

P.B. Shanthappa Vs. Mehboobi

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Court : Karnataka

Decided On : Mar-12-1991

Reported in : ILR1991KAR2854; 1991(2)KarLJ415

Judge : K.A. Swami, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rule 29;

Appeal No. : C.R.P. No. 6119 of 1990

Appellant : P.B. Shanthappa

Respondent : Mehboobi

Advocate for Def. : K.S. Savanur, Adv. for R-2 to R-4

Advocate for Pet/Ap. : G.E. Kotre, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

K.A. Swami, J.

1. As this Civil Revision Petition can be disposed of on a short ground it is admitted and heard for final disposal.

2. This Civil Revision Petition is preferred against the order dated 31-8-1990 passed by the learned Civil Judge, Arsikere in O.S.No. 44/1988.

3. The learned Civil Judge has stayed the further proceedings in Execution Case No. 146/1989 pending on the file of the Additional Munsiff, Arsikere. The Judgment Debtors in Ex.Case No. 146/1989 have filed the aforesaid suit for a declaration that the land bearing S.No. 246 measuring 2 acres 14 guntas belongs to them and for a permanent injunction; whereas the defendant in O.S.No. 44/1988 has obtained a decree against the plaintiffs 2 to 4 for a declaration that 4 1/2 guntas comprised in S.No. 247 belongs to him and for possession of the same. It is to execute that decree the Execution Case No. 146/1989 is filed in the Court of the Additional Munsiff, Arsikere.

4. Now the point for consideration is as to whether the Court of a Civil Judge has jurisdiction to stay further proceedings in Ex.Case No. 146/1989 pending on the file of the Additional Munsiff, Arsikere.

5. The provision under the Civil Procedure Code which empowers the Court to stay the Execution Proceedings is contained in Rule 29 of Order 21 which reads thus:

'Stay of execution pending suit between decree-holder and Judgment-debtor:-

Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its-reasons for so doing.'

The underlined words and the proviso have been inserted by C.P.C. (Amendment) Act 104/1976.

6. The learned Civil Judge, after referring to a Decision of the Supreme Court in **SHAUKAT HUSSAIN @ ALI AKRAM AND ORS. v. SMT. BHUNESHWARI DEVI (DEAD BY L.RS. AND ORS., : [1973]1SCR1022)** has held that the aforesaid Decision does not govern Rule 29 of Order 21 of the C.P.C. as it stands after the C.P.C. (Amendment) Act 104/1976. The Supreme Court, in the aforesaid Decision has held thus:

'For the applicability of Order 21 Rule 29 there should be two simultaneous proceedings in one Court viz., (1) a proceeding in execution of the decree of that Court started at the instance of the decree-holder against the Judgment debtor and (2) a suit at the instance of the same Judgment debtor against the holder of the decree of that Court.'

7. It is not possible to agree with the learned Civil Judge that the amendment effected by the C.P.C. (Amendment) Act 104/1976 has taken away the Rule 29 of Order 21 C.P.C. out of the purview of the aforesaid Decision. In fact, Rule 29 of Order 21 has been amended by the C.P.C. (Amendment) Act, 104/1976 only to give effect to and bring it within the ambit of the aforesaid Decision of the Supreme Court. The words 'such Court' used in Rule 29 of Order 21 indicate that the Court which has passed the decree the execution of which is sought in that Court and the Court in which the suit is pending must be the same. Prior to the amendment, there was a conflict of Decisions on the question as to whether the Court to which a decree is transferred for execution can act under Rule 29 of Order 21 of the C.P. Code. One view was that a Court to which the decree of any Court was transferred could act under Rule 29 of Order 21 of the C.P. Code. Another view was that the transferee Court had no power to act under Rule 29 of Order 21 of the C.P. Code. In order to put an end to this controversy, the Law Commission in its 27th Report recommended for amendment of Rule 29 of Order 21 of the C.P. Code. In its 54th Report, the Law Commission further proposed for insertion of a proviso. In the light of both these Reports, Rule 29 of Order 21 of the C.P. Code came to be amended by C.P.C. (Amendment) Act, 104/1976 by inserting the underlined words and adding the proviso as pointed out earlier. That being so, the learned Civil Judge is not correct in holding that he has jurisdiction to stay the proceedings in execution pending before another Court.

8. For the reasons stated above, this C.R.P. is allowed. The order dated 31-8-1990 passed by the learned Civil Judge, Arsikere in O.S.No. 44/1988 is set aside. Consequently, the execution has to proceed in accordance with law.

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