

(1951) 10 AHC CK 0002

In the Allahabad High Court

Case No : Ex. Second Appeal No. 1292 of 1948 and Civil Revision No. 649 of 1948

Shital Prasad and Another

APPELLANT

Vs

Mst. Tapesara Kurmin and Others

RESPONDENT

Date of Decision : 16-10-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 151

Citation : AIR 1953 All 573 : (1952) 22 AWR 157

Hon'ble Judges : Brij Mohan Lall, J

Bench : Single Bench

Advocate : K.N. Gupta, for the Appellant; J.K. Srivastava, for the Respondent

Final Decision : Partly Allowed

Judgement

Brij Mohan Lall, J.—This second appeal is connected with Civil Revision No. 649 of 1948. It appears that the appellants held a decree against the respondents for possession of certain area of land and for demolition of certain constructions. They put the decree in execution and, according to the concurrent findings of both the Courts below got a larger portion of the constructions demolished than they were entitled to and also succeeded in obtaining possession over a larger area than was awarded to them by the decree.

2. The respondents filed an objection in the execution Court, drawing its attention to the fact that the Amin, while purporting to execute the decree, had gone beyond the terms of the decree. The Court of first instance ordered that possession shall be delivered back to the respondents over the area on which the decree-holders had obtained possession in excess of the terms of the decree. Further, it held that a sum of Rs. 50/- would be paid as damages to the respondents for the loss caused by the demolition of the building in excess of the terms of the decree.

3. The decree-holders preferred an appeal in the Court of the District Judge and,

at the same time, filed a revision in this Court. The respondents filed a cross-objection in the Court of the District Judge. The appeal was heard by the Civil Judge who dismissed it but allowed the cross-objection raising the amount of damages from Rs. 50/- to Rs. 100/-. Against this decision this second appeal has been preferred.

4. The learned counsel for the decree-holders has contended that the respondents' remedy lay by way of a regular suit and not by means of an application to the execution Court. His contention is that the decree having been executed in full, the Court became functus officio and any further remedy in respect of this dispute should have been asked for in a regular suit.

5. It is true that Section 144, Civil P. C. has no application to the present case. That section applies only when the decree of a Court is varied or revised. There has been no variation or reversal of the decree in this case. Therefore, it goes without saying that the respondents judgment-debtors could not invoke the provisions of Section 144, Civil P. C. But they could certainly seek relief from the Court in exercise of its inherent power u/s 151, Civil P. C. Whenever a party is prejudiced by any wrong act or order of the court, the court possesses inherent jurisdiction to restore the status quo and to undo that wrong. Consequently, in so far as the Court ordered the judgment-debtors to be put in possession over that area of land from which they had been dispossessed against the terms of the decree, the Court was perfectly within its right to do so. But different considerations arise in respect of a claim for damages. In awarding damages the Court is not, strictly speaking, putting the parties in the same position in which they were before the wrong execution of the decree. Had the building still existed and had it been in the possession of the decree-holders, the Court could certainly say that possession should be given back to the judgment-debtors over that portion from which they had been ejected otherwise than in accordance with the terms of the decree. But that is not the position here, The Court is not restoring the building to their possession. It has awarded damages for the loss caused to the respondents. This does not amount to restoration of status quo, I am, therefore, of the opinion that it was not within the competence of the Court to pass an order of damages in tile execution proceedings. The judgment-debtors should have been left to enforce their claim for damages for wrongful execution of the decree by means of a separate suit. It was held in the case of -- "Badrudin Khan v. Mahvar Khan AIR 1933 All 66 (A) that:

"It is true that the jurisdiction to make restitution is inherent in every Court, but where the relief claimed is not really restitution and can appropriately be claimed by a suit, recourse cannot be had to the inherent powers of the Court u/s 151 of the Civil P. C."

With this remark I respectfully agree. I am thus of the opinion that the claim for damages should have been enforced by means of a regular suit.

6. The appeal is allowed in part. The order of the Courts below awarding

compensation to the respondents for wrongful demolition of a portion of their building is set aside. The order regarding re-delivery of possession to the respondents over land from which they were dispossessed otherwise than in accordance with the terms of the decree is maintained. In view of the special circumstances of this case, I make no order as to costs.