Kanhaiya Lal Bhargava And Anr. vs Banshi Lal And Ors. on 17 February, 1950

Equivalent citations: AIR1950ALL444, AIR 1950 ALLAHABAD 444

JUDGMENT

Mushtaq Ahmad, J.

1. The first of these three appeals was filed by a creditor and the other two were filed by non-applicant-debtors against orders passed in certain proceedings under the U. P. Encumbered Estates Act. These were orders on applications for injunction made by certain debtors who had not joined in the application under Section 4 of the Act. The circumstances in which those applications and orders were respectively made and passed would appear from the following.

2. The Calcutta High Court in 1936 passed a decree No. 825 of that year, in favour of Pt. Kanhaiya Lal Bhargava and his son, the appellants in appeal No. 278 of 1948, jointly against about 45 persons, descendents of the same ancestor. There had been a suit for partition amongst those persons instituted in 1926 by some of them against the others, in which a preliminary decree was passed the following year and the final decree much later in 1939. In this partition suit, the various persons were arrayed as belonging to different branches, (1) the plaintiff, (2) the Naini branch, (3) the Calcutta branch, (4) the Banaras branch and (6) Baij Nath.

3. On 9th September 1935, Baij Nath, one of the defendants in the said suit, and certain others applied under Section 4, Encumbered Estates Act, the case being No. 25 of 1935, without disclosing the debt due to Kanhaia Lal appellants, this being actually disclosed later.

4. Amongst the debts mentioned in those proceedings, besides the debt due to Kanhaiya Lal, were the amounts due on a decree No. 646 of 1936, held by one Parshottam Das Gujrati and on a decree No. 952 of 1935, held by one Ghanshiam Das Bhagat both of the Calcutta High Court. There were thus three decrees passed by that Court which emerged for consideration in those proceedings, one held by Kanhaiya Lal, another by Parshottam Das Gujrati and the last by Ghanshiam Das Bhagat.

5. The last two decree-holders tried to execute their decrees by having receivers appointed for the satisfaction of the same, a receiver being actually appointed in the case of Parshottam Dass Gujrati. The receiver was authorised by the Calcutta High Court on the execution side to recover the profits due to Bansi Lal and others from the Ratna Sugar Mills, Jaunpur, towards the satisfaction of the decree of Parshottam Das.

6. This was the situation when Bansi Lal and others applied for injunction to the Special Judge in each of the two cases, one relating to the execution of the decree of Parshottam Das and the other to

the execution of the decree of Ghanshiam Das, out of which the two connected appeals NOS. 14 and 15 of 1947 have arisen. Injunction having been refused by that learned Judge, those persons filed the said appeals. They then applied to this Court for a temporary injunction on the lines on which they had prayed to the Special Judge for the same relief, impleading Kanhaiya Lal and his son, decree holders appellants in appeal No. 278 of 1948 also, as respondents, of course having already impleaded them as respondents in their respective appeals. A temporary injunction was issued, but, on Kanhaiya Lal and his son appearing and showing cause in this Court against that order, it was discharged so far as they were concerned, Bansi Lal and others then approached the Special Judge with an application for injunction to restrain Kanhaiya Lal and his son also from executing their decree of the Calcutta High Court. That application was allowed by the successor in office of the former Special Judge in a surprisingly short and ex parte order. The learned Judge this time did not consider the merits of the case at all and all that lie said was that in his thinking "the injunction is essential". This order is the subject of appeal No. 278 of 1948.

7. The arguments before us on each side have covered a vast range raising some very interesting questions of Constitutional Law, in particular, as regards the power of a Court in these provinces to modify a decree passed by a Court of another province. Reliance was placed by the learned counsel on various cases of this and other Courts and also on the provisions of Section 2, Decrees and Orders Validating Act v [5] of 1936. Having given our careful thought to these authorities, we have come to the conclusion that it would be more or less academic to discuss the various aspects of law placed before us during the arguments, inasmuch as the appeals admit of a satisfactory disposal by a simple approach.

8. The applications made in the Court of the Special Judge for restraining the decree-holders from executing their decrees were expressly, in the case of each, for an injunction. They were made in proceedings under the Encumbered Estates Act. The entire Code of Civil Procedure applied to those proceedings under the amended Rule 6 made under the Act. For this reason, the applications had to come under the provisions of Order 39 of the Code. From the elaborate arguments addressed to us by the learned counsel for the debtors, it is quite obvious that the fact of these applications having been made under Order 39 of the Code is positively admitted, though it was some time also suggested that the applications could be conceived as those under Section 151 of the Code. If the applications were made under Order 39, it is obvious that they could not be claimed at the same time to have been made under Section 151 of the Code, it being admitted that that section would apply only if there was no other provision in the Code applicable.

9. For the applicability of Order 39, it cannot be denied that the damage suggested or alleged must be to the property which is the subject matter of the dispute in the suit in which the application for an injunction is made. It will be recalled that the applications in these cases were made by persons other than those who had appllied under Section 4, U. P. Encumbered Estates Act. It was the property only of those applicants which could be deemed to have been in dispute in the proceedings under that Act. In no sense could it be said that Bansi Lal and others who had moved the Special Judge to issue injunctions were alleging any damage to any property forming part of the subject-matter of the proceedings before the Special Judge. Indeed, it would be difficult to say whether these men, by virtue of those applications, at all raised any point with reference to any

property. All that they said was that the decree-holders should be rest-rained from executing their decrees until the liability created by those decrees had been apportioned amongst the debtors. It is only in a remote sense and that only by taking into account the ultimate contingency of the decree, holders proceeding against the property of those persons that it can be said that they were raising a question of damage to their properties. This would not be within the spirit or meaning of the provisions of Order 39, Civil P. C. We therefore, think that there was an initial difficulty in the way of those debtors in seeking the protection of the provisions of this order.

10. If Order 39 of the Code, therefore, did not apply, and no injunction could be if sued against the decree-holders on an application made under this Order in the absence of circumstances rendering its provisions applicable, the applications for injunction ought to have been dismissed on that very ground. In two of the cases, as we have seen, the learned Special Judge refused injunction and in the third his successor-in-office allowed it. Besides, if Order 39 did not apply in anyone of these cases the orders, passed would be governed by the same incidents, that is to say, no appeal lay to this Court against any one of them. The orders allowing or refusing injunction to be appealable under Order 43 must be orders under Order 39 of the Code. An order not covered by Order 39 would not be appealable at least under the Code.

11. In the present appeals, however, it was vehemently argued by Mr. Gopinath Kunzru, learned counsel for the debtors, that the orders under appeal should be treated as appealable under Section 45, Encumbered Estates Act, that is to say, he contended, that they ware each an order "finally disposing of the case of a Special Judge". In the first place, the memoranda of appeal filed in these cases were headed by Order 43. Civil P. C., thereby implying that the orders under appeals, were treated by the appellants themselves as those passed under Order 39 of the Code and no other provision of law. In the second place, a prayer for injunction not being provided for expressly within the ambit of the U. P. Encumbered Estates Act and the provisions therein contained being intended for achieving definite and specified reliefs, for instance, those of getting recognition of money claims or of title to immovable property, it is highly debatable whether the subsidiary relief such as one of injunction would be embraced by the word "case" in Section 45 of the Act, or rather the word would have reference only to the reliefs we have just mentioned. If the word 'case' were conceived in a more generic sense so as to apply to a matter of injunction also, and the same is claimable even on grounds other than those set forth in Order 39, that would be necessarily adding to the provisions of the said Order. This would be hardly permissible. Where the legislature have granted a relief in certain prescribed cases without using the words "and for any other cause" or "for other sufficient reasons" or "otherwise", and they have stopped short after mentioning certain definite contingencies in which alone the relief can be claimed, it would not be right or proper to bold that the same relief could be granted even in cases falling outside those contingencies. And yet this would be the result, if, assuming the word "case" in Section 45, U. P. Encumbered Estates Act embraces an application for injunction, the Court were to hear an appeal against an order on an application for injunction, though the same may have been made on grounds other than those mentioned in Order 39 of the Code.

12. We, therefore, think that these appeals would not be covered by Section 45 of this Act and they had to be justified as falling within Order 43, Rule 1 (r) of the Civil P. C.

13. We have, therefore, come to the conclusion that none of these appeals are competent. This being so, appeals NOS. 14 and 16 of 1947 are hereby dismissed with costs.

14. In view of our finding that none of these appeals lay to this Court, and we having noticed that the learned Special Judge in Kanhaiya Lal's case went wrong in issuing an injunction against him, we have decided to treat the appeal No. 278 of 1948 as a revision, the learned Judge having gone beyond his jurisdiction in passing the order under appeal. We therefore allow the revision, set aside the order of the Court below and dismiss the application for injunction made by Bansi Lal and others with costs to the applicants (Kanhaiya Lal and his son).