

# **Mool Chandra Jain vs Jagdish Chandra Joshi on 24 August, 1954**

**Equivalent citations: AIR1955ALL385, AIR 1955 ALLAHABAD 385**

**Author: Raghubar Dayal**

**Bench: Raghubar Dayal, V. Bhargava**

## **JUDGMENT**

Raghubar Dayal, J.

1. A decree for perpetual injunction was passed in Original Suit No. 1 of 1948 in the Court of the District Judge of Kumaun on 8-7-1949, restraining the defendants and others from claiming any right over the part of Badreshwar property specified in the schedule attached to the plaint or using it for any purpose whatsoever without the plaintiffs' permission. The plaintiffs were Jagdish Chandra Joshi and others, while the defendants were ten persons, which did not include Mool Chandra Jain. The suit was, however, a representative suit under Order 1, Rule 8, C. P. C., and the necessary steps for making the suit representative had been taken.

2. In September and October 1949 Ramlila celebrations took place at Almora. Mool Chandra Jain was the Secretary of the Committee managing the celebrations. In spite of the Civil Court decree it appears that a section of the people was not amenable to obey it and the district authorities failing to bring about an amicable settlement between the persons inclined to celebrate the Ramlila on the piece of land known as Badreshwar issued an order under Section 144, Criminal P. C., forbidding interference by anyone with the entry of the Ravan procession into the Badreshwar property and from carrying weapons. On 1-10-1949, a Ramlila processsion reached the disputed land and a number of people estimated to be 1500 watched the burning of the effigy of Ravan on that land. Mool Chandra Jain led the procession and was in charge of the management.

3. The decree-holders applied for the enforce ment of the decree of perpetual injunction by com mitting Mool Chandra Jain to civil prison or by attacnment of his property. Mool Chandra Jain contested the execution application on the ground that he had no knowledge of the Civil Court decree. Evidence was recorded and the Court held that Mool Chancira Jain had knowledge about the Civil Court decree. It also considered the other objections of Mool Chandra ana decid ed them against him. The objections were that he acted under orders of the District Magistrate and that he did not actually enter the Badreshwar property but remained at the gate. The Court, therefore, ordered him to be detained in civil pri son for one month. It is against this order that this first appeal has been filed by Mool Chancira Jain.

4. The learned counsel for the appellant has not questioned the finding about the appellant's having knowledge of the decree. There is ample evidence on the record that he knew of the decree and wanted the entry of that procession to that land in spite of the decree in view of the demand and the right of the people. The finding that he did not act under the orders of the District Magistrate is also not challenged. What is contended here is that Mool Chandra Jain did not actually enter the Badreshwar property and therefore did not disobey the decree for perpetual injunction. The decree-holder's alleged in the application for execution that he disobeyed the decree and used the property without their permission.

The written reply filed by the appellant did not allege that he had not entered upon that property. No issue was framed with respect to his entry over the disputed property. One of the appellant's witnesses did, however, state that Mool Chandra remained standing at the Badreshwar gate and did not enter it. The solitary witness examined for the decree-holders stated that he did not see him enter that property. No finding on this question can be given in the absence of an issue and of a fair opportunity to the parties to lead all possible evidence on this question.

It appears to us that it was not necessary for Mool Chandra to disobey the decree that he should actually enter on the Badreshwar property. The decree prohibited persons from claiming any right over that property or using that property for any purpose without the permission of the plaintiffs. The evidence on the record establishes that Mool Chandra did claim the right to celebrate the Ramlila over this property and that he was one of the persons who did use that land by burning the effigy of Ravan on it on 1-10-1949. The mere fact, if it be true, that Mool Chandra did not enter on the property makes no difference to the question that he did use the land for a certain purpose without the permission of the decree-holders.

5. The contention concerning the view of the Court below about the appellant's disobeying the injunction decree on account of his abetting the others to disobey has also not been pressed.

6. It was further submitted for the appellant that this decree for perpetual injunction could not be enforced against him personally, and reliance is placed on certain cases of the Madras High Court. The first case referred is -- 'Nandaramdas v. Zulika Bibi', AIR 1943 Mad 531 (A). It was held in this case that the persons not actually impleaded in the suit are not to be deemed parties for certain purposes. That is not the point before us. In -- 'Sahib Thambi v. Hamid', 36 Mad 414 (B), it was observed in connection with the view that a certain judgment could not bind certain persons in any event with respect to partnership property in their hands and it was not alleged that they were in possession of any such property that "The general rule of law, undoubtedly, is, that in suits where one person is allowed to represent others as defendant in a representative capacity and decree passed can bind those others only with respect to the property of those others which he can in law represent and no personal decree can be passed against them, although the parties on record 'eo nomine' may be made personally liable.

This is the principle applied in suits against a Hindu family as represented by its managing member and in suits to which Order 1, Rule 8, Civil P. C., 1908, is applicable. It has consequently been held that an injunction in a decree in the latter class of cases is not binding on those who are not actually

parties to the record. See: -- 'Sadagopachari v. Krishnamachari', 12 Mad 356 (C); and -- 'Srinivasa Aiyangar v. Arayar Srinivasa Aiyangar', 33 Mad 483 (D)."

The sole purpose of a representative suit is that a decision in that suit should bind the persons who were not actually before the Court as parties but who are allowed to be represented by those who were actually before the Court as parties. It is not contended for the appellant and It has not been held in any case that the persons not actually impleaded as parties but being represented by others in the suit are not bound by the decree passed.

The observations were made in the setting of the facts of that case which related to certain property and would be of general application if they were to say that in suits where one person is allowed to represent others as defendant in a representative capacity any decree passed can bind those others only with respect to the findings on questions which were for consideration as against the persons who were allowed to be represented by the persons actually on the record.

It is clear that findings on questions which were not agitated against the persons so represented could not be binding on them as those findings were not obtained against them but were obtained against only those persons who were actually on the record as parties. The two cases referred to in the observation do not actually decide that a decree for injunction is not binding on those persons who are not actually parties to the suit but are represented by others in a representative suit under the provisions of Order 1, Rule 8, Civil P. O.

7. The case reported in '12 Mad 356 C.', dealt with a decree of 1828, which was passed in favour of 10 Tadagalai Brahmins plaintiffs against 13 Tengalai Brahmins residing in a certain village. That suit was not a representative suit and therefore the decree treated as a decree for injunction was not held binding on persons who were not actually parties to that suit. That case cannot, therefore, be any authority for the view that a decree for injunction in a proper suit under Order 1, Rule 8, C. P. C. will not bind the persons represented in that suit by those actually parties on the record,

8. The case reported in '33 Mad 483 (D)', was not a case in which a decree for injunction was passed against the actual parties as well as against others represented by them. The decree for injunction was restricted to the actual defendants in the suit. In the circumstances, it could not have been enforceable against those who were not the actual defendants.

9. Both these Madras cases were considered and explained in -- 'Waryam Singha v. Sher Singh', AIR 1942 Lah 136 (E), which fully supports the view of the Court below and goes against the contention for the appellant and holds that a decree for injunction obtained in a representative suit is executable against the defendants who are represented by other persons selected to represent them under Order 1, Rule 8, C. P. C. Reliance for this view was placed on the cases reported in -- 'Kamal Kutti v. Ibrayi' 24 Mad 658 (F); and -- 'Marivittil Mathu Amma v. Pathram Kunnot Cherukot', 30 Mad 215 (G). Both these cases, we may mention, do not appear to have been cases in connection with a decree for injunction.

10. The last case referred to for the appellant is -- 'Harischandra Khanderao v. A.S. Craig', AIR 1942 Bom 136 (H). That too did not deal with the disobedience of a decree for injunction.

11. We are of opinion that there exists no good reason why a decree for perpetual injunction in Lal was misled not only by the first Pull Bench a representative suit under Order 1, Rule 8, C. P. C., should not be binding on the parties not actually impleaded but represented by those actually on the record. As already mentioned, the so object of such a suit is to bind those persons with the decree passed in the suit. We, therefore, hold that the appellant was bound by the decree for perpetual injunction.

12. Lastly, it was urged for the appellant that Order 21, Rule 32, C. P. C., provides for the enforcement of the decree by the commitment of the person disobeying to the civil prison or by attachment of property and that the Court below should have proceeded against the property. There is nothing in this rule which should compel the Court to proceed against the property in preference to committing the defaulter to prison. In fact, the rule first mentions commitment to prison and then mentions the alternative of attachment of property and also provides that the decree can be enforced by both commitment and attachment. We, therefore, do not consider any force in this contention either.

13. In view of the above the order of the Court below is perfectly correct. We, therefore, dismiss the appeal with costs. The stay order is vacated.