapproval of the procedure adopted by him. He went on with the execution without taking any notice of the stay order. Without making any mention of it, he passed on to issue process for the delivery of possession of the house. He should have devoted his mind to the question involved and given reasons why he did not consider himself bound by it. But now that the matters have gone much further and the possession has already been delivered to the decree-holders no useful purpose would be served by calling upon the Sub-Judge to give his reasons for ignoring the said order. It is urged that even if the order was wrong and did not clearly fall within the four corners of the

provisions made in the Code of Civil Procedure, it ought to have been honoured and acted upon by the Sub-Judge to whom it had been conveyed, since it was not for him to question the validity of the order passed by a competent civil Ct. of co-ordinate jurisdiction. In the first instance I am personally of the view that the order was not only a wrong exercise of the inherent powers but was made without jurisdiction, and therefore, it need not have been looked at with complacency or compulsorily given effect to. There is yet another aspect in which the matter can be considered. Order 21 r. 24, Civil Procedure Code makes it obligatory on an executing Ct. to proceed on with the execution of a decree after certain formalities have been observed. There are certain definite provisions in the Code which permit the execution to be stayed. It can be stayed by an appellate Ct. under Order 41 Rule 5, by the Ct passing the decree under Order 21, Rule 29 and Order 41, Rule 6, and by the Ct. executing the decree under Order 21, Rules 26 and 83. The Code has, thus, made provisions under which an execution can be stayed and in the absence of an order in accordance with these, the executing Ct. is bound to proceed on with the execution unless for any reason it considers advisable to postpone it. This is against not a matter in which the Legislature has omitted to provide for a contingency. The order of the Sub-Judge, Phul

obviously did not fall under any of these provisions and I am, therefore, of the considered opinion that it could not restrain the Sub-Judge, Barnala, from that which the statute directed him to do. He was, consequently, legally bound to proceed on with the execution proceedings and I do not find anything illegal or irregular in the order under revision.

6. A single Bench judgment of the Lahore H. C. in *Shri Mandar Das v. Atma Ram*¹⁶, and another of an *Additional Judicial Commissioner in Sitapat Ram v. Mahabir Prasad*¹⁷, were relied upon by Shri Jagan Nath in support of his argument. Their facts which were almost similar are, however, distinguishable from those of the present case. Certain immovable property which was the subject-matter of a declaratory suit in another Ct. was being sold in execution of a decree. It was sold by the executing Ct. without giving effect to an injunction staying the sale issued by the Ct. hearing the suit. On appeal it was found that the sale held in spite of the injunction granted by a competent Ct. was a nullity. It may be remembered that Order 39 Rule 1, C. P. C., provides for an injunction being issued to prevent the wrongful sale of property in execution of a decree. The question whether the injunction could legally be issued to the executing Ct. was not expressly decided in either of the two cases. It was, however, answered in the negative in *Lal Chand v. Sohan Lal*¹³, by Coldstream J.) with the observation that a temporary injunction under Order 39 is not a mandatory direction to Ct., as is a stay order of the kind provided for by the Code, but is an order directed against a particular person which can be issued only in the circumstances described in R. 1. The Judge expressing his dissent from the view adopted in *Shri Mandar Das v. Atma Ram*¹⁴, and *Sitapat Ram v. Mahabir Prasad*¹⁵, held that a completed sale in contravention of an injunction under Order 39 Rule 1 is not a nullity as being without jurisdiction.

7. On merits also in view of certain subsequent events which cannot escape notice I do not see much force in this petn. The petitioner, whose suit in which the order was made has been dismissed for default, has filed objection under Order 21 Rule 100, Civil Procedure Code in the executing Ct. That was in fact the proper and adequate remedy open to her and the matter will be decided in those proceedings.

8. For all these reasons I do not see any ground to interfere in the order under revision. The petn. is, consequently, dismissed. But in view of questions of law involved I leave the parties to bear their own costs. The parties through their counsel are directed to appear in the Ct. of Sub-Judge, 1st Class, Barnala on 12-2-1951. A copy of this order shall go to the Sub-Judge, Barnala, and also to the Sub-Judge, Phul.

Petition dismissed.

Cases Referred.

¹ A. I. R. (27) 1940 ALL. 241: (I. L. R. (1940) ALL. 232)

² A. I. R. (11) 1924 Bom. 90 : (82 I. C. 852)

³ A. I. R. (22) 1935 Rang 353: (159 i. C. 798)

⁴ A. I. R. (31) 1944 Mad. 161 : (216 I. C. 44)

⁵ A. I. R. (11) 1924 BOM. 90 : (82 I. C. 852)

⁶ A.I.R. (22) 1935 Rang. 355 : (159 i. C. 798)

⁷ A. I. R. (31) 1944 MAD. 161: (216 I. C. 44)

⁸ A. I. R. (22) 1935 PESH. 182 : (160 I. C. 82)

⁹ 63 I. C. 465 : (A.I.R. (8) 1921 PAT. 92)

- ¹⁰A. I. R. (25) 1938 PAT. 606: (179 I. C. 112)
¹¹ A. I. R. (32) 1945 PAT. 483: (24 PAT. 496)
¹² A. I. R. (23) 1936 Pesh. 184 : (165 I. C. 112)
¹³ A.I.R. (25) 1938 LAH. 220 : (179 I. C. 123)
¹⁴ A.I.R. (19) 1932 LAH. 515 : (139 I. C. 342)
¹⁵ A.I.R. (12) 1925 OUDH 424 : (88 I. C. 532)
¹⁶ A. I. R. (19) 1932 LAH 515 : (139 I. C. 342)
¹⁷ A. I. R. (12) 1925 OUDH 424 : (88 I. C. 532)