

KAKL200000182013



**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC,
BANGARPET.**

PRESENT:- Sri DEEPU B.C., B.A.L., LL.B.,
Addl. C.J & JMFC., Bangarpet.

Dated, this the 2nd day of November 2021

Ex. 02/2013

Decree Holder :- H.V. Narayanaswamy,
S/o Late Venkatappa,
51 years, R/at Hanchala Village,
Kasaba Hobli, Bangarpet Taluk.
(By Sri. M.N. Adv.)

V/s

Judgment Debtor :- Narayanappa dead
Repted by his Lrs.

- (a) Smt. Venkatamma, 70 years,
W/o late Narayanappa,
- (b) Venkateshappa, 40 years,
S/o late Narayanappa,
- (c) Chowdappa, 35 years,
S/o late Narayanappa,
- (d) Krishnappa, 30 years,

S/o late Narayanappa,
All the Jdrs are
R/at Hanchala Village,
Sulikunte Hobli,
Bangarpet Taluk.

(By Sri. KKM Adv.)

PARTIES IN I.A.NO. I

Applicant :- H.V. Narayanaswamy
(Dhr)

V/s

Opponent :- Sri. Narayanappa, dead
Repted by his Lrs.
(Jdr)

ORDERS ON I.A. No. I

The instant application is filed by the Dhr U/s 151 of CPC, seeking rendering police help for cut and remove the eucalyptus trees standing in the suit schedule property.

2. In support of the application, affidavit is filed, wherein, the Dhr has sworn to fact that he has filed a suit in O.S 270/2000 on the file of Prl. Civil Judge at KGF against the JDR and other two persons with respect

to landed property in old Sy. No. 40 new Sy. No. 251 measuring 2 acre 30 guntas for the relief of declaration of title and permanent injunction and the said suit came to be decreed vide judgment dated: 05.07/2003 by declaring that the Dhr/plaintiff is the absolute owner and in possession of suit schedule property and the Jdr /defendants were directed to not to interfere with Dhr/plaintiff's possession over the suit schedule property. Thereafter, the Jdr again interfered and cause obstruction to the Dhr's possession over the suit schedule property by violating the judgment and decree of this court. Hence the Dhr has filed above execution petition against the Jdr to detain him in civil prison.

Further, sworn to fact that by virtue of judgment and decree in O.S. 247/1996 dated 31.01.2000, the Jdr also filed execution petition in Ex. No. 7/2008 against the Dhr and same is pending for adjudication. But the Dhr was not a party in the said suit OS No. 247/1996. By taking undue advantage of pendency of said execution petition, in the first week of October, the Jdr came near the suit schedule property and interfered with Dhr's possession over the schedule property by dis-obeying the

order of this court and also caused obstruction and not allowing him to cut and remove the existing eucalyptus trees in the suit schedule property and there is a continuous serious of life threat from the Jdr. Hence it is necessary to protect the suit schedule property by rendering police help.

3. Per contra, the Jdr (b) has filed a memo with a prayer to consider the objection filed by him to the application under section 50 of CPC as objection to said application, but the said objection does not disclosed any relevant objection to this application. However, the learned counsel for the Jdr Sri. K.S. has submitted that the Jdr has challenged the judgment and decree passed in OS 270/2000 before the 3rd ADJ in RA No. 183/2018 and same was dismissed on 28.10.2019 on the ground of it barred by limitation. Hence, the Jdr has filed RSA before the Hon'ble High Court of Karnataka and same is pending. Further, the Jdr also filed a suit in OS No. 247/1996 against the plaintiff's father and one Chinnappaiah and same came to be decreed vide judgment dated: 31.01.2000 and no appeal has been preferred by the plaintiff against the said judgment.

Hence, it attains finality and by virtue of said judgment and decree, the Jdr also filed execution in Ex. No. 07/2008 and same is also pending before this court.

Further, argued that the Dhr is not entitled for police help to secure the suit schedule property and if any interference or violation caused by the Jdr, he ought to have recourse his remedy U/o 21 rule 32, CPC and there is no provision in CPC to rendering police help for execution of decree. In order to get undue advantage of the decree, the Dhr is attempting to cut and remove the standing trees with the help of concerned police and same is not permissible under law and further the Jdr is also one of the family member of the plaintiff and the suit schedule property is the joint family property of Jdr and father of plaintiff and the Jdr is in possession of 27 ½ guntas of land in the schedule property. So under these circumstances, the said application for rendering police help to the Dhr to cut and remove the standing trees is not maintainable and it liable to be rejected.

4. Heard arguments on both sides and perused the materials on record.

The learned counsel for the Dhr relied on below decisions :

- (1) C.R.P. No. 2919/2014, dated: 07.11.2014
(Hon'ble Andhra High Court)
- (2) 2010 (4) KCCR SN 170
- (3) 2017 (5) SCC 371
- (4) 2012 (4) SCC 307
- (5) 2017 (2) KCCR 1153

The learned counsel for the Jdr relied on below decision :

- (1) ILR 2003 KAR 1742

5. The points that arise for consideration of this court are ;

1. Whether the Dhr is entitled for relief sought in the aforesaid application ?

2. What order?

6. My answer to the above points are as under:

Point No.1: In the affirmative

Point No.2: As per the final order,
for the following:

:: REASONS ::

7. **Point No.1** :- The instant execution petition has been filed by the Dhr against the Jdr under order 21 rule 32 CPC for detaining the Jdr in civil prison or attachment of his properties for dis-obeying the decree passed in OS 270/2000 dated: 05.07.2003. Along with the petition, the Dhr has maintained the above application under section 151 of CPC seeking police help to cut and remove the eucalyptus trees standing in the schedule property.

8. It is undisputed fact that the Dhr has filed a suit in OS 270/2000 against the Jdr and other two persons for the relief of declaration of title and permanent injunction with respect to suit Sy. No. 251(old Sy.No.40) measuring 2 acre 30 guntas and same came to be decreed in favor of the Dhr vide judgment dated: 05.07.2003. Further, it is not disputed that the Jdr herein also filed a suit in O.S 247/1996 against his brothers Chinnappaiah and Venkatappa, who is the father of Dhr herein, with respect to three landed properties i,e bearing Sy. No. 162 measuring 1 acre ½ guntas, Sy. No. 144/1 measuring 7 guntas and Sy. No. 40 (new Sy.No.251) measuring 27 ½ guntas, for the relief of declaration of title and

permanent injunction and the said suit was came to be decreed in favor of Jdr vide judgment dated 31.01.2000 and by virtue of said judgment, the Jdr has filed execution in Ex.No.07/2008 and same is pending for adjudication.

9. It is pertinent to note here that in the said suit in O.S.247/1996, the Jdr has sought the relief of declaration of his title and consequential relief of permanent injunction with respect to only item No.1 and 2 properties i,e Sy. No. 162 and Sy. No. 114/1 and also sought the relief of permanent injunction with respect to item No.3 property i,e Sy. No. 40 measuring 27 ½ guntas. Further, in the said judgment, in page No.7, there is clear observation made by court that the Dhr is a khatedar of Sy.No.40 measuring 2 care 30 gunats. Hence it made clear that the tittle of Jdr over Sy.No. 251 measuring 2 acre 30 guntas is not yet to be declared. Further, it is noted that the said suit was not contested by the defendants and the said judgment is exparte judgment. Admittedly, the said judgment was not challenged by the defendants. But subsequently, the Dhr has filed a suit in O.S 270/2000 against the Jdr and other two persons with respect to entire 2 acre 30 gunats in old Sy. No. 40, new

Sy. No. 251 for declaration of his title and permanent injunction and same came to be decreed in his favor and same was confirmed by the Hon'ble Appellate court in R.A. 183/2018 vide judgment dated 28.10.2019 and no documents on record to show that the Jdr has preferred RSA before Hon'ble High court. Hence it may be presumed that the said judgment attains finality.

10. It is pertinent to note here that having heard on both sides and perused the materials on record, there are two questions would arise for consideration in this case

(i) Whether the civil court is having inherent power U/s 151 of CPC to pass any order to meet the ends of justice ?

(ii) Whether the civil courts can issue direction to the police officials in order to execute the orders of civil courts or to implement the order of injunction passed by the civil courts ?

11. In so far as first question is concerned, I have gone through the following decisions:

Decision reported in **(1993) 1 MLJ 274 (Sri-la-Sri Shivasubramanyananda Swami V/s Sri-la-Sri Arunachalaswamy Chidambaram and another)**, it is held in para No. 21 as follows :

“21 :- The possession of law which emerges from the principals laid down by the decisions referred to above this; Section 151 of civil procedure code confers power to make such orders as may be necessary for the ends of justice or to prevent abuse of process of court. Every court is constituted for the purpose of doing justice according to law and must be deemed to passes, as a necessary corollary, and as inherent in its very constitution, all such powers as may be necessary to do the right and to undo the wrong in the course of administration of justice”.

(2) Another the decision of Hon'ble Apex Court in **N.S. Mills V/s Union of India reported in AIR 1976 SC 1152**, it is held that the inherent power of court has its roots in necessity and its breath is coextensive with necessity. Section 151

does not confer any powers, but only indicates that there is a power to make such orders as may be necessary for the ends of justice and to prevent the abuse of process of court.

(3) Another decision in **Manohar Lal V/s Seth Hiralal reported in (1962) 1 SCR (supp) 450** wherein, the Hon'ble Apex Court held that the inherent power has not been conferred on the court; it is a power inherent in the court by virtue of its duty to do justice between the parties before it.

(4) Further, in the decision of **Padamsen V/s the State of Bihar (1961) 1 SCR 884** wherein, the Hon'ble Apex court held that the inherent powers of the court are in addition to the power specifically conferred on the court by the code. They are complementary to those powers and therefore, it must be held that the court is free to exercise them for the purpose mentioned in section 151 of code, when the exercise of those powers is not in any way in conflict with what has been expressly provided in the code or

against the intention of the legislature. The language of section 151 of the code is wide enough to clothe the civil courts with inherent powers to do the right or undo the wrong in the courts of administration of justice.

(5) Another decision reported in **2017 (2) KCCR 1153** between **Swamy Shradananda V/s Mrs Gauhar Taj Namazie and others** wherein, the Hon'ble High Court of Karnataka held that section 151- inherent power of court- Nothing in code deemed to limit or to otherwise affect inherent powers of court to make such orders as may be necessary for ends of justice or to prevent abuse of process of court.

(6) Another decision **Century Flour Mills Ltd. V/s S. Suppiah** reported in **(1975) 88 L.W. 285** wherein, the Hon'ble High Court held in para No. 8 as follows :

8 :- In our opinion, the inherent powers of the court U/s 151 of civil procedure code are wide and are not subject to any limitation. Where

in violation of stay order or injunction against a party something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interest of justice. Even apart from section 151, we should observe that as a matter of judicial policy, the court should guard against itself being satisfied in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's order.

On careful perusal of the aforesaid ratio, it made very clear that there is no dispute about the civil court's power U/s 151 of CPC to pass any order to meet the ends of justice.

11. In so far as second question is concerned, it is worth to refer the following decisions:

Decision reported in **(2003) 3 MLJ 294 (AL Fathima Munavera and others V/s K.**

Kandaswamy) wherein, the Hon'ble High Court held in para No. 5 that

“**5.** As per the decision referred to above, civil court has got power to direct a police officer to give protection at the time of execution of the decree. If decrees of the court can be violated by the parties and decree holder is not able to enjoy the fruits of the decree and he could not enjoy the same unless there is protection from police authorities, it is the duty of the court to see that the decree granted by the court is obeyed by the persons concerned and the decree holder is able to enjoy the fruits of the decree. There is a nothing wrong in the civil court directing the police to give direction to the person who has got an order of injunction in his favor”.

(2) Further, in the decision reported in **AIR 1993 Kerala 62 (Kochupennu Ambujakshi V/s Velutha Kunju Vasu Channar)** wherein, the Hon'ble High Court held in para No. 11 and 18 that

“11. Rule 32 of order 21 and Rule 2-A of order 39 enable a party to get the decree or order enforced either by attaching the properties of the judgment debtor or by detaining him in prison. The disobedience of the decree or order or obstruction caused to the enjoyment can thus be removed. But can such an decree or order be enforced with the assistance of the police authorities ? There is no provision in the code of Civil Procedure empowering the Court to grant police aid to enforce a decree or order. But the Court has every authority to see that its fiat runs. It is the duty of the Court to enforce its decrees and orders and see that the decree-holder gets the fruits of the decree or order. In the case of a decree for prohibitory injunction or an order granting temporary injunction, the same can be enforced by keeping away the obstructor or the person who disobeys the decree or order. Under such circumstances the court should exercise its inherent power under section 151 of the code and direct the police authorities to

render assistance to the aggrieved party in order to see that the Court's order is implemented.”

“**18.** Coming to the facts of the case petitioners seek police protection for enforcement of the judgment Ext. PI. An application has already been filed before the Munsiff's Court under R. 32 of O.21. An advocate Commissioner was appointed to assess the damages caused by respondents 1 to 4. Petitioners, having availed of a remedy available to them under the Code of Civil Procedure, cannot invoke the extraordinary jurisdiction of this Court under Art. 226. the decree being one for a permanent injunction, it can be enforced only in accordance with the provisions contained in R. 32 of O. 21. But putting the judgment debtor in jail and attaching his properties may not be a succour to petitioners so long as he is not in a position to enjoy his property peaceably without interference or obstruction. For such enjoyment the decree of permanent injunction can be enforced by the decree holder through the officer of the court.

Such enforcement can be done by removing any person who causes obstruction. This is one of the modes of enforcement of a decree under Rule 32 of Order 21, CPC it is here that the assistance of the police is required. In case the decree holder apprehends breach of the peace, the Court has to requisition the assistance of the police in order to see that the decree holder gets the fruits of the decree, in the present case peaceful possession of the property on the basis of the decree. Petitioners may therefore seek appropriate reliefs from the Court which passed the decree”.

(3) Another decision reported in **AIR 2004 Bom 225 (Smt. Nirabai J. Patil vs Narayan D Patil)** wherein, the Hon'ble High Court held that if civil courts which has passed an order of temporary injunction takes a view that there is no power vested in the court to direct the police to grant assistance for enforcing from for implementation of the order of temporary injunction, the very purpose of granting order of temporary injunction may be trust rated in a

given case. It is the duty of every police officer to enforce the law of the land. In my opinion, the view taken by the learned trial judge that there is no provision for police and for execution of interim order is totally incorrect. The learned judge failed to appreciate that he has a power U/s 151 of the said code to pass the order directing that police help should be made available provided facts of the case warrant passing of such order.

(4) Another decision reported in **AIR 2003 Mad 219 (N. Karpagam and others V/s P. Deivanaiammal and others)** wherein, it is held the civil court can give direction to the police authorities to render aid to the aggrieved party with regard to implementation of the injunction order passed by the court.

(5) In another decision **Rayapati audumma V/s Pothineni Narasimha** wherein, the Hon'ble High Court of Andhra Pradesh held that "in view of these clear observations of their lordship with regard to the scope and ambit of the inherent

powers of the court U/s 151 of CPC we are clearly of the opinion that in order to do justice between the parties or to prevent the abuse of process of court, the civil courts have ample jurisdiction to give direction to the police authorities to render aid to the aggrieved parties with regard to implementation of the order of court or to exercise of the rights created under orders of the court.

(6) Another decision reported in **2010 (4) KCCR SN 170 (Smt. Karisiddamma and others V/s Smt. Sanna Kenchamma)** wherein, the Hon'ble High Court of Karnataka held that “ Grant of police protection by trial court is well within its inherent powers - In the absence of such powers, protection of the interest of the litigants, cannot be made, against a party violating temporary injunction order.

In view of the above observations made by the Hon'ble Apex court as well as Hon'ble High Courts, it made very clear that the civil court's are having power to grant police

aid or protection to the aggrieved party for enforcing a decree for permanent injunction is fairly well established.

12. Now coming to the case on hand, as stated above, it is undisputed fact that the present execution is filed by Dhr by virtue of judgment and decree passed by this court in O.S No. 270/2000 vide judgment dated: 05.07.2003 and also not disputed that said judgment was confirmed by Hon'ble Appellant court in R.A.No. 183/2018 on 28.10.2019 and further there is no materials on record to show that the Jdr has challenged the said judgment and decree before the Hon'ble High Court of Karnataka and also there is no order for stay the said judgment and decree. So such being the case, it presumed that the said judgment and decree attains finality.

13. It is pertinent note here that as per the Jdr, the Dhr is not entitled for police aid and he has to recourse his remedy set out under order 21 rule 32 CPC if any violation committed by the JDr. But as per the Dhr, the executing court is having ample power under section 151 of CPC to grant any relief to effective execution of decree and meet ends of justice. Admittedly, if any decree of

injunction is violated by any party, he shall undergone the civil prison or attached his property under order 21 rule 32 of CPC. Further, admittedly there is no provision in the court providing for police aid to the implementation of decree for perpetual injunction granted by the court. But when there is no specific provision of law which is sufficient to implement the decree for perpetual injunction granted by the court, the provision of section 151 of CPC can be invoked for the said purpose to render justice and to redress the wrong. Because, the court should not only have the power to pass an order but also should have the power to implement the said order. Therefore when the party has obtain the decree of permanent injunction and the other party against whom the decree of injunction is passed dis-obeyes the same, the aggrieved party can certainly approach the court invoking the powers of the court U/s 151 of CPC and prayed for police aid for the enforcement of the decree. Further, when it is brought to notice of the court that the enforcement of the decree is sought to be prevented or obstructed, the court in exercise of the inherent powers U/s 151 can direct the police authorities to render all aid to aggrieved party in the enforcement of the decree of

injunction granted by the court in order to render complete justice.

14. In the present case on hand, despite obtained the decree, the Dhr is not allowed to enjoy the fruits of the decree and further, the Jdr has not challenged the said judgment and decree before the Hon'ble appellant court. So, at this juncture the decree holder is having right to secure his property by obtaining necessary orders from this court. Therefore, the decree holder is entitled to obtain the police help in order to secure his property. Further, the decision relied by the learned counsel for the JDr, with due respect is not apply applicable to facts and circumstances of the case on hand. So, in view of the above detailed discussion, this court is of the opinion of that in order to ends of justice and to render speedy justice to the Dhr, it is very much necessary to provide police assistance to the Dhr to protect his possession. **Accordingly, point No. 1 is answered in the affirmative.**

15. Point No. 2 :- In view of the findings on point No.1 , this court proceeds to pass the following:

:: ORDER ::

The I.A No. 1 filed by the Dhr U/s 151 of CPC is hereby allowed.

The concerned jurisdictional police is hereby directed to render adequate assistance to the Dhr.

No order as to costs.

(Dictated to the stenographer directly typed by her, corrected and then pronounced by me in open court on this the 2nd day of November 2020.)

(DEEPU B.C.)
Addl. C.J. and JMFC, Bangarpet