

Periyasamy thevan and ors. Vs. Karuthiah thevan and anr.

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Court : Chennai

Decided On : Jan-29-1917

Reported in : AIR1918Mad1293; 39Ind.Cas.933

Judge : Oldfield and ;Bakewell, JJ.

Appellant : Periyasamy thevan and ors.

Respondent : Karuthiah thevan and anr.

Judgement :

1. The plaintiffs-respondents sued defendants-appellants for declaration that they were in possession of the suit property and an injunction restraining defendants from disturbing them. The District Munsif granted these reliefs; and plaintiffs, who had not really been in possession at all, with the assistance apparently of the Police and relying on the moral support afforded by the judgment they had obtained, took possession in some way which is not clear, but not in the ordinary course of execution. Afterwards the District Munsif's judgment, including his findings as to possession, was reversed. Defendants now ask for restoration under Section 144 of the Code of Civil Procedure.

2. Section 144 authorises the grant of relief in order to replace the parties in the position which they would have occupied but for the erroneous decree. No doubt in *Hara Chandra Samanta v. Chintamani Dutta* 21 Ind. Cas. 84 it was held that the possession, restoration of which is claimed, need not have, been lost in execution.

But in that case, the decree was for possession, and possession was lost without a Court delivery, simply because the defendants' respect for the Court made one unnecessary. In the present case defendants did not lose their possession because of any action taken under the decree, but by an act of violence on plaintiffs' part independent of it and inconsistent with the case on which it was obtained. In respect of such an act defendants' remedy is by suit.

3. In these circumstances defendants are entitled to no relief and their appeal must be dismissed. As plaintiffs in these proceedings persisted in the allegations as to their possession, which the lower Appellate Court found untrue, and as they are acting in disregard of its judgment, there will be no order as to costs.

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