

CIVIL REVISION.

Before Jack and Khundkar JJ.

BHAGABATPRASANNA SHAHA

v.

REBATIMOHAN DAS.*

1934

May 8, 9, 14.

Jurisdiction—High Court—Original Side—Injunction—Mofussil property—Execution proceedings—Mofussil—Arrest—Writ, Transfer of—District Judge's jurisdiction—Bail—Code of Civil Procedure (Act V of 1908), s. 136 ; O. XXXIX, rr. 1 (1), (2) ; O. XL, r. 1.

The High Court on its Original Side has jurisdiction to make an order of injunction under Order XXXIX, rule 1, of the Civil Procedure Code, in execution proceedings concerning immoveable property in the *mofussil* and to transfer it, under the provisions of section 136 of the Code, for execution outside the limits of the Original Side, to the appropriate District Judge in the *mofussil*, who will be acting in the lawful exercise of his powers in arresting the person guilty of contempt of the High Court's injunction.

CIVIL RULE under section 115 of the Civil Procedure Code obtained by the (defendant) contemtor.

The facts of the case and the arguments in the Rule appear sufficiently in the judgment.

Atulchandra Gupta and *Bhupendrakishore Basu* for the petitioner.

Saratchandra Basak, Senior Government Pleader, and *Rajendrachandra Guha* for the opposite party.

Cur. adv. vult.

JACK AND KHUNDKAR JJ. This Rule is directed against an order passed by the learned District Judge of Dacca, directing that the petitioner, Bhagabat-prasanna Shaha, be arrested and sent in custody to the sheriff of Calcutta in execution of a writ issued by Mr. Justice Panckridge sitting on the Original Side of this Court to the sheriff of Calcutta with orders directing its transfer for execution to the court of the District Judge of Dacca under section 136 of the Civil Procedure Code.

*Civil Revision, No. 445 of 1934, against the order of A. N. Sen, District Judge of Dacca, dated March 17, 1934.

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On behalf of the petitioner, it is urged that the order was made as a punishment for contempt and, not being made under the provisions of the Civil Procedure Code but in exercise of the inherent jurisdiction of this Court, section 136 of the Code had no application, and the warrant could not be executed outside the territorial limits of the ordinary original jurisdiction of this Court, which does not extend to the *mofussil*. The order directing the execution of the warrant in the district of Dacca was, therefore, without jurisdiction and the order directing the arrest of the petitioner and his despatch in custody to the sheriff of Calcutta is, therefore, illegal and should be set aside.

It is true that the terms of the writ to the sheriff lend some support to the contention that the order was one under the inherent jurisdiction of this Court, inasmuch as it commences with the words "Whereas "the defendant committed contempt of the order of "the High Court in its ordinary original jurisdiction, "dated 2nd August 1933", but when the rest of the order and the proceedings are referred to, it is clear that the original order was really an order of injunction under Order XXXIX, rule 1, sub-rule (1)* and the subsequent order for arrest was made under sub-rule (2) of rule 1 of that order and was lawfully executed by the District Judge under the provisions of section 136, Civil Procedure Code.

Order XXXIX, rule 1(1), so far as it applies to this case, runs as follows:—

Where in any suit it is proved by affidavit or otherwise that any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, * * * * * the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit *until the disposal of the suit or until further orders.*

* *Vide* rules framed under Order XXXIX, Code of Civil Procedure, by the Calcutta High Court and published under Notification No. 3561G., dated 3rd February 1933 (printed in Appendix III of M. C. Sarkar's Code of Civil Procedure).

In this case, in execution of a mortgage decree, this Court appointed a receiver under the provisions of Order XL, rule 1, to take possession of the properties charged in the mortgage and to administer them so as to discharge the decree. The premises in question are No. 40, Madanmohan Basak Road, Dacca. The receiver was obstructed in taking possession of these premises by the petitioner, whereupon he petitioned this Court for an injunction directing the petitioner not to prevent him taking vacant possession of the premises, stating that otherwise there would be irreparable loss and damage to the mortgagee as the petitioner was not keeping the premises in repair or paying the municipal rates and the mortgagor was losing the rents, to which he was entitled. After hearing the parties an order of injunction was duly served on the petitioner, but he continued to obstruct the receiver in taking possession, whereupon the latter applied for his arrest and detention for disobeying the order of injunction. The court, after further hearing the parties, issued a writ to the sheriff directing the arrest of the petitioner for disobedience to the order of injunction and directing him, under the provisions of section 136, Civil Procedure Code, to transfer it to the District Judge of Dacca for execution. The latter duly executed the writ by arresting the petitioner but released him on bail to appear before this Court and enable him to make this application against the order.

It is clear that this Court, in its original jurisdiction, was entitled to make the order of injunction and to transfer it for execution to the District Judge of Dacca and that the latter acted in the lawful exercise of his powers in arresting the petitioner. The circumstances show that the order was made under the provisions of the Civil Procedure Code and not in the exercise of the inherent jurisdiction of the High Court and this was, therefore, not *ultra vires* or without jurisdiction.

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We are not here concerned with the propriety of the original order of injunction, but only with the legality of the order on the District Judge and his action in executing it.

As regards the original order, we would only say that, under sub-rule (2) of Order XXXIX, rule 1, the detention in the civil prison must be for a term not exceeding six months but may extend to that term unless in the meantime the court directs his release.

The Rule is discharged. The petitioner must now surrender to his bail bond and the order for arrest will take effect. There will be no order as to costs.

Let this order be communicated to the lower court without delay.

Rule discharged.

G. S.