

Vir Bhan v. Surjan Singh (J. S. Sekhon, J.)

the Act. Even otherwise wherever two interpretations are possible, the one which favours the subject of the State should be put upon the relevant statute. This is the precise requirement of the law as well as the equity.' In view thereof, it is held that the application for reference in the present case is within time.

(8) As regards the question of enhancement, the learned District Judge, has paid only that much of the compensation which was the price paid by Yog Raj father of the appellant for purchasing the disputed land. Admittedly a period of three years had elapsed between the date of the sale transaction and the notification under Section 14 of the Act. By taking judicial notice of the price rise, I am of the view that the appellant is entitled to Re. 1 per square yard per year. The claimant is, therefore, entitled to the enhancement by Rs. 3 per square yard over and above the compensation determined by the learned District Judge. The appellant shall further be entitled to other statutory benefits under the amended sections of 23 (1-A), 23(2) and 28 of the Act. The amount would be recalculated by the learned District Judge before whom the parties are directed to appear on January 19, 1989. The appellant shall also be entitled to proportionate costs of these appeals. The counsel's fee stands quantified at Rs. 1000 in both the appeals. As a consequence of the acceptance of the appeal of the claimant, State Appeal No. 1372 of 1985 would stand dismissed.

For the foregoing reasons the appeal filed by the Appellant-claimant i.e. R.F.A. No. 818 of 1985 is allowed whereas the State appeal i.e. R.F.A. No. 1372 of 1985 is dismissed.

S.C.K.

Before J. S. Sekhon, J.

VIR BHAN,—*Petitioner.*

versus

SURJAN SINGH,—*Respondent.*

Civil Revision No. 505 of 1980.

December 19, 1988.

Code of Civil Procedure (V of 1908)—O. 38, Rl. 5 and O. 39, Rl. 2A—Suit for recovery of money—Application for attachment before judgement—Court issuing interim injunction—Wilful disobedience

by defendants—Application for punishing defendant for such disobedience—Maintainability of such application.

Held, that in a suit for recovery of some money on an application under the provisions of Order 38, Rule 5 of the Code of Civil Procedure, 1908 the Civil Court could have either attached the property of the defendant proportionate to the amount of decree or obtained a requisite security for complying with the decree ultimately to be passed, but strange enough the trial court has gone against the mandatory provisions of Sub-Rule (4) of Rule 5 of the Order 38 of the Code in restraining the defendant from alienating his property. The order of trial Court being void *ab initio*, its wilful violation would not amount to Contempt of the Court.

(Paras 4, 5).

Petition Under Section 44 of the Punjab Courts Act as amended upto date applicable to Haryana, for revision of the order of the Court of Shri R. D. Aneja, HCS, Senior Sub Judge, Karnal, dated 10th December, 1979, dismissing the petition with no order as to costs.

S. K. Goyal, Advocate, for the petitioner.

Nemo, for the respondents.

JUDGMENT

Jai Singh Sekhon, J.

(1) This civil revision is directed against the order dated 10th December, 1979 of the Senior Subordinate Judge, Karnal, dismissing the application of the petitioner for taking up contempt proceedings against the respondent under the provisions of rule 2-A of Order 39 of the Code of Civil Procedure, for having wilfully disobeyed the injunction order of the trial Court by creating charge of mortgage over his agricultural land situated in village Kalal Majra.

(2) In brief, the facts are that Vir Bhan plaintiff-petitioner filed a suit for recovery of Rs. 8160 against the defendant-respondent on 29th August, 1972. He also moved an application under Order 38 Rule 5 of the Code of Civil Procedure for attachment of the property of the defendant before judgment. The Senior Subordinate Judge, Karnal,—*vide* his order dated 30th August, 1972 ordered the issuance of the notice to the defendant for 3rd November, 1972 and in the meanwhile granted *ex parte* injunction restraining the defendant from alienating the immovable property. The defendant appeared

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in the Court on 3rd November, 1972 and filed reply to the application and the proceedings were adjourned to 4th December, 1972. The defendant, however, mortgaged his land on 12th January, 1973 and on 17th January, 1973. The plaintiff then moved an application under Order 39 Rule 2-A of the Code of Civil Procedure for taking action against the defendant for his wilful disobedience of the injunction order. The trial Court decreed the suit of the plaintiff on 31st January, 1974, but without passing any order on this application. Again, the plaintiff moved an application on 25th March, 1974 for taking appropriate action on the application earlier filed by him under Order 39 Rule 2-A of the Code of Civil Procedure against the defendant. Mr. B. K. Gupta, Subordinate Judge III Class, Karnal,—vide his order dated 16th August, 1977, after appraising evidence led by both the parties, held the defendant-respondents having wilfully violated the above referred order and sentenced to undergo civil imprisonment for three months. This order was set aside by the learned Additional District Judge, Kurukshetra and the case was remanded to the Court of Senior Subordinate Judge, Karnal by holding that the Court of Shri B. K. Gupta had no jurisdiction to pass the said order. Ultimately, the application of the petitioner was dismissed by holding that under the provisions of Order 38 Rule 5 of the Code of Civil Procedure, the Court could either call upon the defendant to furnish security for the satisfaction of the decree that may be passed or attach his property, but no such course was adopted by the said Court. Being aggrieved against the said order, the petitioner has come up in revision petition before this Court.

(3) The respondent has failed to turn up despite service and as such there is no option but to dispose of this matter in his absence.

(4) Mr. S. K. Goyal, learned counsel for the petitioner, contended that the moment the trial Court had come to the conclusion that the respondent has wilfully disobeyed the order of the Court, he should have punished him under the provisions of Order 39 Rule 2-A of the Code of Civil Procedure or under the Contempt of Courts Act, 1971. I fail to agree with him, as the original order of restraining the defendant from alienating his land could not be passed under the provisions of Order 38 Rule 5 of the Code of Civil Procedure, which only provides attachment of the property before judgment or for furnishing adequate security. Clause (b) of sub-rule (1) of Rule 5 further circumscribe the limit of attachment of the property to the extent which may be sufficient to satisfy the decree. Sub-rule (2) further provides that the plaintiff was to specify the

property required to be attached and the estimated value thereof, Sub-rule (3) further directs that the Court may order that the conditional attachment of the whole or any portion of the property so specified. Sub-rule (4) further provides that if attachment is made in contravention of the provisions of sub-rule (1), the same shall be void. Under these circumstances, in a suit for recovery of some money on an application under the provisions of Order 38 Rule 5 of the Code of Civil Procedure, the Civil Court could have either attached the property of the defendant proportionate to the amount of decree or obtained a requisite security for complying with the decree ultimately to be passed, but strange enough the trial Court has gone against the mandatory provisions of Sub-rule (4) of Rule 5 of Order 38 of the Code of Civil Procedure, in restraining the defendant from alienating his property.

(5) In view of the factum that the order of the trial Court being *void ab initio*, its wilful violation would not amount to contempt of the Court. Thus, there being no merit in this petition, it is hereby dismissed.

S.C.K.

Before S. S. Kang and A. L. Bahri, JJ.

AMAR SINGH,—*Petitioner.*

versus

PERHLAD AND OTHERS,—*Respondents.*

Civil Revision No. 845 of 1987.

October 4, 1988.

Code of Civil Procedure (V of 1908)—Ss. 35, 115 and O. 6, Rule 17—Evidence Act (I of 1872)—S. 115—Amendment of plaint allowed subject to costs—Defendant accepting costs awarded under protest—Act of acceptance of costs—Whether estops defendant from challenging order allowing amendment.

Held, that the petitioner having accepted costs awarded in the order while allowing amendment of the plaint further mentioned that he was accepting the amount under protest. This was a unilateral act on the part of the petitioner. Even if he had not accepted