

## **L.D. Meston School Society vs Kashi Nath Misra on 19 September, 1950**

**Equivalent citations: AIR1951ALL558, AIR 1951 ALLAHABAD 558**

### **JUDGMENT**

1. These two connected appeals arise out of two orders of injunction passed in a suit brought by the respondent Shri Kashi Nath Misra against the appellant L.D. Meston School Society, Ballia, for a declaration that a resolution passed by the appellant society on 21-6-1950 was "illegal, ultra vires and ineffective" and that Pt. Sita Ram Chaturvedi, Principal, of a college which is managed by the appellant society could not be asked to make over a charge of his office. The facts briefly stated are as follows :

2. There is a college known as Satish Chandra College at Ballia. The appellant is a society which manages the college. The society is managed by a managing committee consisting of 21 members, of whom six are life members, the collector and the principal are ex officio members and 13 are elected members. Pt. Sita Ram Chaturvedi was appointed as Principal of the college by the managing committee on probation for one year, and he took over charge on 8-7-1948. By another resolution In 1949, his term was extended for another year. On 21-6-1950 the managing committee purported to pass a resolution terminating the services of Pt. Sita Ram Chaturvedi with effect from that date. The College reopened after the summer vacations on 10-7-1950. Before it re-opened, however, and before the year for which Pt. Sita Ram Chaturvedi's term of service which had been extended for one year expired, the managing committee passed another resolution on 28-6-1950 appointing Dr. Kapil Deo Upadhyaya as the Acting Principal of the College. It is not denied that Dr. Kapil Deo Upadhyaya commenced to enrol students from 1-7-1950 and otherwise to act as Principal.

3. The plaintiff respondent, who is one of the members of the Society and who does not appear to have been present in the meeting of the managing committee on 21-6-1950, filed a suit which has given rise to these appeals on 8-7-1950, for the declaration already mentioned. He alleged that the resolution of the managing committee of 21-6-1950 was not a valid resolution for several reasons. On the same date, he moved an application for a temporary injunction. His prayer in this application was that the defendant be restrained "from taking over the charge of office from Pt. Sita Ram Chaturvedi, Principal, Satish Chandra College, Ballia." In para. 6 of the plaint, he had stated that Pt. Sita Ram Chaturvedi was, since the time of his appointment, working as Principal of Satish Chandra College, Ballia. The plaintiff, therefore, assumed that Pt. Sita Ram Chaturvedi was still acting as a Principal and that nobody else was acting in his place.

4. The lower Court passed an ex parte order of injunction on the same date. The order was in these terms :

"Plaintiff's application for issuing interim injunction. The affidavit shows good cause.  
Issue injunction subject to objections by 2-8-1950".

5. On 10-7-1950, two applications were made to the Court. One was by the plaintiff himself complaining that the injunction issued by the Court on 8th of July was not being respected by the defendant because Pt. Sita Ram Chaturvedi was not being allowed to work as Principal. Another application was made by the defendant praying that the ex parte order passed by the Court may be recalled and stating that there was no occasion for passing the order because Dr. Kapil Deo Upadhyya had already been appointed acting Principal of the College and that he was actually acting as such. The Court ordered the defendant to file a reply to the plaintiff's application. The defendant filed objections to the plaintiff's complaint on 15-7-1950 and stated that the facts mentioned by the plaintiff were not true, and that there had been no disobedience of the order of injunction.

6. On 18-7-1950 the plaintiff made another application complaining that the Court's order had not yet been complied with. The Court ordered the defendant to state certain facts to make the position clear. These facts were : (1) What is the name of the official in charge of the College? (2) Whether the College registers are in the custody of Pt. Sita Ram Chaturvedi and has he made any entries in them ? (3) Whether he has access to the College office and to deal with correspondence, etc.?

7. The defendant made a reply to these questions on the 21st of July. It was stated that Dr. Kapil Deo Upadhyya was acting as Principal, that the College registers were in custody not of Pt. Sita Ram Chaturvedi but of Dr. Kapil Deo Upadhyya and that, although Pt. Sita Ram Chaturvedi was not being stopped by anybody to have access to the College office and registers, in fact the College office was being managed by Dr. Kapil Deo Upadhyya. The Court then passed an order on 26-7-1950 confirming its ex parte order of the 8th of July and making it more explicit by saying that the defendant society were restrained from "taking over charge of the office of the Principal from Pt. Sita Ram Chaturvedi and in his functioning as the full-fledged Principal of the Satish Chandra College, Ballia, as he did prior to the passing of the resolution dated 21-6-1950, till the disposal of this suit". In the order the Court stated that it was not finally disposing of the application of the defendant made on 10th of July for recalling the ex parte order of 8-7-1950. Against the orders of 8-7-1950 and 26-7-1950, the defendant has filed these two appeals in this Court.

8. A preliminary objection to the hearing of the appeals has been taken on behalf of the plaintiff respondent. It is urged that both the orders appealed against were ad interim orders and not final orders and, as such no appeal lies against them. There is no force in this contention.

9. A reading of Rules 1, 2, 3 and 4 of Order 39, Civil P. C., shows that the procedure laid down by the Code is as follows: When an application is made by a party for the issue of an injunction under Rule 1 or Rule 2 of Order 39, the Court is directed by Rule 3 to issue notice to the opposite party except when it considers that the delay in issuing the injunction will defeat the object of granting an injunction. If the Court finds that the object of granting an injunction will be defeated by the delay, it is authorised to pass an ex parte order of injunction. When it passes an ex parte order of injunction, no notice is provided for to be issued to the opposite party. But the opposite party is given an opportunity under Rule 4 to move the Court for the discharge, variation or setting aside of the order of injunction issued ex parte. It follows, therefore, that when the Court passes an ex parte order after exercising the discretion vested in it under Rule 3, it passes an order under Rule 1 or Rule 2; and as the Court does not contemplate that notice be issued to the opposite party of the

application made under Rule 1 or Rule 2, when the Court decides to proceed ex parte, the application is for the time being finally disposed of, liberty being reserved to the other side to make an application under Rule 4. Whenever, therefore, a Court passes an ex parte order of injunction, it is to be construed as an order passed under Rule 1 or 2 and, as such, an appeal lies under Order 43, Rule 1 (r), Civil P. C. There is an authority in support of this view, vide *Amolak Ram v. Sahib Singh*, 7 ALL. 550: U885 A. W. N. 128).

10. On the merits of the appeals, it has been urged by Mr. Kanhaiya Lal Misra that the orders passed by the Court below could not be maintained. He has taken several points in support of his case. But it is not necessary to deal with all of them, as our observations may affect the decision of the suit itself. It is enough to deal with two of the points urged by Mr. Misra and which, in our opinion, are decisive of the appeals.

11. It will be observed that after passing the resolution of 21-6-1950 (we are not at the moment concerned with its validity), the managing committee proceeded to pass another resolution on 28-6-1950 appointing Dr. Kapil Deo Upadhyaya as the acting Principal. It is not disputed that this meeting was held by the managing committee and that Dr. Kapil Deo was so appointed. It is the defendant's case that Dr. Kapil Deo Upadhyaya did commence to discharge his duties from 1-7-1950. This fact is also not denied on behalf of the plaintiff respondent. In view of these facts it is quite clear that Pt. Sita Ram Chaturvedi had in fact been dislodged from his position of Principal before the suit was instituted on 8-7-1950 and that he was no longer in possession of his office. Both in the plaint and in the application for the issue of an order of injunction, as we have already stated, an assumption was made that Pt. Sita Ram Chaturvedi was still in charge of his office. This assumption was erroneous. Whatever his position in the eye of law may be, we are not expressing any opinion in the matter. In actual fact, Pt. Sita Ram Chaturvedi had ceased to function as a Principal. In the circumstances, an order of injunction restraining the appellant from "taking over charge of the office from Pt. Sita Ram Chaturvedi" was fruitless.

12. The subsequent order of 26-7-1950 restraining the defendant appellant from taking over charge of the office of Principal from Pt. Sita Ram Chaturvedi and in his functioning as a full-fledged Principal of Satish Chandra College, Ballia, as he did prior to the passing of the resolution dated 21-6-1950, went clearly beyond the prayer made in the original application for the issue of an injunction. If Pt. Sita Ram Chaturvedi had in fact ceased to function as a full-fledged Principal of Satish Chandra College, as he used to function prior to the passing of the resolution dated 21-6-1950, the Court below had no jurisdiction to pass the order which it did. In a suit for declaration, where no relief for a mandatory injunction, such as the one granted by the Court below on 26-6-1950, is prayed for, the Court has jurisdiction to issue an injunction merely to preserve the status quo. It has no jurisdiction to deprive one person from the possession of a certain property, which he holds, or to give possession to one party after taking it away from another.

13. Again it may be noticed that neither Pt. Sita Ram Chaturvedi nor Dr. Kapil Deo Upadhyaya was a party to the suit. The injunction that was prayed for was for the benefit of Pt. Sita Ram Chaturvedi and was to operate as against Dr. Kapil Deo Upadhyaya. None of them being parties to the suit, it is obvious that no such injunction could be issued. For both these reasons, we think that the orders

passed by the Court below were wholly unjustified. They must, therefore, be set aside.

14. The Court below observed in its judgment that it was not deciding the objections of the appellant which it had filed on 10-7-1950. The procedure adopted by the Court below was not justified in the circumstances of the case. When an ex parte injunction is issued against a party, and the party applies under Rule 4 for the discharge, variation or setting aside of the order, it is the duty of the Court to decide the objections raised by the opposite party to the passing of the order of injunction. The defendant-appellant had raised a point which went to the root of the matter, namely, that Pt. Sita Ram Chaturvedi was not acting as a Principal of the College at all and that before the suit was filed, Dr. Kapil Deo Upadhya had already taken charge of the College. The lower Court should have gone into this matter and, if it found that this was so, in fact, it should have had no hesitation in withdrawing its order of 8-7-1950, and in rejecting the plaintiff's applications complaining about the disregard of the order of injunction. As the point has not been disputed before us, we think that we can decide the application for injunction made by the plaintiff and the application of the defendant made on 10-7-1950.

15. We, therefore, set aside the orders of the Court below dated 8-7-1950 and 26-7-1950, and dismiss the applications of the plaintiff filed for the issue of an order of injunction, and complaining that the defendant had not complied with the order of injunction.

16. The defendant will have its costs from the plaintiff in both the Courts.

17. A copy of the judgment may be delivered to the parties on payment of usual charges.