

PETITIONER:
YASHPAL SINGH

Vs.

RESPONDENT:
VIII ADDL. DISTRICT JUDGE AND ORS.

DATE OF JUDGMENT 12/03/1992

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
REDDY, K. JAYACHANDRA (J)

CITATION:
1992 SCR (2) 181 1992 SCC (2) 504
1992 SCALE (1) 696

ACT:
Code of Civil Procedure, 1908:
Order 2. Rule 32-Decree for injunction against State Government-'Party'-Wilfully failing to obey decree-Execution of decree-Whether can be enforced by attachment of property of State employee who is not part to suit.

HEADNOTE:

Respondent no. 3 obtained a decree for permanent injunction restraining the State of U.P. and its Forest Department from interfering with his rights of cutting trees on a plot of land. Later on 'X' filed a suit and obtained a temporary injunction restraining respondent no.3 from cutting and removing trees from her plot under the guise of the injunction obtained by him. Thereafter 'X' reported to the District Senior Superintendent of Police about the disobedience of the temporary injunction; and ultimately the appellant, who was the Station House Officer of the area, seized certain logs of wood said to have been cut and removed from the plot of 'X'. Respondent no.3, moved the executing court under Order 21, Rule 32, C.P.C. impleading the S.S.P and the S.H.O., the appellant, and alleged that their action amounted to obstruction and was in defiance of the injunction granted in his favour. The objections filed by the S.S.P. and the appellant were dismissed and their properties were directed to be attached. On revision, the District Judge modified the attachment order absolving the S.S.P. of the obstruction.

The appellant, after unsuccessfully challenging the orders of the civil courts in writ petition before the High Court, filed the appeal by special leave to this Court,

Allowing the appeal and setting aside the orders of the High Court and of both the civil courts, this court,

184

HELD: 1. The provision of Order 21 Rule 32(1) C.P.C is applicable to a party against whom a decree for injunction had been passed, [p.186A-B]

2. The word 'party' occurring in Order 21 Rule 32(1), C.P.C. cannot be construed so liberally as to include each and every employee of the State to have been a party to the suit in which the injunction was passed. The intention manifested in the provision seems to confine the rigour to

the party who had contested the suit and had suffered the decree and it is that party when obstructing is liable of being detained in the civil prison, or suffer attachment of his property, or both. [p. 186C-D]

3.1 Although the Forest Department of the State of U.P. and the State of U.P. were parties, and, being an employee of the State of U.P., the appellant was in an indirect way bound by the injunction, yet it cannot be said that he was by himself a party to the suit as such against whom the said decree was passed. [p.186B-C]

3.2 The appellant was not a party to the suit in which the injunction was granted. He need not suffer action under Order 21 Rule 32 C.P.C. or to remain under threat of attachment of his property, more so when he is no longer available at the scene to obstruct any more or to expose his property to such supposed attachment. [p.186B & D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4533 of 1990.

From the Judgment and Order dated 14.5.1990 of the Allahabad High Court in Civil Misc. Writ Petition No Nil of 1990.

Bharat Sangal for the Appellant.

Manoj Prasad for the Respondent.

The following Order of the Court was delivered.

This appeal by special leave concerns a Police Sub Inspector who in the discharge of his duty was about to attract an order under order 21 Rule 32 C.P.C. as also the prospect of getting his property attached.

Respondent no.3 obtained a decree for permanent injunction against the Forest Department of the State U.P. and the State of U.P. injunctioning

185

them from interfering in the rights of respondent no.3 from cutting trees on a plot of land said to be belonging to him. Later one Smt. Lagan Devi filed a civil suit against respondent no.3 and obtained an interim injunction restraining respondent no.3 from cutting and removing Trees standing on her plot under the guise of the injunction obtained by him in the earlier suit. Having obtained a temporary injunction she reported disobedience thereof to the Senior Superintendent of Police, District Gorakhpur soliciting help towards obedience of the injunction. It appears that the appellant herein who was the Station House Officer of Police Station, Paniar, Distt. Gorakhpur was asked to take up the matter in hand. As a remedial step he siezed certain logs of wood said to have been cut and removed for the plot of land of Smt. Lagan Devi and stopped their movement. Terming the stoppage of movement of logs of wood as defiance of the injunction granted in favour of respondent no.3, the said respondent moved the Executing Court under Order 21 Rule 32 C.P.C complaining obstructing and necessary orders in that regard. He arrayed the S.S.P. And the S.H.O. as respondents. They filed objection before the Executing Court. The objections were dismissed by the Executing Court directing that the property of the appellant and the S.S.P. Gorakhpur be attached as prayed for. On revision to the District Judge (such revision being competent under a State Amendment) the order was modified to the extent that the S.S.P. was absolved of the obstruction. The appellant on whom came the brunt moved the High Court by means of a writ petition unsuccessfully and this has

brought him to this Court.

We are told at the Bar by Mr. Bharat Sangal, learned counsel for the appellant that since long the appellant stands transferred to another District and now he is in a promotional post. It is otherwise the admitted position that thus far the property of the appellant has not been attached. In the first place when the appellant is no longer present in the District to obstruct or continue obstructing the legal process, it is idle to contend that the order of the Executing Court in the changed circumstance shall remain sustained. These supervening facts must obviously have an impact in moulding the relief. In the second place, it is difficult to uphold the view of the Courts below that the appellant was a person who could be brought within the grip of order 21 rule 32 C.P.C. The said provision in an extracted form can be re-written as follows:

"E.32(1) Where the party against whom a decree for injunction

186

has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for an injunction by his detention in the civil prison, or by the attachment of his property, or by both".

It is significant and patent that this provision is applicable to a party against whom a decree for injunction had been passed. Admittedly, the appellant was not a party to the suit in which the injunction was granted. It may be true that the Forest Department of the State of U.P. and the State of U.P. were parties and being an employee of the State of U.P. the appellant is in an indirect way bound by the injunction but it cannot be said that he was by himself a party to the suit as such against whom the said decree was passed. The word 'party' cannot be construed so liberally so as to include each and every employee of the State of U.P. to have been a party to the suit in which the injunction was passed. The intention manifested in the provision seems to confine the rigour to the party who had contested the suit and had suffered the decree and it is that party when obstructing is liable of being detained in the civil prison, or suffer attachment of his property, or both. Thus we are of the considered view that on either count the appellant need not suffer action under Order 21 Rule 32 C.P.C. or to remain under threat of attachment of his property, more so when he is no longer available at the scene to obstruct any more, or to expose his property to such supposed attachment.

For the reasons recorded above the appeal is allowed. The impugned orders of the High Court as well as that of both the Civil courts against the appellant are set aside. No order as to costs.

R.P.

Appeal allowed.

187