

(1996) 07 BOM CK 0086

In the Bombay High Court

Case No : Civil Revision Application No. 15 of 1996

Smt. Usha Dhabekar

APPELLANT

Vs

Prakash Sahakari Griha Nirman Sanstha and Another

RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 98, Order 21 Rule 99, 151

Citation : (1997) 1 BomCR 136

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : M.G. Bhangde, for the Appellant; S.D. Patil and R.S. Parsodkar, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—Correctness of the order passed by the Executing Court u/s 151 of the Civil Procedure Code, directing the restoration of possession of the suit plot in favour of non-applicant No. 2 Vijay Vithalrao Joshi, is challenged in this Civil Revision Application. The following facts will highlight the controversy.

2. Applicant Usha Pandurang Dhabekar filed a dispute before the Judge, Co-operative Court, Nagpur, against non-applicant No. 1 Prakash Sahakari Griha Nirman Sanstha (hereinafter called "the Society" for the sake of brevity) and others, for a declaration that the applicant/disputant was entitled for allotment of a plot admeasuring 50" x 100" in its Somalwada Layout No. 3, Khasra No. 152/2. The disputant's further request was to permanently restrain the Society from transferring or alienating one plot, admeasuring 50" x 100", from its Somalwada Layout No. 3, Khasra No. 152/2. Her further case was that she had deposited the total amount of Rs. 9,241/- from time to time for the allotment of a plot admeasuring 50" x 100" from Somalwada Layout No. 3 in her capacity as a member of the said Society. She pointed out that the opponents had, by their communication dated 15-5-1980 confirmed this fact. She further alleged that opponent No. 2, who was on the helm of affairs of the Society was removed from

the Managing Committee and he had sent back the Demand Draft of Rs. 4,650/- dated 11-2-1988 to her on the ground that he had resigned from the post of the President of the said Society. She thereafter had also received a letter from the opponent No. 2 with a Demand Draft of Rs. 4,530/- dated 19-5-1988. She claimed that these refunds were of no consequence since the opponent No. 2 was already removed from the Managing Committee by the order dated 11-4-1988. She claimed that she gave a legal notice to the Society and returned the Demand Drafts sent to her. She insisted that she was and remained a member of the opponent/Society right from 1974 and, therefore, she had every right, title and interest in respect of one plot admeasuring 50" x 100" in Somalwada Layout No. 3. In her dispute, she further claimed that the Society was allotting plot to various persons who were not the members of the Society, ignoring her rights and claims. She also filed, alongwith the dispute, an application u/s 95(4) of the Maharashtra Co-operative Societies Act. Though the notices were sent, the opponent No. 1/Society as also the opponent No. 2 remained absent, and the Co-operative Court, vide order dated 21-12-1991, granted injunction and restrained the opponent Society from transferring/ alienating one plot admeasuring 50" x 100" on Somalwada Layout No. 3, pending hearing and final disposal of the dispute.

3. The opponents, i.e., the Society and opponent No. 2, its erstwhile President, chose to remain absent and the Court proceeded ex parte. The disputant lead her evidence by examining her husband who deposed to the effect that the disputant had completed all the formalities for allotment of the plot and that she had also made the payments as per the Rules of the Society. In his evidence, he claimed that Plot Nos. 1, 2 and 3 of the Somalwada Layout No. 3, admeasuring 50" x 100" each, were vacant. On the basis of this evidence, following order came to be passed :

"it is hereby declared that the disputant is entitled for allotment of plot admeasuring 50" x 100" in Somalwada Layout No. 3, Khasra No. 152/2 belonging to the opponent Society.

The opponent Society is hereby permanently restrained from transferring or alienating plot No. 1, admeasuring 50" x 100", in Somalwada Layout No. 3, Khasra No. 152/2 to any other member except the disputant. Taking into consideration the facts and circumstances of the case, no order as to the costs. Award be drawn accordingly.

Sd/- (V.G.Darunde) Judge Co-operative Court, Nagpur"

4. On this basis a certificate came to be issued to the disputant/applicant and on the basis of this certificate, she started an execution of this decree in the Court of the Civil Judge (Senior Division), Nagpur. In the Execution Application, she had claimed the reliefs as under:---

"Issue warrants to opponent Nos. 1 and 2 directing them to allot plot No. 1, admeasuring 50" x 100" in Somalwada Layout No. 3, Khasra No. 152/2,

belonging to opponent No. 1/Society to the applicant and from transferring or alienating the said plot to any other person other than applicant."

To this application again opponent No. 1/Society, while opponent No. 2-Shyamkant Bagaddeo, were shown as parties. The Court issued notices on this Regular Darkhast No. 553 of 1993. It seems that opponent No. 1 Society came before the Court and contended that all the plots in Somalwada Layout No. 3 stood transferred by it prior to passing of the impugned Award dated 15-5-1993 and, thus, the award had become infructuous and there was no question of entrainment in alienating plot No. 1. It was stated that the said plot was owned and possessed by entire different person who was not a party before the Court. The Society further claimed that opponent No. 2-Shyamkant Bagaddeo had no concern with the Society as he had handed over the charge to the Administrator on 1-7-1988 itself. The Society also passed a pursis that the Government had appointed an Administrator with effect from 1-7-1988 and he continued to be an Administrator as such upto 20-1-1992 and the new body had taken over from the Administrator on 20-1-1992. It was clarified that when the new body had taken the charge, no plot had remained vacant in Somalwada Layout No. 3, Khasra No. 152/2.

5. A counter-affidavit came to be filed, probably on this pursis and the earlier reply, by the disputant/applicant to the effect that there was an injunction order against the Society, dated 21-12-1991 restraining it from transferring any plot in the Somalwada Layout and the stay order was communicated to the Society by the letter dated 6-2-1992 by the disputant/decreed-holder. It is further reiterated in this affidavit that the Judgment Debtor thereafter on 1-3-1992 had asked for an affidavit to the effect that the disputant did not own a house or a plot within the jurisdiction of the Society, and the said letter sent by the Society was also replied to by the applicant/disputant. It was further averred in the affidavit that the Society was in the know of the order of injunction passed by the Co-operative Court, right from 21-12-1991.

6. It seems that on the basis of this material, the Executing Court issued a warrant of possession in respect of plot No. 1 of Somalwada Layout No. 3, Khasra No. 152/2. Very significantly enough, the said plot No. 1 was not the subject matter of the dispute before the Co-operative Court, in the sense that the disputant had not claimed the plot No. 1 in the dispute. It was only during the evidence that the husband of the disputant stated that plot Nos. 1, 2 and 3 were vacant. Again, there was no direction to the opponent No. 1 Society specifically to hand over the possession of the suit plot to the claimant. It is the claim of the applicant that in pursuance of the possession-warrant, the possession of plot No. 1 was taken over.

7. Significantly enough, it is at this stage that the present non-applicant No. 2-Vijay Vithalrao Joshi surfaced. It seems that he had made an application to the Executing Court for restoration of possession. He claimed in his application for restoration of possession that he had purchased the suit plot from the Society on

29-8-1991 by a registered sale-deed and he was put in possession of the said plot No. 1 on the date of execution of the sale-deed. He claimed that he had purchased the plot for Rs. 72,630/-. He had also erected a temporary tin-shed and fixed a board exhibiting his name. He claimed that on 8-12-1995, he came to know that a bailiff of the Court had arrived for taking possession and, therefore, he was dumb-founded, that he was never a party to any dispute muchless the one started by Smt. Usha Dhabekar. He pointed out that he was never a party in the original dispute No. 479 of 1991. He further claimed that the bailiff, without giving any notice or intimating, only prepared some papers purporting to be possession receipt and only mentioned that the possession was given to the decree-holder. He claimed that noticing the same, he sought legal assistance and found that one order was passed by the Co-operative Court, merely declaring the entitlement of the disputant for "a plot" on Somalwada Layout No. 3, Khasra No. 152/2, and that by that order, the Society was restrained from transferring plot No. 1 to any other member. He pointed out that even before the order was passed, he was already the owner as the sale-deed in his favour is dated 29-8-1991. He pointed out that even in the ex parte Award, there was no order of delivery of possession in favour of the decree-holder who had misled the Court, played fraud on it and claimed a warrant of possession, and the warrant of possession was mistakenly granted by the Court. He pointed out that he had immediately moved an application before the Court for recalling the warrant on the same day i.e., on 18-12-1992, but it was shown by the bailiff that possession was already taken and the warrant was executed though, in fact, was not. It was, therefore, that he was making an application. It was further reiterated in this application that the so-called delivery of possession was absolutely illegal and without jurisdiction and that he was thrown out of the property as a result of the fraud played by the applicant/decreree-holder on the Court.

8. The present applicant filed a detailed reply to this application, on being noticed, and mainly contended that Shri Joshi had no locus stand to file the application as it was not he who was dispossessed, pursuant to the decree passed by the Co-operative Court. It was claimed that once the warrant of possession was executed, the Court cannot pass any orders, as nothing remained for being adjudicated. It was reiterated that if at all the claim as put forth by the applicant is to be entertained, then the Court will have to enquire into the right, title and interest of the applicant over the property in the execution proceedings and that this enquiry could not be conducted into execution proceedings. It was further denied that there was any registered sale-deed or that the plot was possessed by V.V. Joshi. It was reiterated that V.V. Joshi was never dispossessed from the plot as he was never in possession. It was further claimed that there was no valid title in favour of V.V. Joshi, as the person who executed the sale-deed had no authority to do so. The alleged sale-deed dated 29-8-1991 was, therefore, a void document. The other claims made in the restoration application were also traversed in details and more particularly it was contended that the

Court has no power u/s 151 of the CPC to rectify any such mistake.

9. It seems that the trial Court then passed the impugned order and directed the restoration of possession by allowing the application Exhibit 22 and directed the restoration of possession of plot No. 1 in question in favour of the present non-applicant No. 2 Vijay Vithalrao Joshi. It is this order which is impugned in the instant Civil Revision Application.

10. Shri M.G. Bhangde, learned Counsel appearing on behalf of the applicant, mainly contended that the course adopted by the trial Court in ordering the restoration of possession, particularly with the aid of section 151 of the Code of Civil Procedure, is wholly erroneous. He further contended that section 151 could not be used particularly when the specific provisions of Order 21, Rule 99 read with Rule 101 of the CPC was available. According to him, the only course open for the present non-applicant No. 2, Joshi, was to make an application under Order 21, Rule 99 of the CPC and the Court was bound to adjudicate upon the application as per the dictates of Order 21, Rule 99(2). Shri Bhangde further pointed out that it was imperative for the Court to go into the questions referred to in Order 21, Rule 101 and such questions included right, title or interest in the suit property of the parties in question including, in the present case, the objector (non-applicant No. 2 herein). According to him, these questions had to be decided only in the execution proceedings and not by a separate suit. He pointed out further that Order 21, Rule 103 gives the force of a decree to an order deciding such questions and, therefore, there had to be an elaborate enquiry as to whether the objector had acquired a good title to the suit property so as to be able to resist the decree of possession in favour of the present applicant. He painstakingly pointed out that there was no opportunity of leading evidence afforded by the trial Court, nor was any such evidence led by the parties. He, therefore, pointed out that there was no enquiry as such as contemplated under Order 21, Rule 101 of the CPC and, therefore, the order passed exercising the powers u/s 151 in a brisk manner, as in the present case, was obviously an order without jurisdiction. During the course of his arguments, Shri Bhangde heavily relied upon a Supreme Court decision reported in Babulal Vs. Raj Kumar and Others, 3 . Shri Bhangde, criticised the impugned order as being based on the rulings which were not at all applicable.

11. Shri R.S. Parsodkar, learned Counsel appearing on behalf of non-applicant No. 2 contended that there was a clear evidence of fraud and as such the Court was fully justified in relying upon section 151 of the CPC and restoring the possession. According to Shri Parsodkar, there was no decree for possession passed at all by the Co-operative Court, muchless in respect of plot No. 1. Shri Parsodkar very strongly relied upon the language of the operative part of the order passed by the Co-operative Court and contended, in the first place, that plot No. 1 was never a subject matter of dispute, nor was the dispute brought with an objective of getting the possession of that plot. He further pointed out that a stray reference to that plot, alongwith two other plots, was made by the

applicant's husband in his evidence, but that could not have been a reason for the Co-operative Court to grant any relief against plot No. 1. He strenuously pointed out that the non-applicant No. 2 was never a party to the original proceedings before the Co-operative Court and, therefore, any decree was not binding on him at all. He also pointed out that he had become the owner by a sale-deed from the Society and, according to him, whether he acquired a good title or not, was a question wholly outside the realms of jurisdiction of the Executing Court. According to him, since there was no decree of possession in favour of the present applicant and a warrant of possession was sent without there being any basis for the same and more particularly on account of the mischievous representation made by the applicant in her execution application, there was no question of applicability of Order 21, Rule 99 of the Code of Civil Procedure. He supported his contentions by various rulings which would be considered later on.

12. The main question, therefore, is whether the Court has erred in invoking section 151 when the specific remedy under Order 21, Rule 99 read with Rule 101 was available to it. The opening words of Order 21, Rule 99 give a clear pointer that a person dispossessing any person other than the judgment debtor has to be a holder of a decree for possession of such property or at least has to be a purchaser where such property is sold in execution of a decree. It will be worthwhile to see the nature of decree passed. The operative order of the Co-operative Court, which has already been quoted earlier, nowhere suggests that there was any direction for possession. Even stretching language of that order, in the first paragraph of the order there is merely a declaration that the disputant is entitled for allotment of plot admeasuring 50" x 100" in Somalwada Layout No. 3, Khasra No. 152/2, belonging to the Society. There is no direction given by this decree to actually allot a plot, muchless plot No. 1. What is granted is a hollow declaration crystallising the right of the disputant to be allotted one plot out of the Somalwada Layout of the Society, without there being any concomitant direction to do so, muchless to the Society and in favour of the disputant. It has already been pointed out that the whole judgment of the Co-operative Court is silent about the plot No. 1. There is only a passing reference to the evidence of the husband of the present applicant to suggest that he had deposed that plot Nos. 1, 2 and 3, admeasuring 50" x 100" each, were vacant. Beyond this, there is no reference to the plot No. 1 in the whole Judgment, excepting at the fag end of the order. In the last but one paragraph also there is a reference that the witness (husband of the applicant) had filed the copy of layout plan marked as Article * and the witness had deposed that the plot Nos. 1 to 3 are vacant; all plots being admeasuring 50" x 100". On this basis, the declaration is given which has been referred to earlier. The second part of the operative order is more confusive. There, the Court has issued a permanent injunction restraining the Society from transferring or alienating plot No. 1, admeasuring 50" x 100", in Somalwada Layout No. 3, Khasra No. 152/2, to any members except the disputant. It is not for me in this matter to consider the correctness or otherwise

of the dispute, since the dispute, according to the applicant, has become final, though Shri Dharmadhikari, learned Counsel appearing on behalf of the Society, does not accept this and insists that an application to set aside this ex parte dispute is pending before the Co-operative Court. Be that as it may one fails to understand as to where from has plot No. 1 emerged in this injunction. The husband of the applicant had referred to plot Nos. 1 to 3 being vacant, in his evidence. By what process has plot No. 1 been chosen to be included in the injunction is not known or cannot be conceived.

13. Shri Bhangde strongly urges that the Court should not look into merely the language of the order in separate paragraphs but the whole order should be read as one. His contention is that where the declaration is granted for allotment of the plot, it would mean that there is a declaration for the possession of the plot also since an allotment of a plot includes the possession thereof. He thereafter wants the Court to read the negative injunction, in the sense that because of that negative injunction, a necessary reference to plot No. 1 has to be read in the first part of the operative order. I am afraid, such acrobatics would be wholly unnecessary and unwarranted while reading a decree. The decree has to be read as it is. The Executing Court cannot interpret the decree so as to aid something in it which has not specifically been granted. After all, a decree is a formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of matter in controversy in the suit. The decree, therefore, has to be read as it is. That apart, this could not be said to be an adjudication of the rights between the applicant and the non-applicant No. 2, as non-applicant No. 2 was never a party to the dispute. It will be seen that a certificate issued u/s 96 of the Maharashtra Co-operative Societies Act, on the basis of this dispute, also does not refer to plot No. 1 in the first paragraph of the order. It is nothing but a replica of the operative order passed in the dispute. The position, therefore, is obtained that there was no decree for possession of plot No. 1. Even if the word "allotment" includes a possession, the language of the operative order falls short as there is no direction of allotment of plot No. 1 in favour of the applicant. There is only a declaration in general terms and that is not sufficient to read a further direction for plot No. 1. If the Court passing the decree stop short of issuing a direction in pursuance of the declaration, an Executing Court cannot read the said direction in the decree, nor can the order be stretched so as to imagine what the Court passing the decree had intended to pass such direction. Since the language of the operative order passed as also the certificate issued u/s 96 of the Maharashtra Co-operative Societies Act is clear enough, there is no scope to hold that this was a decree for possession of plot No. 1. Consequently, the applicant cannot be deemed to be a decree-holder as contemplated in Order 21, Rule 99 of the Code of Civil Procedure. There was, therefore, no applicability of Order 21, Rule 99 of the Code of Civil Procedure, in this case.

14. Shri Bhangde very heavily relied upon the Supreme Court ruling reported in Babulal v. Rajkumar (1996) Scc 154. He pointed out that in this case also there

was a decree for specific performance but no further decree for possession, though in the suit a specific prayer was made for possession. In pursuance of this decree, an execution was started, wherein the legal representatives of the decree-holder sought to dispossess the appellant. The appellant, who was not a party to the suit, apprehending his dispossession, filed another suit for injunction based on possessory title and had also obtained an injunction. An application came to be filed under Order 21, Rule 32 of the CPC by the decree-holder, wherein an objection came to be filed by the said stranger to the decree that he could not be dispossessed. His objection was over-ruled by the Executing Court holding that since he was not dispossessed, application under Order 21, Rule 97 was not maintainable. This order was confirmed in the High Court. The Apex Court, relying on the ruling of *Bhanwar Lal Vs. Satyanarain and another*, held that under Order 21, Rule 98 of the Code of Civil Procedure, before removal of obstruction caused by the objector and before the finding is recorded, the adjudication is required. The Apex Court further held that in such case, there has to be determination of question of right, title and interest of the objector in the immovable property under execution by an adjudication under Order 21, Rule 98 of the Code of Civil Procedure. Shri Bhangde relying on this case, very heavily submits that the facts are similar, that here was an objection by a stranger which was for resisting the claim of possession of the decree-holder. Shri Bhangde also pointed out that here in the reported decision, though there was no decree for possession, yet the Court had directed an enquiry under Order 21, Rule 98 of the Code of Civil Procedure.

15. The ruling is completely being misunderstood by the applicant. First on facts, the situation is completely different. In the reported ruling, there was a valid decree for specific performance, whereas no such decree of specific performance has been passed in the dispute before the Co-operative Court, in the present case. Further, what is given here is only a declaration and further an injunction against the Society. There is no direction for allotment of plot No. 1 in the judgment of the Co-operative Court. That would be a distinguishing feature. Secondly, the Apex Court has only mentioned section 22(1) of the Specific Reliefs Act to say that in a suit for specific performance, a possession or partition as regards the property in question can be prayed for, and unless there is such a prayer, such relief of possession or partition cannot be granted. The Apex Court has nowhere given the direction in the ruling for possession but has merely held that there has to be an adjudication under Order 21, Rule 98 of the CPC on an objection being raised by an outsider for the grant of possession to the decree-holder. The ruling is not on the question of grant of possession, but it relates to a tenability of an application under Order 21, Rule 98 of the CPC and the necessity for an adjudication of such objection. In the present matter, it would be seen that though there was no decree for possession even for the specific performance and again though plot No. 1 was not even covered under the first part of the decree on the basis of which the possession was being asked for, the Executing Court erroneously issued a warrant for possession. Thus, the case could not come

under Order 21, Rule 98 or 99 of the CPC as, in the first place, there was no valid decree for possession. There is no question of Order 21, Rule 98 becoming operative as this was not a case where the resistance or obstruction was occasioned without any cause by the judgment-debtor or by some other person at his instigation or on his behalf. Applicability of Order 21, Rule 98 is, therefore, out of question. Insofar as the applicability of Order 21, Rule 99 is concerned, it has already been pointed out that even that Rule was not applicable as the present decree-holder was not holding a decree for possession of the property in question. The ruling is, therefore, not applicable and the contention of the applicant in this behalf has to be rejected.

16. That leaves us to the question as to whether the Executing Court was right in pursuing the course as it did of restoring the possession of the non-applicant No. 2, with the aid of section 151 of the Code of Civil Procedure. Shri Parsodkar, learned Counsel appearing on behalf of the non-applicant No. 2, very vehemently urged that this course was wholly permissible as there was no other provision. He pointed out that the provisions of Order 21, Rules 98 and 99 of the CPC were obviously not applicable to the situation and also the provisions of section 144 of the CPC for restoration. He pointed out that under such circumstances, the use of section 151 of the CPC was perfectly justified for remedying the wrong resulted with the Court's order. It has already been pointed out that there was absolutely no justification on the part of the Executing Court to issue a possession warrant as, firstly, there was no direction in the decree for such a possession, muchless to the non-applicant No. 2. Secondly, the plot No. 1 was nowhere mentioned in the first part of the operative order of the Co-operative Court. Thirdly, the non-applicant No. 2 was never a party to the original proceedings and, fourthly the non-applicant No. 2 was claiming an independent title to the property by a sale-deed. Shri Parsodkar also pointed out that the non-applicant No. 2 had purchased the plot from the Society on 29-8-1991 i.e. even prior to the issuance of an injunction order which was passed by the Co-operative Court on 21-12-1991. The date of the sale-deed in favour of the non-applicant No. 2 from the Society being 29-8-1991, is not disputed by the Society. However, it is disputed by the present applicant, and Shri Bhangde, learned Counsel appearing on behalf of the applicant, contended that the vendor had no authority to transfer the said plot in favour of the non-applicant No. 2 as the concerned person who put his signature on the sale-deed was not authorised to effect a transfer. Shri Parsodkar argued, and in my opinion rightly, that presently in this execution proceeding, there could be no enquiry into the title of non-applicant No. 2 in respect of plot No. 1, as firstly the plot No. 1 was never a subject matter of the original dispute. Further, the present non-applicant No. 2 was never a party and in this case the present non-applicant No. 2 was not resisting the possession of a valid decree-holder nor was he, an outsider, having been dispossessed by a decree-holder. Shri Parsodkar rightly argued that the adjudication about the claim of such an outsider could be made only under Order 21, Rule 98 or 99 of the Civil Procedure Code, in pursuance of an enquiry in the

further provisions of Rules 101 and 103 of Order 21. It has already been pointed out that those provisions have no application. Therefore, there is no question of enquiry into the title of the present non-applicant No. 2. Shri Parsodkar also pointed out that though there was no direction in respect of plot No. 1, the said plot came to be mentioned in the execution application. A perusal of the said application shows that really speaking the plot No. 1 is mentioned therein, though there does not appear to be any prayer for the possession of the said plot. There was, therefore, no question of issuing the possession warrant in respect of plot No. 1, when that possession was not even asked for. I have already rejected the argument of Shri Bhangde that the first part of the operation order of the Co-operative Court in declaring the allotment of one plot in favour of the disputant/present applicant amounts to a grant of possession. The argument of Shri Bhangde that for that purpose, first part and second part of the operative order of the Co-operative Court should be read together and an inference should be drawn that there is such a direction for possession, is also not correct and is already rejected. Under such circumstances, there is no go but to hold that there was absolutely no justification on the part of the Executing Court, firstly, to issue a warrant of possession. If that is so, the restoration of possession with the aid of section 151 of the CPC was fully justified.

17. Shri Bhangde further argued that there was nothing on record to suggest that it was the non-applicant No. 2 who was in possession of the plot and that it was he who was dispossessed. According to Shri Bhangde, a wider enquiry would be required to reach such a finding that it was non-applicant No. 2 who was in possession of the property and because of the warrant, it was he who was dispossessed. Shri Bhangde even went to the extent of praying for a remand for such an enquiry. In my opinion, such enquiry would be wholly unnecessary. In the first place, the Society has nowhere disputed that the plot was sold to the non-applicant No. 2 and possession was also given to him. Immediately after the possession warrant was issued, admittedly it was the non-applicant No. 2 who ran helter-skelter and moved the Executing Court for recalling of the warrant and even the warrant was ordered to be recalled. Unfortunately for the non-applicant No. 2, the possession was lost even before that; at least that was the report of the bailiff. There is no case either pleaded or proved that there has been any collusion between the non-applicant No. 2 and the Society. Under such circumstances, unless the non-applicant No. 2 was in possession of the plot No. 1, he would not have bothered to move the Court. That apart, there are some intrinsic circumstances to suggest that it was he who was in possession of the suit plot. However, even such an enquiry would be of no consequence as, firstly, the warrant issued for taking possession of the plot No. 1 was itself wholly without any justification. The Court could always recall that warrant as it had really done so under the powers of section 151 of the Code of Civil Procedure; nay, it had the duty to do so in the interest of justice, particularly in the light of the facts narrated in the present case. The user of powers u/s 151 has been dealt with by the Apex Court in *Mrs. Kavita Trehan and another Vs. Balsara*

Hygiene Products Ltd., In this case, on the basis of an ex parte interim order, the appellants had sold away the bulk of stocks. The suit ultimately came to be dismissed on the technical ground that it was hit by section 69(2) of the Indian Partnership Act. The question, that arose, was as to whether in the wake of the dismissal of the suit, the goods which were sold in the wake of injunction, whether the plaintiff could be directed to pay to the defendant the amounts which the plaintiffs had collected by sale of the stocks which belonged to the defendant. The High Court, before whom the original suit was pending took the view that the plaintiffs were bound to secure the interest of the defendant by taking out the F.D. Rs. in the Nationalised Bank in the sum of Rs. 29.40 lakhs in the name of the Registrar of the Court, by way of security. The order was confirmed by the Division Bench of the High Court. In the appeal, before the Supreme Court, the correctness of the view taken by the High Court directing the appellants to furnish security, was challenged. The Single Judge of the High Court had proceeded to take his view on the rationale that a party who has received benefits under the erroneous order of the Court must restore to the other party what the latter lost as a result of the said order, on the same being reversed or set aside. It was further held by the learned Single Judge that the dismissal of the suit had the effect of automatic dissolution of the interim order. But there would be no use of setting aside or reversing a wrong order of the Court, if the party who had suffered the consequence of such order remains seething with pain of injustice even when the order is knocked down. In that view of the matter, the learned Single Judge had directed the order of security so as to secure the interests of the defendant who was bound to be paid about 25 lakhs of rupees for the goods owned by it and sold illegally by the plaintiffs. The learned Judge further held that it cannot be justified to say that though the interest of the litigant had been harmed by the act of the Court, it could not undo the wrong as sufferer did not have the possession of the property over which he had undoubted title. While confirming the observations and the course undertaken by the learned Single Judge, the Supreme Court has relied on the case decided by the Privy Council in *Alexander Rodger Charles Carnie v. Comptoir D'Escompte De Paris* 1871 Lr 3 Pc 475 and has quoted the principle of law enunciated therein. The paragraph quoted by the Apex Court is to the following effect :-

"..... one of the first and highest duties of all courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression "the act of the Court" is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case."

The Supreme Court has further gone to hold that section 144 of the CPC incorporates only a part of general law of restitution and is not exhaustive. For this, the Supreme Court has relied upon and quoted with approval the following two cases : (1) *Gangadhar and Others Vs. Raghubar Dayal and Others*, and (2)

State Govt. of Andhra Pradesh Vs. Manickchand Jeevraj and Co., Bombay, . In paragraph 22, the Supreme Court says :---

"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, in the present case, was not applicable as this is not a case of variation or reversal of any decree or order, or its being set aside or modified. However, the observation, that the Court has inherent powers of restitution in case of injustice, is confirmed by the Apex Court and for that purpose, the Apex Court has recognised the inherent powers of the Court.

18. The situation is no different in our case. It has already been pointed out that there is the towering injustice in the issuance of the possession warrant as regards the plot No. 1 which was not the property in dispute and owned by the non-applicant No. 2 who was not a party to the original proceedings and in respect of which the Co-operative Court had not given any directions whatsoever. There could be no better example of injustice being caused. The user of section 151 for restitution of possession was, therefore, fully justified in this case.

19. In the view that I have taken, the further argument of Shri Parsodkar, that a fraud was played upon the Court and on that count also section 151 of the CPC could be brought in for being used, is not being considered.

20. In the result, the Civil Revision Application fails and is dismissed with costs.

21. At this stage, Shri Bhangde requested for a status quo. Considering the overall circumstances, the request for status quo is rejected.