

Nripendra Narayan Vs. Beda Bala Debi

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Court : Kolkata

Decided On : Apr-25-1951

Reported in : AIR1952Cal702,55CWN479

Judge : Harries, C.J. and ; G.N. Das, J.

Acts : Contempt of Courts Act, 1926 - Section 1

Appeal No. : A.F.O.O. No. 108 of 1950

Appellant : Nripendra Narayan

Respondent : Beda Bala Debi

Advocate for Def. : H.N. Sanyal and ; M. Hazra, Advs.

Advocate for Pet/Ap. : B. Chaudhuri, ; Sudhamay Bose and ; Mihir K. Sarkar, Advs.

Disposition : Appeal allowed

Judgement :

Harries, C.J.

1. This is an appeal from a order of S. E. Das Gupta J. dated 21st April 1950 committing the appellant for contempt of Court and sentencing him to undergo simple imprisonment for one month.

2. The parties are husband and wife, the appellant being the husband and the wife being the respondent. It seems that the husband had created a trust of his property in favour of his wife and had divested himself of the right to manage the same. There had been in fact two trust deeds but in each of the deeds a power of revocation was reserved to the settlor, the husband. It seems that the relationship between the parties was not happy and the husband had brought a suit for revocation or cancellation of the deed of trust. But that suit seems to have been abandoned and withdrawn.

3. It is an admitted fact that at 10 a.m. on 24th June 1949, the appellant registered a deed claiming to revoke this trust and on the same day a suit was filed by the wife on the Original Side of this Court for an injunction restraining her husband, the defendant, from interfering with the plaintiff's possession and her right to manage the properties comprised in the trust deed. An application was made on the same day for an ad interim injunction which was granted. The Registrar of the Original Side of this Court appears to have been directed to communicate the Court's order to the defendant by telegram and a telegram was sent by the Court to the defendant. This telegram arrived at the post office of destination at about 3.30 p.m. on 25th June and the only evidence before the Court was that the telegram was not actually delivered to the defendant until the morning of 26th June.

4. I do not think that it can possibly be said that the defendant had knowledge of this interim injunction made by this Court until the morning of 26th June. What is suggested on behalf of the respondent is that after receiving notice of the injunction the defendant took possession of the estate, assumed management over it and began to collect rents.

5. That the appellant assumed management of the estate is quite clear. But if he assumed management of the estate and entered into possession thereof before he received notice of the ad interim injunction made by this Court, no question of contempt of Court could arise. On the other hand, if the appellant took possession and assumed management of this estate after receiving notice of the interim, injunction granted by the Court, then his conduct would be contumacious to a degree and would amount to serious contempt of Court. It is clear therefore that

the only point which has to be decided is whether or not the defendant-appellant took possession and assumed management of this estate after he had knowledge of the interim injunction made by this Court.

6. The plaintiff-respondent sought to establish that the defendant-appellant had assumed possession of the estate and interfered with the plaintiff's management thereof by producing a letter signed by the superintendent in charge of the estate and countersigned by the defendant-appellant. That letter which was addressed to the plaintiff-respondent is in these terms :

'Having been directed by Sree Nripendra Narayans Chowdhury, Zemindar Chapore Street, I beg most respect fully to inform you that the zamindar after revoking the Trust Deed of 28-9-1945 by a registered deed to-day, has taken possession and charge of all the properties both movable and immovables of the said Chapore Estate and has dismissed your Secretary Sri Surendra Nath Mukher-jee and the Manager Sri Birendra Nath Banerjee. Neither you nor the Secretary nor the Manager shall have any connection whatsoever with the Chapore Estate, henceforward.'

7. There can be no doubt that this letter is an intimation in the clearest terms that the defendant-appellant had taken over possession of the estate and. further that he had dismissed the officials who were managing the estate on behalf of the plaintiff-respondent. Certain other acts were done by the defendant-appellant, and the only question which we have to consider is: Were these acts committed before or after 26th June when admittedly notice of the injunction made by this Court was received by the zamindar

8. The letter which I have set out which was sent to the plaintiff-respondent is dated 24-6-1949 and if it was written on the date it bears, it completely destroys the case for the. plaintiff-respondent, because the letter shows that on the date it was written possession had been taken and the servants of the plaintiff-respondent dismissed.

9. The suggestion made on behalf of the plaintiff-respondent is that this letter could not have been written on the date it bears. But there is no evidence at all in

the case which would suggest, that this letter was deliberately antedated in order to give an appearance of having taken possession before 26th June. It must be remembered that this letter is produced by the plaintiff-respondent and it is a part of her evidence and the letter on the face of it shows that the act of taking possession and of dismissing the plaintiff-respondent's servants could not possibly amount to contempt of Court. It seems to me quite clear that the onus of showing that this letter was not written on 24th June clearly rested on the plaintiff-respondent, and, as I have said, there is no direct evidence which would suggest that such was the case.

10. It is, however, common ground that this letter which was despatched in a registered cover was not registered and posted until 27th June - there being a delay of three days. The defendant-appellant sought to explain the delay by calling members of his office or Katchery with a view to showing that this letter was taken to the post office for registration on the 25th which was a Saturday, but that it could not be registered because no letters were received for registration, after about 1.30 p.m. The following day, the 26th, was a Sunday during which no registered letters could be sent and the first possible opportunity for registering the letter was, therefore, according to the defendant appellant Monday morning 27th June.

11. I think there can be no doubt that a zamindar similar to the defendant-appellant would not be likely to register and post his own business letters. He would undoubtedly follow the usual course of people of his class, namely, hand over the letter to the staff of the Katchery to despatch in ordinary course. If that were done, the letter could have been registered and despatched on the 25th. But promptness is not a virtue greatly admired in katcheries similar to that of the defendant-appellant. In these days clerks do take their time and there would be nothing strange if this letter was handed over to the clerk on the afternoon of the 24th and that clerk failed to have it registered before 1-30 p. m. on the following day. The explanation given by the defendant-appellant is by no means improbable. But the learned Judge found it very difficult to accept the evidence of clerks from the katchery who were called to establish this case.

12. Even if we assume that the evidence called on before of the defendant-appellant cannot be relied upon with any confidence, nevertheless it appears to me that the plaintiff-respondent failed to show that the defendant-appellant acted in breach of the injunction after notice of the injunction issued against him.

13. As I have said there is nothing to suggest that the letter relied upon by the plaintiff-respondent was not written on 24th June, It is true that neither the defendant-appellant nor his (superintendent in charge, who signed the letter, were called to give evidence. But as I have said prima facie the letter was written on 24th June and the plaintiff-respondent adduced no evidence to show that it could not have been written on that day. 'We must therefore assume that the letter was written on 24th June.

14. Further, it appears to me that the probabilities are that it was written on the date it bears. On that very day the defendant-appellant had revoked the deed of trust or had purported to revoke the deed of trust and had registered the deed of revocation. It would be natural in the circumstances that he should take action at once and that fact makes it very probable that 'this letter was written on 24th June, the date which it bears. On that date the defendant-appellant had no knowledge of an injunction and therefore if possession was taken over on 24th June, there could be no question of contempt.

15. The letter however, as I have said, was not despatched until 27th June, that is after notice of the injunction had been received by the defendant-appellant. Even if this letter was written and signed on 24th June, taking possession would nevertheless be contempt if the letter was despatched with the defendant-appellant's knowledge after he had received notice of the injunction. On the other hand, if the delay in despatching it was not brought to the knowledge of the defendant-appellant and he never permitted the letter to be despatched after he had received notice of the injunction, then no question of contempt can arise.

16. As I have said even if the evidence of the clerks of the katchery be not accepted, there is nothing from which -we can infer that the defendant-appellant after writing this letter and countersigning it was ever aware that there had been a delay in despatching it, and in fact either authorised or permitted its despatch after

receiving notice of the injunction. It seems to me that even excluding the whole of the evidence adduced on behalf of the defendant-appellant, the probabilities are that he countersigned this letter on the 24th and that it was handed over to the katchery for despatch and that was the last the defendant-appellant thought of the matter. Before we can convict the defendant-appellant of contempt of Court we must be satisfied that this letter was despatched after notice of the injunction was received,

17. Mr. Sanyal who has argued this case on behalf of the plaintiff-respondent with considerable force has contended that we should not interfere in a case of this kind unless we are satisfied that the rules of natural justice have not been complied with. He relied upon a decision of their Lordships of the Privy Council in *Ali Mahomed Adamalli v. Emperor*, 72 Ind. App. 226 (P. C.) and particularly on an observation of Lord Porter who delivered the judgment of the Board. At p. 237, the learned Lord observed :

'Their Lordships have no desire to lessen the standard of care and circumspection to be observed by all Courts before exercising their jurisdiction to commit for contempt, but it must be remembered that the question of committal or non-committal is one for the exercise of the discretion of the Court before whom the application to commit is brought, and, unless there is found to be a serious disregard of the principles of natural justice, their Lordships would be slow to interfere with that discretion.'

18. It must be remembered however that in this case before their Lordships of the Privy Council there was no doubt whatsoever that the act complained of had been committed. What was argued was that as there was an alternative remedy committal for contempt was not appropriate. It was in the discretion of the Court whether it should take action or not for contempt and it had exercised that discretion and their Lordships refused to interfere with such exercise of discretion. The case is not concerned with the standard of proof required for a conviction for contempt. In the English case of *Ex parte Langley; Ex parte Smith. In re Bishop*, (1879) 13 Ch. D. 110, the question of the degree of proof was considered. At p. 119 Thesiger, L. J., observed :

'But the question in each case, and depending upon the particular circumstances of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which had been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.'

In the case of *Homi Rustomji v. Sub-Inspector Baig*, A. I. R. 1944 Lah. 196 (S. B.), a Special Bench of the Lahore High Court of which I was a member laid down that proceedings for contempt of Court though not criminal, are of a quasi-criminal nature and therefore where there was any reasonable doubt, the persons charged with contempt were entitled to the benefit of such doubt. In the Lahore case the contempt of Court alleged was what is described as a criminal contempt, whereas in the present case the contempt is for a breach of an order of the Court and what is usually described as a civil contempt. It must be remembered that *Ex parte Langley* *Ex parte Smith*, *In re Bishop*, (1879) 13 Ch. D. 110 was a case of civil contempt and the Court of Appeal was of opinion that as the liberty of the subject was involved the Court had to be satisfied beyond all reasonable doubt that notice of the Court's order had been received before the acts complained of were committed.

19. In the present case I am left in doubt as to whether the defendant-appellant had received notice of the injunction before he took possession. There are indications that he actually took possession on June 24, that is, the date stated in the letter relied upon by the plaintiff-respondent, and as I have said the probabilities are that he took possession on the day he revoked the deed of trust which was June 24. In any event there is nothing to suggest that the defendant-appellant was aware that the letter had not been despatched and that he authorised or permitted it to be despatched on June 27, that is, twenty-four hours or so after he admittedly had received notice of an injunction.

20. For these reasons we are not satisfied that it was established that the defendant had acted in breach of the Court's injunction. It was suggested that as

he collected rent after June 26 he was clearly guilty of contempt. If however he had taken possession before the notice of the injunction was received, then there can be no question of a breach of this injunction. If he had already performed the act which the injunction restrained him from performing there could be no question of a breach, and I think it is clear that if the defendant-appellant had entered into possession on June 24, collection of rent thereafter could not possibly be a breach of the injunction because he would have been entitled to collect the rent by reason of taking possession and as the taking of possession could not be in breach of the injunction as it happened before the injunction was made, no question of contempt could arise.

21. For these reasons I hold that the defendant-appellant should not have been convicted for contempt and I would accordingly allow the appeal, set aside the conviction and sentence and find the defendant-appellant not guilty of contempt of Court.

22. Much of this litigation, I think, could have been avoided if the defendant-appellant had been fit to give evidence in this case. But for reasons best known to himself he kept out of the witness-box and I think quite falsely alleged illness. He brought a good deal of this on himself and that being so, I would make no order for costs either in this appeal or in the proceedings in the Court below.

G.N. Das, J.

23. I agree