

Bagicha Singh Vs. Suba Singh and ors.

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Court : Punjab and Haryana

Decided On : May-12-1982

Reported in : AIR1983P& H174

Judge : G.C. Mital, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rule 32; [Limitation Act, 1963](#) - Sections 15(1)

Appeal No. : Civil Revn. No. 2862 of 1980

Appellant : Bagicha Singh

Respondent : Suba Singh and ors.

Judgement :

ORDER

1. On 19-1-1974, a decree for permanent injunction was granted in favour of Bagicha Singh restraining Suba Singh and other judgment-debtors from interfering with the possession of the plaintiff on the agricultural land in dispute. In July, 1974, the judgment-debtors dispossessed the decree-holder and violated the injunction decree. Thereafter, there were two sets of criminal litigation between the parties at the instance of the judgment-debtors in both of which the judgment-debtors were not convicted for one reason or the other. On 6-12-1977, the decree-holder filed an application under Order 21, Rule 32 of the Civil P. C. (hereinafter called the Code) for enforcing the decree of permanent injunction by the modes provided in

the Code. On 26-5-1979, the Executing Court ordered the enforcement of the decree by detaining judgment-debtors in civil prison and attachment of their properties. On 4-7-1979, attachment of their properties. On 4-7-1979, attachment of the properties of the judgment-debtors was effected. However, they were not detained in civil prison as in the meantime they had moved this Court by filing Civil Revision No. 1477 of 1979 against the order of the Executing Court in which interim order of stay of arrest was passed on 17-7-1979. Finally, by order dated 9-10-1979 the revision of the judgment-debtors was dismissed by this Court. Thereafter, the judgment-debtors moved the Supreme Court by filing a Special Leave Petition along with an application for stay for execution in which the operation of the order of the Executing Court was stayed on 15-11-1979. The matter finally came up before the Supreme Court on 14-4-1980, when the order of the Executing Court regarding detention of the judgment-debtors in civil prison was set aside and the remaining order was maintained and the execution was allowed to proceed further in accordance with law. The exact order of the Supreme Court was as follows :--

'Heard learned counsel for the parties. On the facts and in the special circumstances of the case, we think that the order directing the petitioners to be detained in Civil Prison is not justified. We set aside that portion of the order and the execution will now proceed further in accordance with law.'

On 15-5-1980, the decree-holder filed an application before the Executing Court to revive the execution proceedings in view of the Supreme Court order and to proceed with the same in accordance with law. The matter was revived by the Executing Court and notice was issued to the parties. On 18-8-1980 the judgment-debtors filed objections that the attached properties could not be sold because six months' period from the date of attachment had already lapsed. The objections were disputed by the decree-holder. By order dated 25-8-1980, the Executing Court allowed the objections and came to the conclusion that the attachment ceased on the expiry of six months' period and the attached property could not be sold as no application was filed by the decree-holder for sale of the same within six months of the attachment. This revision petition has been filed by the decree-holder against the aforesaid order.

2. After hearing the learned counsel for the parties I am of the view that this revision deserves to succeed. Since various provisions of Rule 32 of Order 21 of the Code fall for consideration, therefore, it will be appropriate to reproduce the same :--

'32. Decree for specific performance for restitution of conjugal rights, or for an injunction :--

(1) Where the party against whom a decree for the specific performance of a contract or for restitution of conjugal rights, or for an 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 restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract, or for an injunction by his detention in the Civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principle officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.'

A reading of sub-rule (1) shows that to enforce a decree for injunction, an opportunity is to be granted to the judgment-debtor to obey the decree and in case he wilfully fails to do so, the decree can be enforced by detention in civil prison or by attachment of the property of the judgment-debtor or by both. Under sub-rule (3), if attachment made under sub-rule (1) remains in force for a period of six months and if the judgment-debtor has not obeyed the decree and if the decree-holder has applied to have the attached property sold, the same can be sold. Under sub-rule (4), where the judgment-debtor has obeyed the decree and has paid all costs of executing the same or where at the end of six months from the date of attachment no application to have the property sold is made, or if made, has been refused, the attachment ceases. Under sub-rule (5), where a decree for injunction has not been obeyed, the Court may, in lieu of or in addition to all of the aforesaid processes, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court at the cost of the judgment-debtor and upon the act being done, the expenses incurred may be recovered as if they were included in the decree. Therefore, it is clear that if time is allowed to the judgment-debtor to obey the decree of injunction and if he wilfully continues to defy, he can be detained in civil prison or his property can be attached or both steps can be taken against him and if in spite of that he does not obey the decree for a period of six months, then the attached property can be put to sale if so applied for by the decree-holder. It is further provided that the Court has power to have the compliance of the decree in lieu of other processes or in addition thereto by directing that the act required to be done by the judgment-debtor be done at his expense either by the decree-holder or some other person appointed by the Court.

3. In the present case, the judgment-debtors cannot be detained in civil prison as ordered by the Supreme Court, therefore, it is to be seen whether out of the remaining processes, which of them deserve to be followed. The decree of injunction was passed on 19th Jan., 1974 which they violated in July, 1974 by dispossessing the decree-holder. The decree-holder first resorted to complaints before the Criminal Court and then moved the Civil Court on 6th Dec., 1977. It is not disputed even before me that all though the judgment-debtors have been in possession of the land in dispute since after the passing of the decree for permanent injunction. It is also not in dispute that the decree-holder is seeking compliance of the decree right from Dec., 1977 before Civil Court and yet the judgment-debtor have not complied with the same as they have not delivered back possession to the decree-holder.

4. Once attachment was effected on 4th July, 1979, under sub-rule (1), the point which now falls for determination would be--when would it cease to operate and what would be its consequence. The resume of facts given in the opening part of the judgment clearly goes to show that 12 days later, on 17th July, 1979, stay of arrest was obtained from this Court in the revision filed by the judgment-debtors which was dismissed on 9th Oct., 1979. Thereafter, stay of operation of the order of the Executing Court was obtained by the judgment-debtors from the Supreme Court on 15th Nov., 1979, which continued up to 14th April, 1980, when it was finally ordered that the judgment-debtors shall not be detained in civil prison and the execution will proceed further in accordance with law. Therefore, if period between 15th Nov., 1979 and 14th April, 1980, during which the entire order of the Executing Court remained stayed, is excluded in accounting the period of six months of attachment, as provided by sub-rule (3), in accordance with the provisions of Section 15(1) of the [Limitation Act, 1963](#), I find that a period of four months and 12 days elapsed between the date of attachment and the stay granted by the Supreme Court. Supreme Court stay came to an end on 14th April, 1980 and the decree-holder moved the Executing Court for proceeding further with the execution on 15th May, 1980. The decree-holder spent one month and one day in doing so. So the total period of attachment in this manner comes to five months and thirteen days. It is clear that all through the execution proceedings remained pending and the decree-holder was wanting compliance of the decree by the

judgment-debtors, which was not complied with and instead the judgment-debtors resorted to the remedy of revision in this Court and then appeal to the Supreme Court, in which he obtained stay. After they failed in the Supreme Court on 14th April, 1980 in getting the entire order of the executing Court set aside, they had opportunity to comply with the decree and their non-compliance till 15th May, 1980 clearly gave a cause to the decree-holder to move the executing Court for further proceedings with the execution in accordance with law in view of the Supreme Court order. On these facts 'further proceedings in accordance with law' meant that opportunity may be granted to the judgment-debtor through Court to once again comply with the decree and if they failed to do so then to proceed with the matter in accordance with law, namely by selling the attached property and/or by directing the decree-holders to recover possession by issue of warrants or by appointing a local commissioner to get the possession of the land in dispute restored to the decree-holder. The executing Court issued notice of the executing to the judgment-debtors who instead of complying with the decree in spite of the dictum of the highest Court, filed objection on 18th August, 1980 to the effect that the attached properties could not be sold as the six months' period had elapsed. This further shows the wilful disobedience of the decree in the sense that they did not want to comply with the same in spite of failing up to the highest Court. As I have found above only 5 months and 13 days have been done by when the decree-holder moved the executing Court to further proceed with the execution in accordance with law in view of the Supreme Court order. Therefore, it cannot be said either that the six months' period had elapsed or that the decree-holder took no steps to have the attached property sold or to have further steps in getting compliance of his decree. Accordingly, I hold that the Executing Court clearly fell in error in coming to the conclusion that when the decree-holder moved application for execution on 15th May, 1980, the six months' period had elapsed. The period during which the order of the Executing Court remained suspended because of the stay order granted by the Supreme Court, that period has to be excluded in accounting six months' period under Section 15(1) of the Limitation Act. Therefore, it is clear that the judgment-debtors (decree-holder?) moved well within six months and since by the end of six months the judgment-debtors had not obeyed the decree, there was no other option with the Executing Court but to order the sale of the attached

properties. In view of the above, I hold that the attachment continued till 15th May, 1980, when the decree-holder moved an application for proceeding further with the execution and after setting aside the order of the Court below, order that the attached property of the judgment-debtors be put to sale and from the sale proceeds to pay compensation to the decree-holder equal to the mesne profits which could accrue from the land in dispute from July, 1974 up to the date the possession of the land in dispute is restored to the decree-holder besides costs of the execution proceedings through-out.

5. The facts of the case are so vocal that it is a fit case in which sub-rule (5) should also be resorted to. After the judgment-debtors failed in the Supreme Court in avoiding execution of the decree by any mode other than the detention in civil prison, they should have moved the executing Court for surrendering possession to it for being restored to the decree-holder. Instead of doing so, they filed objections to avoid/delay the execution of the decree which again has taken over two years since the Supreme Court decision. Therefore, I am of the view that the mere sale of the attached property of the judgment-debtors and payment of compensation in lieu of mesne profits, would not meet the ends of justice, until possession of the land in dispute is also restored to the decree-holder.

6. Courts do not grant decrees either for the fun of it or for being violated in the manner it has been violated in this case. Violation has continued for almost for about eight years by now, because the decree-holder was dispossessed in July, 1974. Sub-rule (5) clearly provides for this eventuality. Accordingly, I am of the opinion that the executing Court should appoint an Advocate as Local Commissioner for taking over possession of the land in dispute and for delivering the same to the decree-holder. The expenses and costs of the same shall also be borne by the judgment-debtors in Court, then the same would also be recoverable from the sale proceeds of the attached property, as if they were also included in the decree.

7. On behalf of the judgment-debtors, the following three decision have been cited for not issuing order for delivery of possession to the decree-holder under sub-rule (5) :--

(i) Murari Lal v. Nawal Kishore, AIR 1961 Punj 547; (ii) Sarup Singh v. Daryodhan Singh, AIR 1972 Delhi 142 and (iii) Prithivi Singh v. Natha Ram, 1980 Pun LJ 1999.

The aforesaid decisions do go to support the contention of the judgment-debtors that no order for delivery of possession could be passed under sub-rule (5), but these decisions are no longer good law in view of the dictum of the Supreme Court in Civil Misc. Petition No. 10572 of 1978 in Civil Appeals Nos. 1298 and 1299 of 1969* (Krishan Murari Lal Sehgal v. State of Punjab) decided on 16-10-1978 and a latest Full Bench judgment of this Court in R. S. A. No. 402 of 1973, Radha Ram v. Municipal Committee, Barnala dated 28-4-1982. (reported in 1982 Lab IC 1857). In Krishan Murari Lal Sehgal's case (supra), the implementation of a purely declaratory decree was ordered as follows :--

'Heard, counsel for the parties. This application is disposed of on a short ground. It has become necessary to clarify the order made by his Court allowing the appeals of the petitioner. According to the decision of this Court, the petitioner was given a declaration that he would be deemed to continue in service with effect from the date of the suit. As a logical consequence of this declaration, it is manifest that the petitioner would be entitled to back-salary right from 1st June, 1962 till 9th Feb., 1974. The only way in which the judgment of this Court can be implemented is to pay the aforesaid amount of salary to the petitioner. With these observations, this application is disposed of. The amount of the salary must be paid within two months from today.'

8. A reading of the aforesaid shows that the Supreme Court ordered the compliance of a purely declaratory decree in a case where an employee was declared that he would be deemed to continue in service from the date of the suit, by ordering that not only he was entitled to be reinstated but also that he should be paid back salary for he period of about 12 years within two months of the date of order. On the basis of he aforesaid Supreme Court decision in Radha Ram's case (1982 Lab IC 1857)(supra), the Full Bench of this Court ruled that in a suit for mere declaration, direction can be given for reinstatement and payment of back salary etc. And once that is done, the decree would be plainly executable. It deserves to

be recalled that till before the decision of final Court in *State of Madhya Pradesh v. State of Maharashtra*, (1977) 2 SCC 288 : (AIR 1977 SC 1466) and *Maimoona Khatun v. State of U. P.*, (1980) 3 Serv LR (SC) 455: (AIR 1980 SC 1773) the Courts had decided that the employees would be entitled to recovery of three years' salary from the date of filing of suit for recovery. Because of the aforesaid decisions it was ruled that the cause of action to claim recovery of the entire back wages accrued on the passing of decree for declaration that the order of termination of services, was illegal, without jurisdiction and void. The Full Bench also considered whether an employee who is able to successfully prove before the Court that the order of termination of his services was illegal, void and without jurisdiction should he be granted mere declaration to that effect and should be left with the remedy of filing of a second suit for relief which directly flows from the declaratory decree or the necessary direction should be granted in the same suit in which declaratory decree is passed. The relevant observations of the Full Bench deserve to be reproduced (at p. 1863) :--

'Once the relief of setting aside or quashing the order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from the status. He must be deemed to be in position identical with that existing prior to the passing of the order of termination his service. In the felicitous language of their Lordships the emoluments of the post are a logical consequence of setting aside the order of termination. In such a situation to insist upon the filing of a second suit for a relief which directly flows from the declaratory decree can hardly be warranted. The hallowed rule that the law disfavours multiplicity of proceedings would again required that the consequential relief should be recorded in the original proceedings itself. This seems to be the more so in view of the recent judgment of the final Court adverted to above holding that in essence the cause of action for the claim to salary and emoluments is conterminous with the decree setting aside the wrongful termination. Therefore, no issue or bar of limitation now raises any hurdle in this context. It deserves recalling that on the earlier view that the right to salary and emoluments was likely to become barred after a period of three years from the date of the order of termination itself there

might have been some justification for the need of a separate suit for emoluments etc. To test it of the anvil of limitation. However, since such a view has now been given the go-by and its anomalous results have been authoritatively noticed by the final Court in *State of Madhya Pradesh v. State of Maharashtra*, (1977) 2 SCC 288 : (AIR 1977 SC 1466) and *Maimoona Khatun's case* (AIR 1980 SC 1773) it seems wholly wasteful to require a fresh spurt of litigation for the recovery of emoluments which necessarily flow from the quashing of the termination order or the grant of the declaratory decree.

Particularly in this context it calls for notice that in *Krishan Murari Lal's case* (AIR 1977 SC 1233) the direction had been given by their Lordships not even at the appellate stage when they decided to allow the appeals on the 9th Feb., 1977, but indeed it was so done in a Miscellaneous Petition No. 10572 preferred more than a year later in 1978. Now if such a direction can be given even years after the conclusion of the appellate proceedings I am unable to see why it cannot and should not be incorporated in the appellate to the original judgment itself and indeed it seems to be more appropriate that should be so.'

9. A reading of the aforesaid leaves no manner of doubt that even in a declaratory decree, direction can be given for compliance of all matters which are necessary consequences of the declaratory decree. Even those directions have been held to be executable up to the highest Court, I fail to understand how a decree for permanent injunction restraining the defendants not to interfere in plaintiff's possession, cannot be executed by having possession delivered back to the decree-holder which in turn flows from sub-rule (5). Here again if the Executing Court cannot have the possession restored, it means the remedy for getting back possession is by filing another suit for possession which practice has to be avoided by Courts under the rule laid down by the Full Bench as quoted above. Accordingly, I am of the opinion that the rule laid down by the Full Bench as quoted above. Accordingly, I am of no behalf of the judgment-debtors are no longer good law and I do not find any impediment in my way to order restoration of possession in the interest of justice even apart from sub-rule (5). The Supreme Court in *Krishan Murari Lal Sehgal's case* (AIR 1977 SC 1233)(supra) ordered the compliance of declaratory decree without reference to any rule but on the

larger principles of justice and compliance of a decree. Similarly, even if sub-rule (5) does not come to the aid of the decree-holder, on general principles, I am of the firm opinion that the Executing Court or this Court has the jurisdiction to order that the possession of the land in dispute be restored to the decree-holder.

10. As already noticed above, mere payment of the mesne profits or the costs of execution to the decree-holder, would be no compliance of the decree because mesne profits would be equal to not more than 1/3rd of the produce of the land which even a tenant has to pay this landlord. Therefore, virtually the judgment-debtors, who violated the decree, and got into illegal possession, would be allowed to continue in possession till another suit is filed by the decree-holder to regain possession because the Executing Court is helpless in this decree to get the possession restored to him. I am afraid, I cannot countenance this. I am afraid, I cannot countenance this. Neither law nor larger principles of justice come in the way in getting the restoration of possession to the decree-holder in these proceedings. Accordingly, on this basis also, I am of the opinion that the possession of the property in dispute deserves to be restored to the decree-holder.

11. For the reasons recorded above, this revision petition is allowed the order of the Executing Court dated 25-8-1980 is hereby set aside and it is ordered that the attachment made on 4-7-1979 continues to be in force and that the attached property be sold and out of the sale proceeds the decree-holder be paid compensation by way of mesne profits with effect from 1-7-1974 till possession is restored to the decree-holder. It is further ordered that an Advocate be appointed as a Local Commissioner to deliver possession of the land in dispute to the decree-holder as far as possible before 16-6-1982. In case the Local Commissioner or the decree-holder finds that police help is necessary, it will be open to the Executing Court to order for police help. The costs incurred in the appointment of the Local Commissioner etc. would be borne by the judgment-debtors. The costs of the execution proceedings throughout would also be borne by the judgment-debtors which are quantified at Rupees 2,000/- The expenses of the Local Commissioner etc. and the costs would also be deducted from the sale proceeds of the attached property. The balance sale proceeds shall be paid to the judgment-debtors. The parties, through their counsel, are directed to appear

before the Executing Court on 2-6-1982.

12. Revision allowed.

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