

(2004) 09 AP CK 0054
In the Andhra Pradesh High Court
Case No : CRP No. 2982 of 2004

Ammanabrolu Srinivasulu Reddy

APPELLANT

Vs

Yeturu Bhakthavatsala Reddy and Another

RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 144(1)

Citation : (2004) 5 ALD 433 : (2004) 6 ALT 445 : (2004) 3 APLJ 165

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : M.V.S. Suresh Kumar, for the Appellant; M. Venkata Narayana, for the Respondent

Judgement

B. Seshasayana Reddy, J.—Aggrieved by the order-dated 5.5.2004 passed in C.M.A. No.11 of 2003 on the file of III Additional District and Sessions Judge (FTC), Nellore, the defendant has filed this Civil Revision Petition.

2. Scenario of the case, in brief, giving rise to filing of this Civil Revision Petition by the defendant is as follows:

The petitioner is the 1st defendant, and the 1st respondent is the plaintiff in O.S. No.25 of 1982 on the file of Senior Civil Judge, Kovvur. One Mogili Venkatasessaiah is the second defendant in the said suit. The plaintiff filed the suit for permanent injunction restraining the defendants and their men not to interfere with the peaceful possession and enjoyment of the suit schedule mentioned land or to cut and carry away the crop raised by him therein. The suit schedule lands are:-Survey No. 793 admeasure Ac.3-94 cents and Survey No. 791/A admeasuring Ac.4-02 cents. It is averred in the plaint that he took the lands on lease under a lease deed from Balakrishna Reddy who obtained the possession of the suit lands through the process of Court in E.A. No. 273 of 1979 in O.S. No.26 of 1976. The defendants resisted the suit by filing written statement. The suit ended in dismissal on 2.11.1989. Assailing the judgment and decree passed in O.S. No.25 of 1982, the plaintiff therein filed A.S. No. 40 of

1989, on the file of the Senior Civil Judge, Kovvur. Pending disposal of the appeal, the plaintiff along with his wife E. Kameswaramma filed-OS No.3 of 1990 against the defendant-Srinivasulu Reddy and four others i.e., Konjeti Viswanatham, Konjeti Sreenivasulu, Mogili Satyanarayana and Mogili Venkata Subbaiah seeking the following reliefs:

- "(1) for a declaration of title and possession of the suit schedule land;
- (2) that the plaintiffs are entitled to the deposit in O.S. No.25/82 in Prl. Dist. Munsif's Court, Kovvur as detailed in the "B" schedule filed herewith;
- (3) directing the defendants or the 1st defendant for profits from the date of suit till realization;
- (4) for costs of this suit; and
- (5) for such other and further reliefs."

It is averred in the plaint that Balakrishna Reddy, the owner of the suit schedule lands, executed two settlement deeds dated 25.3.1981 in their favour retaining his life interest therein and that after the death of Balakrishna Reddy in the year 1982 they became absolute owners of the suit schedule lands. It is further averred in the said plaint that the 1st defendant entered into possession of the suit lands after the dismissal of the suit in O.S. No.25 of 1982. I deem it appropriate to refer to Para 15 of the plaint in O.S. No.3 of 1990 and it is thus:

"The 1st plaintiff herein who was in possession filed a suit in O.S. No.25 of 1982 on the file of the Prl. Dist. Munsif, Kovvur for permanent injunction on the basis of his possession from the time of delivery to Balakrishna Reddy against the 1st defendant and the defendant in O.S. No. 26/ 76 from whom the 1st defendant claimed possession. The said suit was dismissed without considering any of the documents filed by the plaintiff there and without considering any points raised dismissed the suit on the basis of the colourable document of compromise in ATC.11 of 1980 only. In the said suit when the suit was pending the Court could not come to any conclusion as to who was in possession in the temporary injunction petition the land was being leased out by the cause inter parties and the plaintiff therein who was the successful bidder was cultivating the land and as the suit was dismissed the 1st defendant herein entered possession of this land so an appeal in A.S. No. 40/89 of Sub-Court, Kovvur was filed and is pending."

A.S. No. 40 of 1989 came to be allowed on 28.11.1991 setting aside the judgment and decree dated 2.11.1989 passed in O.S. No. 25 of 1982 and consequently suit filed by the plaintiff ended in decree granting perpetual injunction as prayed for. Assailing the judgment passed in A.S. No. 40 of 1989, D1 Ammanabrolu Srinivasulu Reddy in O.S. No. 25 of 1992 filed S.A. No. 661 of 1991, on the file of this Court. The said appeal came to be dismissed on 15.7.1992. While so, the suit filed by the plaintiff in O.S. No. 3 of 1990 came to be decreed. Assailing the judgment and decree passed in O.S. No. 3 of 1990, D2

to D5 therein filed A.S.No. 27 of 2002 on the file of III Additional District Judge, Nellore, and obtained stay of the operation of the judgment passed in O.S. No. 3 of 1990. The plaintiff filed E.P.No. 52 of 1992 against the defendants/JDRs in O.S. No. 25 of 1982 and sought for attachment of their properties for disobedience of injunction order. The said E.P. came to be dismissed on 8.2.1994. Subsequently, the plaintiff filed E.A. No. 45 of 1994 u/s 144 of C.P.C for restitution of the property and also the amounts withdrawn by D1 after dismissal of the suit. Pending disposal of the restitution application, the plaintiff filed E.A. No. 273 of 1994 for appointment of an Advocate Commissioner to harvest the standing crop and deposit the proceeds to the credit of the suit. The executing Court dismissed the said application by an order-dated 7.3.1995. Assailing the said order, the plaintiff filed C.R.P. No. 902 of 1995. The said revision, came to be allowed setting aside the order dated 7.3.1995 passed in E.A. No. 273 of 1994 and consequently directed the executing Court to appoint a Commissioner to harvest the crop and deposit the proceeds to the credit of O.S.25/82. For completion of the narration of facts, I deem it appropriate to refer the relevant portion of the order passed by this Court in C.R.P. No. 902 of 1995 and it is thus;

"Admittedly, it is a case where the petitioner is seeking restitution of the possession from which he was dispossessed pursuant to the dismissal of the suit by the District Munsif. However, it is not necessary for me to decide whether the application is maintainable or not in view of the categorical statement made by the respondent in the counter-affidavit, which I have already extracted that he has surrendered the possession and he is not interested in the property. Since the respondent is not in possession of the property, he has no loco standi to raise the objection for appointment of the Commissioner. Admittedly, the petitioner filed the suit as long back as in 1982 and we are in 1995, the petitioner succeeded in three Courts, namely, in the District Munsif Court, High Court and Supreme Court and therefore in the interest of justice, an Advocate Commissioner should be appointed to harvest the crop and deposit the proceeds of the crop in the District Munsif's Court to the credit of the suit O.S.25/82 pending disposal of the restitution proceedings. It follows from the above that the impugned order is liable to be set aside and is accordingly set aside and the lower Court is directed to appoint a Commissioner to harvest the crop and deposit the proceeds to the credit of O.S.25/ 82 pending disposal of the restitution proceedings. The Court below is directed to dispose of the restitution proceedings within three months from the date of receipt of this order. In the result, this Civil Revision Petition is allowed."

The plaintiff/decreed holder filed E.A. No. 32 of 1998 (old E.A. No. 45 of 1994) seeking the following reliefs:

"(1) that restitution be ordered of the suit schedule property taken possession by R1 after the dismissal of the above suit.

(2) that restitution be ordered and the 1st respondent be directed to pay the sum of Rs. 26,070/- drawn by him by way of cheque application on 18.6.1990

drawn by him by way of cheque application dated 18.6.1990 and Rs. 23,955.25; on 10.7.1990; Rs. 2,114.75 and also direct him to pay interest at 12 1/2% per annum from the date of receipt of the amount till the date of payment to the petitioner or deposit into Court;

(3) that mesne profits for faslies 1394, 1395 and 1398 with regard to suit schedule land be ascertained and 1st respondent be directed to pay the said amount with interest at 12 1/2% p.a. from the due dates to the petitioner;

(4) that permission be granted to realize the said amount cleared by Prayer No. 1 against the 2nd respondent who is a surety;

(5) that the defendant be directed to pay mesne profits for Faslies 1399, 1400 and 1401 for two crops an year along with interest at 12 1/2 % per annum from the due dates;

(6) for costs of this application; and

(7) for such other and further reliefs be granted."

He has filed his sworn affidavit in support of the said application. It is averred in Para 10 of the affidavit as follows:

"10. Then the 1st respondent herein filed S.A. No. 666/91 and obtained orders of stay of taking possession by me. Then the S.A. No. 666/91 was dismissed on 15.7.1992 holding that I am in possession of the suit land on the date of my filing the suit and I took possession of the lands and once again they are trying to meddle with my possession in spite of High Court orders and I am filing separate application for prosecuting him."

E.A. No. 32 of 1998 is filed against D1-Ammanebrolu Sreenivasulu Reddy and another, who is said to be surety. The learned Senior Civil Judge on considering the material on record and on hearing Counsel for the parties allowed the application and ordered for restitution of the suit schedule property. The executing Court further declared that the plaintiff/ decree holder is entitled for realization of Rs. 26,070/-withdrawn by R1 therein from Court deposit (Rs. 23,995.25 on 18.6.1990 and Rs. 2,114.75 on 10-7-1990) with interest at 12% per annum from the date of withdrawal till the date of this order and at 6% p.a. from the date of this order till realization, besides mesne profits for 1394, 1395 and 1398 to 1401 Faslis which shall be ascertained on a separate application. Assailing the order passed in E.A. No. 32 of 1998 in O.S.25 of 1982, J.Dr. No. 1 therein filed C.M.A. No. 11 of 2003 on the file of II Additional District and Sessions Judge (FTC), Nellore. The said appeal ended in dismissal on 5.5.2004, Hence, this Civil Revision Petition by D1/JDR No. 1 in O.S. No. 25 of 1992.

3. Learned Counsel for the petitioner/ JDR No. 1 submits that R1/decreed holder having filed O.S.3/90 seeking possession of the property in dispute cannot be permitted to file an application in execution Court for restitution of the same property. He also submits that the question of restitution arises when the

disposition of the parties is in pursuance of the orders of the Court and as there is no such situation in this case, the petition filed by R1/decree holder u/s 144 of CPC is per se not maintainable and the same is liable to be dismissed. His further submission is that the petitioner/JDR No. 1 is not in possession of the property with effect from 18.8.1994 and therefore the question of directing to the petitioner/JDR No. 1 to deliver the suit schedule land to R1/decree holder does not arise. He placed reliance on the decision of Madras High Court in Periyasamy v. Karuthiah AIR 1918 Mad. 1293, and our High Court in Sanampudu Krishna Reddy v. Pallamreddy Kota Reddy 1980 (1) ALT 429.

4. Per contra, learned Counsel for R1/decree holder submits that the petitioner/JDR No. 1 came into possession of the property after dismissal of the suit filed by R1/decree holder and since the judgment of the Trial Court has been set aside by the appellate Court, R1/decree holder is to be put in possession of the suit properties and in such a situation the petition filed by R1/decree holder is maintainable u/s 151 CPC. It is also submitted by him that law of restitution encompasses all the claims founded upon the principle of unjust enrichment and since the possession as on the date of filing of the suit has been upheld by the first appellate Court and the second appellate Court, R1/decree holder is entitled for restitution of the property and in which event the only recourse open to him is to file an application u/s 144 of CPC which he rightly exercised that the executing Court considered the material brought on record in right perspective and the same has been confirmed by the appellate Court and therefore the order of restitution is not liable to be interfered with in this revision. He placed reliance on the decision of Supreme Court Mrs. Kavita Trehan and another Vs. Balsara Hygiene Products Ltd., .

5. Before delving on the rival contentions of the parties, I deem it appropriate to recapitulate the circumstances that led R1/decree holder to file E.A. No. 32 of 1998 (old E.A. No. 45 of 1994). One Balakrishna Reddy was the original owner of the lands bearing Survey No. 798 admeasuring Ac.2-00 guntas and Survey No. 791/A admeasuring Ac.3-30 guntas, hereinafter referred to as the suit lands. He had a daughter by name K. Ramanamma. Some disputes cropped up in respect of the suit lands between Balakrishna Reddy and Magili Venkateseshayya. It is to be noted that M. Venkateseshayya claimed the properties under an agreement of sale dated 10.9.1970 executed by Y. Satyanarayana who claimed to have purchased the property from K. Ramanamma and Venuvaka Susheelamma under an agreement of sale dated 1.7.1970. The suit filed by Balakrishna Reddy ended in decree. M. Venkateseshayya unsuccessfully challenged the decree by filing A.S. No. 502 of 1978. Ultimately Balakrishna Reddy got the possession of suit lands through the process of Court in E.P. No. 41/79. The litigation relating to the suit schedule property did not rest there. The petitioner filed A.T.C. No. 11/80 for protection of his cultivating tenancy rights basing on lease deed dated 7.10.1980. In the meanwhile, two registered sale deeds dated 14.10.1981 came to be executed in favour of Viswanatham and Srinivasulu in respect of the suit schedule lands. Consequent on change of ownership, A.T.C. No. 11 of 1980

ended in compromise. Later on, Balakrishna Reddy filed O.S. No. 14 of 1982 for cancellation of sale deeds and also cancellation of the orders passed in A.T.C. No. 11 of 1980. Balakrishna Reddy died pending the suit and the suit presumably stood as abated. R1-Yeturi Bhaktavatsala Reddy filed O.S. No. 25 of 1982 on the file of District Munsif, Kovvur against the petitioner-Annaprolu Srinivas Reddy and another namely Mogili Venkateshaiah seeking the following reliefs:

"(a) for a permanent injunction restraining the defendants and their men not to interfere with the peaceful possession and enjoyment of the schedule mentioned land or to cut and carry away the crop raised by the plaintiff therein;

(b) for costs; and

(c) such other reliefs as deemed fit and proper in the circumstances of the case be granted."

He filed the said suit as a lessee of the suit lands having taken on lease from Balakrishna Reddy on 5.4.1981. The petitioner resisted the suit contending that he took the lands on lease from Viswanatham and Srinivasulu who purchased the lands under registered sale deed from one M. Venkateshaya. The suit filed by him ended in dismissal on 2.11.1989. Aggrieved by the dismissal of the suit, he filed A.S. No. 40 of 89 on the file of Senior Civil Judge, Kovvur. Pending the appeal, he along with his wife Y. Kameswaramma filed O.S. No. 3/90 for declaration of their title and recovery of possession against the petitioner-A. Srinivasula Reddy and four others namely Konjeti Viswanatham, Konjeti Sreenivasulu, Mogili Satyanarayana and Mogili Venkata Subbaiah. He also sought for declaration that he is entitled to the deposits in O.S. No. 25 of 1982 on the file of Principal District Munsif, Movvur. The appeal (A.S. No. 40 of 1989) preferred by the petitioner against the judgment and decree granted in O.S. No. 25 of 1992 ended in dismissal on 28.11.1998. The S.A. No. 666 of 1991 also ended in dismissal on 5.7.1992. His attempts to question the judgment passed in the Second Appeal by filing SLP before the Apex Court also proved to be futile since the SLP also ended in dismissal on 8.2.1993. The suit filed by R1 in O.S.3/90 came to be decreed on 29.1.2002. Assailing the judgment and decree, D2 to D5 therein filed A.S. No. 27 of 2002 and obtained stay of the execution of the decree. It is to be noted that the petitioner who is D1 in the said suit did not chose to challenge the decree granted in O.S.3 of 1990. R1/ decree holder filed E.P. No. 52 of 1992 against the petitioner and another for execution of the decree granted in O.S. No. 25 of 1982. The said E.P. came to be dismissed as not pressed. He filed E.A. No. 45 of 1994 (re-numbered as E.A. No. 32 of 1998) under Sections 144, 145, 147 and 151 CPC for restitution of the suit property etc. He also filed E.A. No. 273 of 1994 for appointment of a Commissioner to harvest the standing crop. The petitioner/JDR No. 1 filed counter resisting the Commissioner's appointment petition. He took the plea in the counter that he handed over the possession of the properties to the landlords viz., K. Viswanadham and K. Srinivasulu from whom he took the lands on lease. The executing Court dismissed the said application by an order dated 7.3.1995. R1/

decree holder filed C.R.P.No. 902 of 1995 which came to be allowed appointing a Commissioner to harvest the crop and to deposit the proceeds to the credit of O.S.No. 25 of 1982 pending disposal of restitution proceedings. The executing Court conducted enquiry in E.A. No. 32 of 1998 (E.A.No. 45 of 1994) and ordered restitution of the property and also directed the petitioner/JDR No. 1 to redeposit the amounts withdrawn by him pending the proceedings i.e., Rs. 26,070/-. Assailing the orders passed in E.A.No. 32 of 1998, the petitioner/JDR No. 1 filed C.M.A. No. 11 of 2003 on the file of III Additional District Judge (FTC), Nellore. The learned Additional District Judge on hearing Counsel for the parties dismissed the C.M.A. No. 11 of 2003 modifying the order of the executing Court so far as the quantum of re-depositing the amounts that were withdrawn by the petitioner pending the proceedings.

6. To make myself very clear that Balakrishna Reddy, the original owner of the suit lands died in 1982. Disputes relating to the suit lands arose even during the life time of Balakrishna Reddy. The litigation continued after the death of Balakrishna Reddy between the purchasers and the beneficiaries under the settlement deed. R1/decree holder claims that Balakrishna Reddy settled the suit lands in favour of him and his wife under a registered settlement deed dated 25.3.1981. Whereas the petitioner/JDR No. 1 claimed that he is the lessee of the suit lands having taken it on lease from the purchasers Viswanadham and Srinivasulu, Of course, the petitioner/ JDR No. 1 incidentally claimed that he took the lands on lease from Balakrishna Reddy during his life time and indeed filed A.T.C.No. 11 of 1980 and subsequent to purchase of lands by Viswanadham and Srinivasulu, he attorned the tenancy in their favour and continued the same till 18.8.1994, the date on which he allegedly delivered the possession of lands to them. It is also to be noted that pending disposal of OS.25 of 1982, the property was auctioned between the parties and R1 being the highest bidder deposited certain amounts to the credit of the suit. After the dismissal of the suit, it appears the petitioner/JDR No. 1 withdrew the amounts. With this background of the case, what is to be seen is whether the petitioner/JDR No. 1 can be directed to put the suit lands in possession of R1/decree holder and whether the petitioner/JDR No. 1 can be directed to re-deposit the amounts which he withdrew from the Court.

7. To avoid ambiguity with regard to the stand of the parties in O.S.3/90, I deem it appropriate to refer Para 15 of the plaint in the said suit and it is thus:

"15. The 1st plaintiff herein who was in possession filed a suit in O.S. No. 25 of 1982 on the file of the Principal District Munsif, Kovvur for permanent injunction on the basis of his possession from the time of delivery to Balakrishna Reddy against the 1st defendant and the defendant in O.S. No. 26/ 76 from whom the 1st defendant claimed possession. The said suit was dismissed without considering any of the documents filed by the plaintiff there and without considering any points raised dismissed the suit on the basis of the colourable document of compromise in ATC. 11 of 1980 only. In the said suit when the suit

was pending the Court could not come to any conclusion as to who was in possession in the temporary injunction petition the land was being leased out by the cause inter parties and the plaintiff therein who was the successful bidder was cultivating the land and as the suit was dismissed the 1st defendant herein entered possession of this land so an appeal in A.S. No. 40/89 of Sub-Court, Kovvur was filed and is pending."

The above-referred para does not give any scope for ambiguity with regard to the fact that the petitioner/JDR No. 1 came into possession of the suit lands after dismissal of O.S. No. 25 of 1982, the date of dismissal of the suit being 2.11.1989. It has also come on record that the petitioner/ JDR No. 1 took a specific plea that he delivered the possession of the suit lands to Viswanadham and Srinivasulu on 18.8.1994. This fact is evident from the order in C.R.P. No. 902 of 1999. I deem it appropriate to refer the relevant portion in the C.R.P. No. 902 of 1999 and it is thus:

"The main argument of the learned Counsel for the petitioner is that though the suit was decided in his favour and he was not able to enjoy the fruits of the decree, the learned District Munsif is not correct in dismissing the E.A., on the grounds mentioned in the order. The Counsel for the petitioner also submitted that in the counter it is categorically mentioned by the respondent that "after dismissal of the suit, I surrendered my possession to my landlords Sri K. Viswanadham and Sri K. Srinivasulu. Hence, I am not in possession of the suit property since 18.8.1994. These facts could not be stated in my counter filed in E.A., as I filed the counter on 1.8.1994. So far as the present standing crop in the land is concerned, I am not at all interested and concerned." In view of this categorical statement in the counter-affidavit, the respondent could not have raised any objection for appointment of the Advocate-Commissioner. Therefore, to safeguard the interest of the petitioner and to reap the fruits of the decree obtained by him, a Commissioner should be appointed, directing him to harvest the crop and deposit the proceeds in the Court to the credit of the decree in O.S. No. 25/82."

The petitioner/JDR No. 1 has categorically pleaded that he was not in possession of the property as on the date of filing of the restitution petition having delivered the suit lands to Viswanadham and another person on 18.8.1994.

8. A petition u/s 144 of CPC embodies the doctrine of restitution. Sub-section (1) of Section 144 declares that where a decree or order is set aside, reversed or varied in any appeal, revision or other proceeding, the party entitled to the benefit of restitution may apply to the Court which passed the decree or made the order. On such application, the Court, which had passed the decree, will make an order of restitution by placing the parties in the position, which they would have occupied, but for such decree or order. The doctrine of restitution is based upon the well-known maxim "*actus curiae neminem gravabit*", i.e., the act of Court shall harm no one. One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to the suitors It has been held

by the Supreme Court in Mrs. Kavita Trehan and another Vs. Balsara Hygiene Products Ltd., , as follows:

"The Law of Restitution encompasses all claims founded upon the principle of unjust enrichment. "Restitutionary claims are to be found in equity as well as at law". Restitutionary law has many branches. The law of quasi-contract is "that part of restitution which stems from the common indebitatus counts for money had and received and for money paid, and from quantum meruit and quantum valebat claims." Halsbury's Law of England, 4th Edn. Page 434 states :

"COMMON Law. Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another, which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi contract or restitution.

For historical reasons, quasi contract has traditionally been treated as part of, or together with, the law of contract. Yet independently, equity has also developed principles, which are aimed at providing a remedy for unjustifiable enrichment. It may be that today these two strands are in the process of being woven into a single topic in the law, which may be termed "restitution"."

The jurisdiction to make restitution is inherent in every Court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose....". In the instant case R1/ decree holder pleaded in O.S.3/90 that the petitioner/JDR No. 1 came into the possession of the property after dismissal of the suit in O.S. No. 25/82. In such a situation can it be said that the petitioner/JDR No. 1 entered upon the property under the guise of the decree granted by the Court. In my considered view the possession of the petitioner/JDR No. 1 in such a situation cannot be construed that it is in pursuance of the decree granted by the Court. The decision on which R1/decreed holder relies on i.e., Mrs. Kavita Trehan and another Vs. Balsara Hygiene Products Ltd., , the properties came to be sold by the plaintiff under the orders of the Court and ultimately the plaintiff was found to be not entitled to exercise such a right. In those circumstances, the Supreme Court held that the restitution could be made under inherent powers. Coming to the facts of the case on hand, the petitioner/JDR No. 1 entered into the suit lands is not in pursuance of the orders granted by the Court. Therefore, the cited case has no application to the facts of the case on hand. The Madras High Court in Periyasamy Thevan and Others Vs. Karuthiah Thevan and Another, has held that Section 144 of CPC authorizes the grant of relief in order to replace the parties in the position they would have occupied but for the decree. It does not apply to a

case where possession is obtained independent of and in opposition to the decree. In the cited case the plaintiffs obtained a decree for injunction and got possession of the property in dispute in some way, but not in the ordinary course of execution. The decree was reversed in appeal. Defendants applied for restitution of possession and for removal of a superstructure erected by the plaintiffs over the property. The Madras High Court held that Section 144 of CPC does not apply, inasmuch as plaintiffs possession was not under the decree, but in opposition to it. Our High Court in Sanampudu Krishna Reddy v. Pattamreddy Kota Reddy and Ors. 1980 (1) ALT 428, following the decision of Madras High Court in Periyasamy v. Karuthiah AIR 1918 Mad. 1293, held that as a rule and rule of practice in India, restitution is ordered on the principle that acts of the Court should not injure any of the suitors.

9. In the instant case it is not as a result through the process of Court that possession was lost. Therefore, the only remedy is that the respondents should have recourse to a suit and not by an application u/s 144 of CPC in execution. Indeed, R1/decree holder had filed O.S.3/90 seeking for declaration of title and also recovery of possession. Both the execution Court and the appellate Court failed to note this aspect and thereby erred in ordering restitution of the suit lands. With regard to the restitution of the amounts withdrawn by the petitioner/JDR No. 1 there is every justification in allowing the application of R1/decree holder. Admittedly, the suit lands were put to auction pending the suit O.S.25/82. R1/decree holder being the highest bidder enjoyed the suit lands pending disposal of the suit and deposited amounts. After dismissal of the suit, it appears the petitioner/ JDR No. 1 withdrew the said amounts. It is a matter of record that the dismissal of the suit came to be reversed in an appeal, and the petitioner/JDR No. 1 unsuccessfully questioned the judgment and decree by filing Second Appeal and further by Special Leave Petition. In these circumstances, the petitioner/JDR No. 1 having withdrawn the amounts which he is not entitled is liable to re-deposit the same. To that extent the order of the executing Court and the first Appellate Court cannot be interfered with.

10. In the result, this civil revision petition is partly allowed setting aside the order of the executing Court and also Appellate Court to the extent of directing restitution of the suit lands to R1/decree holder while confirming the order directing the petitioner/JDR No. 1 to re-deposit the amount of Rs. 26,070/- which he withdraw from the Court.