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M.K. Chinthamani Vs. M.K. Jayadeva

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Court : Karnataka

Decided On : Sep-17-1991

Reported in : 1991(3)KarLJ42

Judge : K.A. Swami, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 151 - Order 21, Rule 29

Appeal No. : C.R.P. No. 2959 of 1987

Appellant : M.K. Chinthamani

Respondent : M.K. Jayadeva

Advocate for Def. : H.L. Narasimha Murthy, Adv. for R-1

Advocate for Pet/Ap. : Rama Rao, Adv. for ;M.T. Nanaiah, Adv.

Disposition : Civil revision petition dismissed

Judgement :
ORDER

K.A. Swami, J.

1. This Civil Revision Petition is preferred against the order dated 19-6-1987 passed by the XIX Additional Small Causes Judge, Court of Small Causes, Bangalore City, rejecting I.A.No. III filed by the petitioner under Order 21 Rule 29

read with Section 151 C.P.C. to stay further proceedings in Execution No. 2146 of 1986 pending decision in O.S.No. 2251 of 1987 on the file of the City Civil Court, Bangalore.

2. The Execution Court has rejected the application on the ground that the Order 21 Rule 29 of the C.P.C. is not attracted; that as far as Section 151 of the C.P.C. is concerned, it has not stated anything though it has referred to the contention of the petitioner raised under Section 151 C.P.C.

3. Sri Rama Rao, learned Counsel appearing for the petitioner has put forth two contentions; 1) That the provisions of Order 21 Rule 29 of the C.P.C. are attracted as the requirements of those provisions are satisfied, that in the event it is held that the provisions of Order 21 Rule 29 of the C.P.C. are not attracted in the facts and circumstances of the case, it is just and appropriate to exercise the inherent power under Section 151 C.P.C.

4. Expanding the first contention, it is contended that the Court which passed an order of eviction in H.R.C.No. 2462 of 1984 against the petitioner and the second respondent, is none other than Civil Court and the Court in which the suit is filed, is also a Civil Court and the Court in which the execution is filed by the first respondent for execution of the order of eviction passed in H.R.C.No. 2462 of 1984, is also a Civil Court, therefore, the execution case and the suit are pending in the same Court i.e., Civil Court, hence Order 21 Rule 29 of the C.P. Code are attracted. Learned Counsel also placed reliance on the Decisions of this Court in M.M. MATHEW v. PRAFULCHAND AMRITLAL AND ANR., : AIR1980 Kant57 and SIDDAPPA v. ASST. COMMISSIONER, SHIMOGA AND ANR., 1981 (2) KLJ 201

5. It is not possible to accept the contention. The scope and effect of Order 21 Rule 29 of the C.P. Code as amended by the Central Act 104/1976, has been considered by this Court in P.B. SHANTHAPPA v. MEHBOOBI, : ILR 1991 KAR2854 . On taking into consideration the conflicting Decisions of various High Courts on the interpretation of the provisions contained in Order 21 Rule 29 C.P. Code before the enactment of Central Act 104/1976 and in the light of the Decision of the Supreme Court in SHAUKAT HUSSAIN @ ALI AKRAM AND ORS. v. SMT BHUNESHWARI DEVI, : [1973]1SCR1022 the C.P.C. (Amendment) Act 104 of

1976 effected amendment to the provisions contained in Order 21 Rule 29 of the C.P. Code. This Court taking into consideration all these aspects in P.B. Shantappa's case has held thus:

'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 Akrarn and others v. Smt. Bhuneswari Devi (Dead by L.Rs. and others) has held that the aforesaid Decisions 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 a 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 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 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 C.P.C. 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 or 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. Therefore, in order to attract the provisions contained in Order 21 Rule 29 of C.P.C., it is necessary that the decree must have been passed by the same Court in which the execution is pending and the suit filed subsequent to the decree must also be pending in the same Court between the same parties. The expression 'same Court' used in the Rule takes into its fold the Principal Court and the Additional Court such as the Court of Principal Munsiff and the Court of Additional Munsiff, the Court of Principal Civil Judge or Court of Additional District Judge and the Court of Additional District Judge, because in such case, the Court will be the same but there will be more than one Presiding Officers. However, the expression 'such Court' does not cover a case in which the proceedings are pending in two different Courts, such as Munsiff Court and Civil Judge Court or District Court or any other Courts.

9. In the instant case, the order of eviction is passed by the Court of Small Causes Judge and the execution is also pending before that Court. Even taking into

consideration of the fact that the order passed under the Karnataka Rent Control Act has to be executed and is executable by a Civil Court, even then the requirements of Order 21 Rule 29, is not satisfied because the suit is pending before the City Civil Court which cannot be equated to the Court of Small Causes or a Civil Judge Court which is empowered to exercise the powers of a Small Cause Court. Therefore, requirement of Order 21 Rule 29 of C.P.C. is not satisfied. Hence the Court below is correct in holding that the provisions of Order 21 Rule 29 of C.P.C. are not attracted. In the Decisions reported in : AIR1980 Kant57 and 1981(2) KLJ 201 this question did not come up for consideration. Therefore, those two Decisions do not have any bearing on the question raised in this case. Hence they are of no assistance to the petitioner. Accordingly, the first contention is rejected.

10. Now the question for consideration is whether in a case like this inherent powers should be exercised. The petitioner and the respondent No. 2 who are the wife and husband respectively have suffered an order of eviction in HRC No. 2462 of 1984 as joint tenants of the schedule premises. That order of eviction has been confirmed by this Court in C.R.P.No. 1714 of 1986 decided on 15-1-1987. Therefore, it is not open to the petitioner and the second respondent to contend that they are not bound by the order of eviction. Consequently the executing Court cannot also Refuse to execute the order of eviction and cannot stay the execution proceeding pending decision by the Civil Court in the suit tiled by the petitioner. The inherent powers cannot be exercised if it results in defeating the decree or order of eviction or results in violation of the specific provisions of the Act. The fact that the petitioner is the sister of the 1st respondent does not absolve her from the order of eviction suffered by her. The fact that a suit for partition is filed, cannot also be made aground to exercise inherent power to defeat the order of eviction confirmed by this Court. Therefore, in the facts and circumstances of the case, there is no scope for exercising the inherent power in the instant case. Hence the contention is rejected.

For the reasons stated above, the Civil Revision Petition is dismissed.

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