

(2003) 02 KAR CK 0060

In the Karnataka High Court

Case No : Civil Revision Petition No. 2892 of 2002

Gangadharappa

APPELLANT

Vs

Smt. Kanthamma

RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, 151

Citation : (2003) ILR (Kar) 1742

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Somasundara Dixit, for the Appellant; S. Venkata Rama Reddy, for the Respondent

Final Decision : Allowed

Judgement

Sreedhar Rao, J.—The revision filed against the impugned order of the Civil Judge (Jr.Dn.), Shidlagatta in Execution No. 54/2001.

2. The respondent in this petition is the decree holder obtaining a decree for permanent injunction against the petitioner in O.S.No. 256/97 on the file of Civil Judge (Jr.Dn.) Shidlagatta. The said decree is under execution. Inter-alia in the execution, an application u/s 151 CPC was filed seeking Police help to protect the possession of the decree holder. The Executing Court granted the request. Being aggrieved, the present revision is filed.

3. The Counsel for the petitioner submits that an appeal is filed in R.A.No. 76/2000 on the file of the Civil Judge (Sr.Dn.), Chintamani against the judgment and decree passed in O.S.No. 256/97. There is an application for condonation of delay and also for staying execution of the judgment and decree of the Trial Court. During the pendency of the appeal, it is said that the decree is executed and impugned order is obtained.

4. It is the contention of the Counsel for the petitioner that in view of Order 21 Rule 32, it is impermissible for the petitioner to seek Police Protection. The

provision of Rule 32 clearly envisages the mode and manner of execution of decree for injunction granted. The decree holder on proof of non compliance of terms of decree can secure the detention of the judgment debtor in a Civil prison and can also seek sale or attachment of the property. The Court has jurisdiction to grant compensation from out of sale proceedings.

4. In view of provision of Rule 32, it is impermissible for the Court to have granted the relief of Police Protection. The decree holder can avail only the relief which is permissible under Rule 32. Accordingly, I find that the order of the Executing Court in granting Police Protection to the decree holder is illegal and totally in contravention of Rule 32. The inherent powers u/s 151 are always subject to the express provisions of law under the Code. In that view of the matter, the impugned order of the Trial Court is set aside.

5. Accordingly, the revision is allowed.