

Dalip Kaur and others v. Harbans Singh (S. P. Goyal, J.)

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discharge on the ground of absence of the complainant. I have already pointed out that in view of the distinction between sections 249 and 259 of the Code of Criminal Procedure in regard to death of the complainant being considered as absence of the complainant in a case where section 249 of the Code comes into play the death of the complainant may not amount to absence of the complainant. But, even if it is, for the sake of argument, assumed that it amounts to absence of a complainant, then in such circumstances if the Magistrate discharges the accused, it would certainly not amount to exercise of judicial discretion because such an order would not advance or cause injustice but would cause miscarriage of justice."

(5) In view of the interpretation of Section 249 of the Code, it is clear that this provision applies only to a case where the complainant is absent and in that case too the discretion is given to the trial Court to discharge the accused or to continue the proceedings. In a case where the complainant dies this provision is not attracted. The trial Court in this case in the ends of justice allowed Dalip Singh father of the complainant deceased to continue the proceedings in the complaint and the discretion has been judicially exercised by the trial Court. No illegality has been pointed out and the order of the trial Court was justified. I affirm the same and dismiss the present petition.

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S.C.K.

*Before S. P. Goyal, J.*

DALIP KAUR and others,—*Petitioners.*

*versus*

HARBANS SINGH,—*Respondent.*

*Civil Revision No. 1702 of 1986.*

May 15, 1987.

*Code of Civil Procedure (V of 1908)—Order XXI, Rule 32—Decree for injunction disobeyed by Judgment-Debtor and third party—Proceedings against third party under the said Rule—Sale made in disobedience of the decree—Setting aside of such sale—Jurisdiction of executing Court.*

*Held*, that the proceedings under Order 21, Rule 32 of the Code of Civil Procedure, 1908, are execution proceedings and order of attachment of property or detention in civil prison can be passed only against the judgment-debtor and not a third party. There is also no jurisdiction under the said rule to set aside any sale made in disobedience of the decree of injunction. (Para 2).

*Petition under section 115 C.P.C. against the order of the Court of Shri L. N. Mittal, Senior Sub-Judge, Kurukshetra, dated 3rd March, 1986, setting aside the sale deed dated 8th April, 1983 registered on 11th April, 1983 and declaring that the same shall have no effect against the rights of the applicant in the suit land. Secondly, punishment has also to be given to respondents 1, 2 and 6 under Order 21, Rule 32, C.P.C., for disobeying the decree. Further ordering that the salary of respondent No. 6 be attached. And also ordering that the suit land be also attached. Other property of respondent No. 1 and 2 be also attached on filing list of property and passing an order for detention of respondents Nos. 1, 2 and 6 in Civil prison. and dismissing the application against respondents No. 3 to 5 and 7.*

S. P. Sharma, Advocate. for the Petitioners.

Nemo. for the respondent.

#### JUDGMENT

S. P. Goyal, J.

(1) Harbans Singh respondent entered into an agreement dated March 25, 1982 with Smt. Dalip Kaur petitioner No. 1 whereby the latter agreed to sell the land measuring 30 *kanals*, 9 *marlas* for consideration of Rs. 55,000. He filed a suit for permanent injunction restraining her from alienating the said land in which a consent decree was passed on January 21, 1983. In spite thereof petitioner No. 1 sold the land and executed sale deed in favour of petitioner No. 2 on August 4, 1983. When the deed was presented to the Sub Registrar for registration, Harbans Singh appeared there and apprised him of the decree. Still the deed was registered. So he moved the present application for execution of the decree and for taking contempt proceedings. Respondent Nos. 1 and 6 only seem to have filed their replies who admitted the factum of the sale but denied the existence and knowledge of the alleged decree. The Executing Court exonerated respondents Nos. 3 to 5 and 7; holding respondents Nos. 1, 2 and 6 (now petitioners Nos. 1, 2 and 6) guilty of the disobedience of the decree, set aside the sale and ordered the attachment of the salary of petitioner No. 6 and attachment of the suit land as well as other

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property of petitioners Nos. 1 and 2. Aggrieved thereby all the respondents in the executing court have come up in this revision although the prayer against petitioners Nos. 3, 4, 5 and 7 for taking action had been declined.

(2) The proceedings under Order 21, Rule 32 of the Code of Civil Procedure are execution proceedings and order of attachment of property or detention in civil prison can be passed only against the judgment debtor and not a third party. There is also no jurisdiction under the said rule to set aside any sale made in disobedience of the decree of injunction. So, the order made against petitioners Nos. 2 and 6 for the attachment of the salary, the land sold and other property and the setting aside of the sale has to be quashed being wholly without jurisdiction.

(3) So far as the judgment debtor is concerned, he can be ordered to be detained in civil prison or his property attached, but that too can be done only for the enforcement of the decree. The land respecting which a decree for permanent injunction restraining petitioner No. 1 from alienating it was passed, has since been sold. It is, therefore, not possible to enforce the decree either by attachment of the property of the judgment debtor or by detaining him in civil prison. The proceedings under Rule 32 are not meant to punish the judgment debtor for disobedience of the decree. If the judgment debtor renders himself incapable of performing the decree, he may be liable to be proceeded against under the Contempt of Courts Act, but no action under Rule 32 can be taken by way of punishment to the judgment debtor.

(4) Even if for the sake of argument it may be accepted that the property of the judgment debtor could be attached or he could be detained in prison, the facts of the present case did not justify such a course to be adopted. The decree holder had sought the injunction restraining petitioner No. 1 from alienating the property because of the agreement of sale in his favour. The agreement of sale could be enforced by way of a suit for specific performance within three years. No suit, however, has been filed for the enforcement of that agreement. The decree holder, therefore, has not even an actionable claim so far as the land subject-matter of the sale is concerned. The decree for injunction was also passed in violation of the provisions of Section 41(h) of the Specific Relief Act which provides that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in

case of breach of trust. The proper and the only efficacious remedy for the respondent was to file a suit for specific performance of the agreement. If he had been put into possession in part performance of the agreement, it may have been possible for him to defend that possession by seeking a decree of permanent injunction. In the absence of the delivery of possession in part performance of the agreement, it is not possible to grant permanent injunction restraining the owner from transferring the property for all times to come. The decree holder, therefore, has no subsisting right to enforce the decree against petitioner No. 1 as well.

(5) For the reasons recorded above, this petition is allowed and the impugned order set aside. No costs.

S.C.K.

*Before R. N. Mittal and M. M. Punchhi, JJ.*

RANBIR SINGH,—*Petitioner.*

*versus*

THAPAR INSTITUTE OF ENGINEERING & TECHNOLOGY,  
PATIALA and another,—*Respondents.*

*Civil Writ Petition No. 4478 of 1986.*

May 15, 1987.

*Constitution of India, 1950—Article 226—Admission to professional course—Sports category—Candidate with higher grade sports certificate lower in merit list to another candidate—Whether has better claim to admission only on the basis of superior sports certificate—Overall merit—Whether proper criteria for admission.*

*Held*, that in order to determine *inter se* merit of sportsmen for admission to the College, weightage is given to them by adding 10 per cent, 5 per cent, 3 per cent and 2 per cent marks on the basis of their Sports Gradation Certificates to normalized qualifying marks. Thus, while determining merit of the candidates, benefit of the Sports Gradation Certificates is given to them and on the basis of that merit, they are admitted to the College. The clause nowhere provides that a sportsman having Higher Grade Sports Certificate is to be preferred for admission to the College to that who holds a