

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9916 OF 2017

[@ SPECIAL LEAVE PETITION (C) NO.32606 OF 2014]

RAJA VENKATESWARLU & ANR.

APPELLANT(S)

VERSUS

MADA VENKATA SUBBAIAH & ANR.

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

Leave granted.

2. The appellants approached the Execution Court for execution of a decree for permanent injunction granted in O.S. No. 26 of 2001 on the file of the Junior Civil Judge, Badvel in Andhra Pradesh. It is not in dispute that the decree has attained finality. They sought for police protection in the execution proceedings. However, the

application for police protection was filed under Section 151 of the CPC. The Execution Court granted it. The High Court has interfered with the order holding that the application could have been filed only under Order XXI, Rule 32.

3. We find it difficult to appreciate the stand taken by the High Court. The decree for permanent injunction having become final, the decree holder approached the Execution Court by way of an application for execution (E.A. No. 64/2011 in O.S. No. 26/2001 before the Junior Civil Judge, Badvel). No doubt, Order XXI Rule 32 provides for execution of a decree for injunction and more specifically under sub-rule (5) which reads :-

"(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the Court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree."

4. But merely because an application for police protection was filed only under Section 151 CPC invoking the inherent jurisdiction, it cannot be a reason for the

High Court to reject it and hold that the application should have been filed under Order XXI, Rule 32 CPC. The crucial question is whether the Execution Court has jurisdiction. That is not disputed. The only thing is that an exact provision was not invoked. That by itself shall not be a reason for rejecting the application (See Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal¹ and T. Nagappa v. Y. R. Muralidhar²). In case, the Execution Court has the jurisdiction and has otherwise followed the procedure under the Rules, the action has to be upheld. One relevant question is also whether the judgment debtor has suffered any injury or whether any prejudice has been caused to him. If the answer is in the negative, as in the instant case, the execution must proceed. The impugned judgment is hence set aside, the appeal is allowed and the order passed by the Execution Court is restored.

5. Learned counsel for the respondent/judgment debtor submits that there are other disputes with regard to the same property and they have filed a suit for specific performance.

6. Needless to say that the execution of the decree shall not stand in the way of suit for specific performance,

1 (1983) 2 SCC 422

2 (2008) 5 SCC 633

being tried on its own merits.

7. Pending applications, if any, shall stand disposed of.

8. There shall be no orders as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[R. BANUMATHI]

NEW DELHI;
JULY 31, 2017.

ITEM NO.5

COURT NO.6

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 32606/2014

(Arising out of impugned final judgment and order dated 28-03-2014
in CRP No. 4987/2013 passed by the High Court of A.P. at Hyderabad)

RAJA VENKATESWARLU & ANR.

Petitioner(s)

VERSUS

MADA VENKATA SUBBAIAH & ANR.

Respondent(s)

Date : 31-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. M. Vijaya Bhaskar, AOR

For Respondent(s) Mr. Sadineni Ravi Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed judgment.

(NARENDRA PRASAD)
COURT MASTER (SH)

(RENU DIWAN)
ASST. REGISTRAR

(Signed "Reportable" Judgment is placed on the file)