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RAJA VENKATESWARLU & ANR.

v.

MADA VENKATA SUBBAIAH & ANR.

(Civil Appeal No.9916 of 2017)

JULY 31, 2017

B

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

C

Code of Civil Procedure, 1908 – s.151, Or. XXI, r.32 – Execution of Decree – Appellant sought Police Protection for execution of proceeding u/s.151 – Granted by Execution Court – High Court interfered holding that application could be filed only u/Or. XXI, r.32 – Held: The jurisdiction of execution court is not disputed – If only thing is that an exact provision was not invoked, that by itself shall not be the reason for rejecting the application – If judgment debtor has not suffered any injury nor any prejudice has been caused to him, as in the instant case, the execution must proceed.

D

Allowing the appeal, the Court

HELD: 1. The decree for permanent injunction having become final, the decree holder approached the Execution Court by way of an application for execution. [Para 3] [549-E-F]

E

2. Merely because an application for police protection was filed only under Section 151 CPC invoking the inherent jurisdiction, it cannot be a reason for the High Court to reject it and hold that the application should have been filed under Order XXI, Rule 32 CPC. The crucial question is whether the Execution Court has jurisdiction. That is not disputed. The only thing is that an exact provision was not invoked. That by itself shall not be a reason for rejecting the application. In case, the Execution Court has the jurisdiction and has otherwise followed the procedure under the Rules, the action has to be upheld. One relevant question is also whether the judgment debtor has suffered any injury or whether any prejudice has been caused to him. If the answer is in the negative, as in the instant case, the execution must proceed. [Para 4] [550-A-C]

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Municipal Corporation of the city of Ahmedabad v. Ben Hiraben Manilal (1983) 2 SCC 422 : [1983] 2 SCR 676; T. Nagappa v. Y.R. Muralidhar (2008) 5 SCC 633 : [2008] 6 SCR 959 – relied on.

H

Case Law Reference

[1983] 2 SCR 676

relied on

Para 4

[2008] 6 SCR 959

relied on

Para 4

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9616
of 2017.

From the Judgment and Order dated 28.03.2014 of the High
Court of Judicature of A. P. at Hyderabad in Civil Revision Petition
No. 4987 of 2013.

M. Vijaya Bhaskar, Adv. for the Appellant.

Sadineni Ravi Kumar, Adv. for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. The appellants approached the Execution Court for execution
of a decree for permanent injunction granted in O.S. No. 26 of 2001 on
the file of the Junior Civil Judge, Badvel in Andhra Pradesh. It is not in
dispute that the decree has attained finality. They sought for police
protection in the execution proceedings. However, the application for
police protection was filed under Section 151 of the CPC. The Execution
Court granted it. The High Court has interfered with the order holding
that the application could have been filed only under Order XXI, Rule
32.

3. We find it difficult to appreciate the stand taken by the High
Court. The decree for permanent injunction having become final, the
decree holder approached the Execution Court by way of an application
for execution (E.A. No. 64/2011 in O.S. No. 26/2001 before the Junior
Civil Judge, Badvel). No doubt, Order XXI Rule 32 provides for execution
of a decree for injunction and more specifically under sub-rule (5) which
reads :-

“(5) Where a decree for the specific performance of a
contract or for an injunction has not been obeyed, the court may,
in lieu of or in addition to all or any of the processes aforesaid,
direct that the act required to be done may be done so far as
practicable by the decree holder or some other person appointed
by the Court, at the cost of the judgment debtor, and upon the act
being done the expenses incurred may be ascertained in such
manner as the Court may direct and may be recovered as if they
were included in the decree.”

- A 4. But merely because an application for police protection was filed only under Section 151 CPC invoking the inherent jurisdiction, it cannot be a reason for the High Court to reject it and hold that the application should have been filed under Order XXI, Rule 32 CPC. The crucial question is whether the Execution Court has jurisdiction. That is not disputed. The only thing is that an exact provision was not invoked.
- B That by itself shall not be a reason for rejecting the application (See Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manila¹ and T. Nagappa v. Y. R. Muralidhar²). In case, the Execution Court has the jurisdiction and has otherwise followed the procedure under the Rules, the action has to be upheld. One relevant question is also whether the judgment debtor has suffered any injury or whether any prejudice has been caused to him. If the answer is in the negative, as in the instant case, the execution must proceed. The impugned judgment is hence set aside, the appeal is allowed and the order passed by the Execution Court is restored.
- C
- D 5. Learned counsel for the respondent/judgment debtor submits that there are other disputes with regard to the same property and they have filed a suit for specific performance.
- E 6. Needless to say that the execution of the decree shall not stand in the way of suit for specific performance, being tried on its own merits.
7. Pending applications, if any, shall stand disposed of.
8. There shall be no orders as to costs.

¹ (1983) 2 SCC 422

² (2008) 5 SCC 633