

(1995) 08 KAR CK 0035

In the Karnataka High Court

Case No : Civil Revision Petition No. 1554 of 1995

The Assistant Executive Engineer, No. 1, Maintenance Sub-division, K.R. Sagara, Srirangapatna Taluk and Another

APPELLANT

Vs

B.K. Nagaraju

RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144

Citation : (1998) 1 CivCC 217 : (1997) 4 KarLJ 420

Hon'ble Judges : H. N. Narayan, J

Judgement

1. Though this matter is listed for orders, by consent taken up for final disposal, heard and disposed of by this order.

2. The revision is directed against an order of restitution passed by the Additional District Judge, Mandya, granting restitution of property to the respondent in an application-I.A. No. 3 filed by him under Section 144 read with Section 151, Civil Procedure Code.

3. The brief facts are these:

The respondent is a licensee and he was in possession of the premises belonging to the Government running milk parlour. Even after the licence period was over, he continued in occupation of the same unauthorisedly. Hence, petition under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1974 ("the Act" for short) was filed. The respondent was not available for service of notice. Hence, notice was held sufficient. Thereafter, an order of eviction came to be passed by the 2nd respondent-the authority under the Act. An appeal was preferred by the respondent before the Additional District Judge, Mandya, challenging the order of eviction passed by the 2nd respondent. He filed an application to stay the order which was granted. However, possession was taken by the petitioner on the very day of the stay order issued by the District Court.

4. Aggrieved by the said action of the 1st petitioner, respondent filed an

application under Section 144 read with Section 151, Civil Procedure Code for restitution of the property. The District Judge on consideration of the material before him has passed the impugned order directing the respondents-petitioners to put back the appellant in possession of the petition schedule premises, pending disposal of the appeal before him. The Assistant Executive Engineer has challenged the order on the ground that restitution application should have been filed before the Court of first instance. It is canvassed by the learned Government Pleader that the respondent voluntarily surrendered possession of the premises and therefore the question of restitution does not arise.

5. The learned Counsel for the respondent submitted that the First Appellate Court has exercised its inherent power under Section 151, Civil Procedure Code and passed the order of restitution. He has fortified his contention by the ratio rendered by this Court in *M/s. Hameed Enterprises v M/s. Nicky's Parlour*, ILR 1989 Kar. 835.

6. Therefore, the short point for consideration is whether the order of restitution passed by the First Appellate Court is justifiable.

7. There appears to be no dispute that an application under Section 144, Civil Procedure Code lies to the Court of first instance. However, in this case, the order of the Court of first instance though in appeal is not varied or modified or set aside. The question of filing of this petition before the Court of first instance i.e., the Assistant Commissioner, Pandavapura, does not arise. There is no material on record to accept the contention of the learned Government Pleader that the respondent has surrendered possession of the premises voluntarily. It is vehemently submitted by the learned Counsel for the respondent that if the respondent were to surrender the premises voluntarily, he would not have preferred any appeal before the District Judge and obtained the stay order. Moreover, he was forcibly evicted from the premises on the very day of the stay order passed by the First Appellate Court.

8. Records do not disclose as to how possession was taken by the respondent. The authority under the Act has passed an ex parte order. There is no record to show that the authority has served the copy of the order on the respondent. When the matter was pending in appeal before the Court, the respondent was dispossessed. Having considered these facts, the First Appellate Court has passed the order of restitution.

9. The contention of the learned Government Pleader that application should have been filed before the Court of first instance does not arise in this case. It is now settled that Section 144 provides for procedure and the power of restitution is independent of it and inherent in every Court. Section 144 is not exhaustive. There are various circumstances in which restitution is to be ordered to restore status quo ante for the ends of justice. Therefore, power of restitution is not confined to Section 144. Court has inherent power to grant restitution where Section 144 in terms does not apply. In exercise of powers under Section 151,

Civil Procedure Code, Court can set aside the steps taken between the time the stay order was passed and the time it was brought to its notice if it is necessary in the ends of justice and if it is asked to do so.

10. This is not a case where the District Judge has no jurisdiction to pass an order in exercise of his inherent power under Section 151, Civil Procedure Code. The petitioner could have waited till the disposal of the appeal. Therefore, in my opinion, the impugned order of the learned District Judge cannot be interfered with. In view of these facts, the revision fails and the same is dismissed.