
(2005) 09 AP CK 0083
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3942 of 2005

Khaja Shoukat Ali and Others

APPELLANT

Vs

Smt. Khairunnissa Begum and Others

RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 39 Rule 2, Order 39 Rule 2A, 151

Citation : (2005) 6 ALT 710 : (2005) 3 APLJ 285

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : K. Srinivas, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—The petitioners aggrieved by the order dated 6-7-2005, passed by the Junior Civil Judge, Devarakonda, Nalgonda District, allowing the application in E. A. No. 13 of 2004 in E.P.No. 5 of 2004 in O.S.No. 50 of 1997, filed by the respondents seeking police protection for enjoying the fruits of the decree, have filed this C.R.P.

2. The respondents claim to have obtained a judgment and decree for perpetual injunction against the petitioners in respect of the property in O.S.No. 50 of 1997 from the Court of the Junior Civil Judge, Devarakonda on 30-3-2001. Against the said judgment and decree, the petitioners filed appeal in A.S.No. 31 of 2001 on the file of the. IV Additional District Judge, Nalgonda, which was dismissed by judgment dated 31 -7-2003. The said judgment was confirmed by this Court in S.A.No. 999 of 2003 by this Court vide order dated 25-3-2004. Thereupon, the respondents filed E.P.No. 5 of 2004. During the pendency of the said petition, the petitioners appear to have filed a suit in O.S.No. 105 of 2004 on the file of the Senior Civil Judge, Nalgonda, for declaration of title and perpetual injunction contending that their rights were, decided in O.S.No. 54 of 1983 and that they are in possession and enjoyment of the suit property, and obtained orders of

interim injunction in I.A.No. 610 of 2004. At that point of time, the present application in E.A.No. 13 of 2004 was filed by the respondents u/s 151 C.P.C. seeking police protection for enjoying the fruits of the decree obtained by them in O.S.No. 50 of 1997, dated 30-3-2001, which on contest by the petitioners, by the order under revision, was allowed.

3. The learned Counsel for the petitioners submitted that if the petitioners are said to have disobeyed the judgment and decree obtained by the respondents in the suit, which was confirmed by the first appellate Court and the second appellate Court, the remedy of the respondents is to take recourse to the provisions of Order XXI Rule 32 C.P.C., and not by way of an application u/s 151 C.P.C. seeking police protection. He submits that unless and until the parties are given opportunity to adduce evidence, as provided under Order XXI Rule 32 C.P.C., the Court below could not have allowed the application filed by the respondents u/s 151 C.P.C., and more so when the petitioners had obtained an order of injunction in I.A.No. 610 of 2004 in O.S.No. 105 of 2004, which was filed by them when the respondents sought to interfere with their possession, which is still subsisting. In support of this contention, he placed reliance on the judgment of this Court in *G. Anandam and Others Vs. The Warangal Municipal Corporation*, .

4. Heard the learned Counsel for the petitioners and perused the order under revision.

5. Admittedly, the respondents had obtained a decree of perpetual injunction against the petitioners in O.S.No. 50 of 1997, dated 30-3-2001, from the Junior Civil Judge, Devarakonda, which was confirmed in appeal in A.S.No. 31 of 2001 vide orders dated 31 -7-2003 of the IV Additional District Judge, Nalgonda, and in second appeal in S. A. No. 999 of 2003 by this Court vide orders dated 25-3-2004. The fact that the order of perpetual injunction granted by the trial Court, was confirmed by the first appellate Court in appeal, and this Court in second appeal, itself testifies that the respondents are in possession of the suit property. May be the petitioners obtained order of temporary injunction in I.A.No. 610 of 2004 from the Court of Senior Civil Judge in O.S.No. 105 of 2004, but the fact remains, there is already an order of injunction granted in favour of the respondents, which as stated above, was confirmed by the appellate Court as well as this Court. The petitioners admittedly having suffered a decree, and the rights of the parties having been crystallized under the decree, now cannot be allowed to contend that there are disputes in regard to the boundaries of the suit property.

6. In *Rayapati Audemma Vs. Pothineni Narasimham*, a Division Bench of this Court, upon considering the power of the Court u/s 151 C.P.C. to order police aid for the implementation of an order of temporary injunction granted under Order XXXIX Rule 2 C.P.C., held thus:

In such a case, there being no other express provision in the Code for enforcement of the order, it is not only proper but also necessary that the Courts

should render all aid to the aggrieved party to derive full benefits of the order. Though the order of injunction under Order 39, Civil P.C. is only interim in nature, still it clothes the person who obtained the order with certain rights and he is entitled to enforce the aforesaid right against the party who is bound by the order. No doubt in such a case, the aggrieved party himself could approach the police authorities to prevent obstruction to the enforcement of the order or to the exercise of the right which he derives under the order of Court. But we do not see why when the same person brings to the notice of the Court that enforcement of the order is sought to be prevented or obstructed, the Court should not exercise its inherent power u/s 151 Civil P.C. and direct the police authorities to render all aid to the aggrieved party in the implementation of the Court's order.

In our opinion, the exercise of such power is necessary for the ends of justice or to prevent abuse of the process and the civil Court has ample jurisdiction to pass such order u/s 151 Civil P.C.

7. A learned single Judge of this Court in *P. Shanker Rao Vs. B. Susheela*, while repelling similar contention raised by the petitioner therein that the Court cannot direct police aid for execution of its order --interlocutory or final and that the party should only have recourse to the procedure laid down under Order XXI, Rule 32 or the Contempt of Courts Act, held thus:

... The mere fact that the action could be taken against either party for flouting the injunction under Order XXXIX Rule 2-A or under the Contempt of Courts Act does not come in the way of the Court taking all necessary steps for ensuring obedience of the injunction order. The Court need not wait till the injunction is breached. In a fit case, the Court can undoubtedly direct police aid as a preventive measure. This power though not expressly conferred, is a power incidental or ancillary to the exercise of the power to grant injunction pending the suit.

8. In the case on hand, what all the respondents have sought in the present application filed u/s 151 C.P.C. is to provide police protection to enjoy the fruits of the decree. It is not as if they are seeking restoration of the decretal property to them from the petitioners with the help of police aid. Had the respondents by way of the present application sought restoration of the decretal property with the help of police aid from the petitioners, certainly they would have been justified in contending that the respondents have to take recourse to the provisions of Order XXI Rule 32 C.P.C., but that is not the case on hand. The respondents except seeking police protection to enjoy the fruits of the decree obtained by them, have not sought the restoration of the suit property, which is admittedly in their possession. In that view of the matter, reliance placed by the learned Counsel for the petitioners on the judgment of this Court in *G. Anandam v. Warangal Municipal Corporation* (1 supra), is of no help to them, inasmuch as in the said case, the petitioners therein with the help of police aid sought to execute the decree and seek restoration of possession of the suit property from

the respondents, which is not the case on hand.

9. For the foregoing reasons, I find no merit in the C.R.P., and the same is accordingly dismissed. No costs.