Secy. of State Vs. Raghuber Singh

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Court : Allahabad

Decided On : Nov-01-1934

Reported in : AIR1935All186; 153Ind.Cas.574

Appellant : Secy. of State

Respondent : Raghuber Singh

Judgement :

Bennet, J.

1. This is an execution first appeal by the Secretary of State for India in Council judgment-debtor. The facts are that the opposite party is a decree-holder in a suit which was brought for Rs. 7,000 damages on account of physical injury sustained by the opposite party when driving a motor lorry on a level crossing and colliding with an express train. The decree in question was passed by a Subordinate Judge. It was within the jurisdiction of the Subordinate Judge to award damages for the injury, etc., which the plaintiff had suffered up to date and it was also within the jurisdiction of the trial Court to pass a decree for prospective damages, i.e., damages which would include probable and future injury which would result to the plaintiff from the wrong act of the defendant. It is laid down in Underbill's Law of Torts, 3rd (Indian) Edition, in Article 38, 'Prospective Damages,' p. 115, that more than one action will not lie on the same cause of action and therefore prospective damages must be ascertained and awarded at the time of the trial. The trial Court

however did not comply with this provision of law and instead of granting prospective damages the trial Court passed an order that as for further damages for the period following December 1930:

the matter would be taken up in execution proceedings. It might be then found that the plaintiff's condition would improve or that motor vehicle drivers could be had cheap or ho might have been provided with a job in the Railway Department.

2. The order stated:

I decree the claim for Rs. 932, with proportionate costs minus defendant's costs in proportion to the claim dismissed and provide that the defendant would be liable to pay such further damages with costs as the plaintiff may prove in the execution department as suffered after December 1930, owing to his suffering caused by the incident concerned. The rest of the claim is dismissed.

3. Neither party made any appeal against the decree of the Subordinate Judge. It was open to either party to object in appeal that this provision in regard to prospective damages was illegal. Neither party did so. The decree-holder has now made an application in the execution department for the ascertainment of damages for the period from December 1930, up to 19th January 1933, and he claims a sum of Rs. 40, for medical treatment and Rs. 1,000 as damages at the rate of Rs. 40 per mensem on the allegation that he still has trouble with his eyes and is unfit to be a motor driver. The lower Court has made an inquiry and held that the decree-holder is entitled to Rs. 382-8-0 damages. This amount is ascertained by taking Rs. 25 per mensem as the wages which the decree-holder might have earned as a motor-lorry driver if he had not been injured and deducting Rs. 10, per mensem which he is able to earn at present. The Civil Surgeon gave evidence that the decree-holder is of sound mental condition and can work as a mechanic, cleaner or shop-keeper, that there is no atrophy of any muscle of any part of his body, that he cannot do ordinary labouring manual work because he has got some stiffness in his right wrist and left knee and that he is not fit to be a motor driver as he has got photophobia and lactrymation and his distant vision is not yet normal. The objection has been taken in first appeal that the lower Court had no jurisdiction to determine the amount of damages suffered by the plaintiff

after passing the original decree and that there was no executable decree before the lower Court to execute and that the lower Court could not go behind the decree. Further that the amount of profits awarded was excessive. Both parties agreed in argument that the decree as it stood was final. That being so recourse cannot be had to Order 20, Rule 12, which provides for an ascertainment in regard to future mesne profits from the institution of the suit until delivery of possession to the decree-holder. In that case there is a preliminary decree passed and later a final decree. The lower Court did not adopt this method of procedure of a preliminary and a final decree.

4. It might conceivably have been open to the lower Court to do so in view of the definition of 'decree' in Section 2(2) and its explanation in the Civil Procedure Code. I may also note that the provision in Order 20, Rule 12, is only in I regard to mesne profits and under the definition of mesne profits in Section 2(12), the expression is connected with property and cannot include damages to the person. Learned Counsel for the respondent stated that the application for execution would come under Order 21, Rule 10. That rule merely states that an application may be made for execution of any decree. Learned Counsel was not able to refer to any rule of Order 21, which would grant an execution Court jurisdiction to hold an inquiry as to the amount of damages which had arisen after the passing of a decree. The Civil Procedure Code, following the English procedure on the point contemplates that a decree for damages should be final and should state the full amount of damages to be granted. It is only in the case of mesne profits that there is an exception to this rule. In the case of the English procedure no doubt the fact that damages are assessed by a jury prevents any procedure of a further inquiry as to the amount of prospective damages after the case has been decreed. I consider that the lower Court had no jurisdiction to make any such inquiry in execution. It was contended for the respondent that the fact that the decree directed that the matter would be taken up in execution proceedings was an order which would endow the execution Court with jurisdiction. I do not consider that a direction of that nature in a decree can invest a Court with jurisdiction which is not given to it by the Civil Procedure Code or by any other law. This view is also strengthened by a Full Bench ruling in Katwari v. Sita Ram Tiwari 1921 All. 118. That was a case in which a decree had been passed directing the sale of an

occupancy holding. This direction was contrary to the provisions of Section 20, Agra Tenancy Act of 1901. It was held by the Full Bench that the mere provision in the decree could not endow an execution Court with jurisdiction to do something which was contrary to law and therefore that the execution Court was barred from executing this portion of the decree. I consider that that principle will govern the present case. The provision for the future inquiry in execution proceedings in a decree is a provision which is contrary to the procedure of the Civil Procedure Code. Therefore the execution Court is barred from adopting that procedure. I may also refer to a ruling reported in Ganga Prasad v. Hemangini Debi 1918 Cal. 742, where a Bench held that a decree directing that mesne profits should be ascertained in the execution department was a decree which was not capable of execution because the Code did not provide for any such inquiry, the provision in the Code being under Order 20, Rule 12, that the inquiry should be made by the trial Court.

5. For these reasons I allow this first appeal with costs in both Courts and I dismiss the application for execution.