CIVIL MISCELLANEOUS.

Before Falshaw and Kapur, JJ.

SARUP LAL,—*Appellant-Petitioner.*

versus

KAUSHALYA DEVI AND OTHERS,—*Respondents.*

Civil Miscellaneous No. 805/C of 1955.

1956

March 14th

Code of Civil Procedure (V of 1908)—Order 45, Rule 13—Scope of—Powers of High Court under—Stay of operation of the order appealed against, whether can be granted—Successful party, whether can be restricted from exercising his rights under the final orders of the Court.

On 21st July, 1954, S. L. granted leave to appeal to Supreme Court. He applied under Order 45, Rule 13, Civil Procedure Code, for stay of the operation of the order of the High Court appealed against. Stay was granted as prayed. K. D. moved the High Court for vacation of the stay.

(1) 28 I.A. 11
(2) A.I.R. 1923 Mad. 232

Held, that Order 45, Rule 13(2) (d), does not enable the High Court to give any direction to the successful party either restricting the exercise of rights or preventing him from exercising the rights to which he has become entitled under its final order. The clause only gives power to stay execution of the decree, it does not give power to stay proceedings under the decree.

Rajahumundry Electric Supply Corporation v. *State of Madras* (1), *Laliteswar Singh* v. *Bhabeswar Singh* (2), and *Chet Ram* v. *Ram Singh* (3), relied upon.

Petition under Order 45, Rule 13 and Section 151, C.P.C., praying that pending the decision of the appeal by the Supreme Court the operation of the order of this Hon'ble Court be suspended and the respondent Nos. 1 and 2 be ordered not to alienate the property in dispute, and further praying that necessary directions be issued for the purpose.

N. L. SALOOJA, for Petitioner.

D. K. MAHAJAN, for Respondents.

ORDER.

Kapur, J.

KAPUR, J. This is an application made by Sarup Lal who has obtained leave to appeal to the Supreme Court against a judgment of this Court dated the 24th December, 1953. This certificate was granted on the 21st July, 1954. He has now applied under Order 45, Rule 13 of the Civil Procedure Code praying that the operation of the Order of this Court be suspended and respondents 1 and 2 be restrained from alienating the property sold to them. Rule was issued by me and as I was of the opinion that this matter should be heard by a Division Bench and not by a Single Bench, the case has been placed before this Bench.

Leave was granted on the 21st July, 1954 and the application for stay was made on the 26th September, 1955.

(1) A.I.R. 1953 Mad. 475
(2) 1 I.C. 812 (F.B.)
(3) 64 I.C. 152

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An objection has been raised that under Order 45 the prayer made in this petition cannot be granted. The present petitioner sold to the opposite parties some land and disputes arose in the Revenue Department as to mutation and the Chief Commissioner ordered the mutation to be set aside and mutation proceedings to be started *de novo*. It was against this order that the opposite parties brought a petition to this Court under Article 226 of the Constitution. This petition was allowed and in the present application made by Sarup Lal petitioner it is stated that during the years 1954 and 1955 the opposite parties entered into 41 transactions of sale with the result that about half of the land sold has already been sold.

The petitioner relies upon clauses (b) and (d) of Rule 13(2) of Order 45, but in proceedings such as the one now before us neither of these two clauses are applicable. The matter was considered by a Bench of the Madras High Court. in *Rajahmundry Electric Supply Corporation* v. *State of Madras* (1), where it was held that clause (d) of Rule 13 (2) does not enable the Court to give any direction to the successful party either restricting the exercise of rights or preventing him from exercising the rights to which he has become entitled under its final order. In that case also the petitioner seeking to appeal to the Supreme Court had prayed for the grant of stay of the operation of the order made by the Court and the prayer was rejected because it did not fall within the scope of clause (d) of Rule 13 (2). It was observed—

> "That provision only enables this Court to place the party seeking the assistance of the Court under any conditions

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which this Court may think fit to impose. And it enables this Court to give such other direction, that is to say, direction other than a direction placing the party under any condition respecting the subject-matter of the appeal, such as for instance, by an order directing the appointment of a Receiver. The provision does not enable this Court to give any direction to the successful party by way of restricting or preventing from exercising the rights to which he has become entitled under the final order of this Court."

The respondents next relied on a judgment of the Calcutta High Court in *Laliteswar Singh* v. *Bhabeswar Singh* (1), where it was held that a Court cannot under Rule 13 (2), clauses (c) and (d), stay proceedings after a preliminary decree is passed, because they are proceedings in the suit and not proceedings in execution. It was observed—

"It is clear that it gives power to stay execution of the decree; it does not give the power to stay proceedings under the decree. The learned Advocate-General has argued that the power is included under sub-section (d) which I have just read; but we do not think that the section bears the interpretation which he places upon it. Order 41, rule 5, provides in express terms under what condition the proceedings under a decree can be stayed, and we think that if it had been intended, under Order 45, rule 13, to place that power

(1) 1 I.C. 812 (F.B.)

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in the hands of the Court whose decree is appealed from it would have been in the same express term."

A Division Bench of the Allahabad High Court in *Chet Ram* v. *Ram Singh* (1), refused to give relief where in execution of a decree of a High Court possession had been taken by the decree-holder and he had started proceedings in the Revenue Department to eject the judgment-debtor from certain sir and *khudkasht* lands, and it was held that this is not a matter which falls under Order 45, Rule 13 (d) of the Code of Civil Procedure.

Mr. Saluja relied on clause (d) of Rule 13 (2) which provides :—

> "13 (2) (d). The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court, place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal as it thinks fit, by the appointment of a receiver or otherwise."

But I do not think that that clause covers the prayer made by the petitioner. The researches of the petitioner's counsel do not seem to have resulted in the discovery of any case which supports the contention raised by him. I would, therefore, discharge the rule issued by me on the 27th of September, 1955.

Parties will bear their own costs in these proceedings.

Falshaw, J.

FALSHAW, J. I agree.

(1) 64 I.C. 152