



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 17552 OF 2022 (GM-CPC)

BETWEEN:

HARIJANA SANNA.

H.S. BORAMMA.

BOTH ARE SINCE DECEASED BY HIS LRS.

1. SMT. H.S.PARVATHY,
W/O PUTTAIAH,
AGED ABOUT 73 YEARS,
R/AT CHERAMBANE VILLAGE,
BHAGAMANDALA, MADIKERI TALUK,
KODAGU DISTRICT-571247.
2. SMT. H.S.JAYAMMA @ SUMA,
W/O PREM,
AGED ABOUT 71 YEARS,
R/AT VIJAYA BANK, BALELE VILLAGE,
VIRAJPET TALUK,
KODAGU DISTRICT-571218.
3. SMT. H.S.MUNIYAMMA,
W/O SANNAPPA,
AGED ABOUT 59 YEARS,
R/AT NANGALA VILLAGE,
VIRAJPET TALUK,
KODAGU DISTRICT-571218.

...PETITIONERS

(BY SRI. SACHIN B S., ADVOCATE)





AND:

1. SRI. KUPPUNDA S. APPAIAH @ VITTALA,
S/O LATE SUBBAIAH,
AGED ABOUT 73 YEARS,
R/AT NANGALA VILLAGE,
VIRAJPET TALUK,
KODAGU DISTRICT-571218.
2. SRI. GUDDANDA K. BJEEMAIAH,
S/O LATE CARIAPPA,
AGED ABOUT 61 YEARS,
R/AT NANGALA VILLAGE,
VIRAJPET TALUK,
KODAGU DISTRICT-571218.

...RESPONDENTS

(BY SRI. RAJESH P.L., ADVOCATE FOR R1;
R2 - SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 14.09.2021 IN EXECUTION CASE NO.2/2015 ON THE FILE OF THE COURT OF PRINCIPAL CIVIL JUDGE, VIRAJPET, AS PER ANNEXURE-A AND CONSEQUENTLY ALLOW THE PETITION FILED BY THE PETITIONER UNDER ORDER 21 RULE 11 READ WITH RULE 32 OF THE CODE OF CIVIL PROCEDURE AS PRAYED FOR.

THIS PETITION COMING ON FOR ORDERS THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated 14.09.2021 passed in Execution Case No.2/2015 by the Principal Civil Judge, Virajpet (for short 'Executing Court').

2. Sri B.S. Sachin, the learned counsel for the petitioners submits that the petitioner filed a suit for permanent injunction against the respondents, which was dismissed and the Appellate Court in R.A.No.32/2006 decreed the suit, which was confirmed in R.S.A.No.2138/2008. It is submitted that the petitioner filed execution petition in Ex.Case No.2/2015 seeking specific prayer that the judgment-debtors have not obeyed the Court order and caused mischief and obstruction, which has to be removed and direction has to be given to the judgment-debtors to comply the judgment. The Executing Court under the impugned order closed the execution petition by recording an incorrect finding that the petitioner has failed to approach the police authorities indicating the obstruction and further finding that the petitioner has to file a suit for recovery of possession. It is submitted that it is the specific case of the



plaintiff that after the judgment and decree by the competent Court, there is a clear presumption that the said decree is passed by considering the lawful possession of the suit schedule property by the plaintiff and in violation of the same, if the judgment-debtors obstruct the right of pathway, then the Executing Court is bound to exercise its power under Order 21 Rule 32(5) of the Code of Civil Procedure, 1908 (for short 'CPC'). However, the Executing Court has failed to consider the said aspect and closed the execution petition. In support of his contentions, he placed reliance on the judgment of this Court in the case of **KAREPPA v. TAHASILDAR AND OTHERS** reported in **2016 3 KCCR 2251** and the judgment of the Punjab and Haryana High Court in the case of **SANJU @ PAYAL AND ANOTHER v. KAMLESH AND ANOTHER** reported in **2025 Supreme (P & H) 1554** and seeks to allow the petition.

3. Per contra, Sri Rajesh P.L., the learned counsel for respondent No.1 supports the order of the Executing Court and submits that the judgment-debtors have clearly deposed in the execution proceedings that they have not encroached or



causing any obstruction to the decree holder as contended. It is submitted that the Executing Court considering the evidence of R.W.1 and the documents at Ex.D.1 and Ex.D.2 i.e., sketch and RTC, clearly recorded the finding that the petitioner is required to file a suit for possession and recover possession from the person, who is in possession and the said finding is strictly in consonance with the material on record and hence, he seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioners, the learned counsel for respondent No.1 and meticulously perused the material on record.

5. The petitioner filed O.S.No.4/1997 seeking for the following relief:

"a) For a permanent injunction restraining the defendants, their men, agents, labourers or any person/persons claiming through them from trespassing or interfering or creating mischief or putting or destroying the fence or cultivations or blocking the path way leading towards the residential house and Government well in the suit schedule properties or disturbing the peaceful possession and enjoyment of the schedule property."



6. The said suit was contested. In the said proceedings, the Trial Court appointed the Court Commissioner and he submitted the report showing the factual aspects as per the memo of instructions given by the parties. After detailed adjudication, the suit in O.S.No.4/1997 came to be dismissed on 28.03.2006. Being aggrieved, the petitioner filed R.A.No.32/2006, which came to be allowed vide judgment and decree dated 12.09.2008 by the Civil Judge (Sr. Dn.), Virajpet (for short 'Appellate Court'). The Appellate Court allowed the appeal and decreed the suit as prayed for. The respondent No.1 challenged the judgment and decree of the Appellate Court before this Court in R.S.A.No.2138/2008. This Court vide order dated 23.09.2011 dismissed the RSA. The suit of the petitioner came to be decreed as prayed for. The petitioner filed execution petition in Ex.Case No.2/2015 alleging that the judgment-debtors are not obeying the decree granted by the Court and causing mischief and obstruction, which has to be removed and direction has to be issued to the judgment-debtors to comply the judgment. The Executing Court considered the contentions of both the parties under the impugned order and the execution petition was dismissed. The



Executing Court has considered various aspects in paragraph Nos.10 and 11 and comes to the conclusion that for the alleged obstruction by the defendants, the petitioner ought to have approached the jurisdiction police and he has failed to do so. It has recorded further finding that, if there is any encroachment made by the judgment-debtors as per the report of the Court Commissioner, the petitioner has an opportunity to file a suit for recovery of possession. In my considered view, such approach of the Executing Court would run contrary to Order 21 Rule 32(5) of CPC. The Executing Court has further recorded the finding with regard to the possession of the petitioner/plaintiff, which was uncalled for as the Appellate Court in R.A.No.32/2006 recorded a clear finding with regard to the lawful possession of the petitioner by considering the Court Commissioner's report and the said finding has been affirmed by this Court in R.S.A.No.2138/2008 and if the Executing Court makes any finding with regard to the possession of the petitioner/plaintiff, it would run contrary to the judgment and decree.



7. Insofar as the scope of Order 21 Rule 32(5) of CPC, this Court in the case of **Kareppa** (supra) at paragraph Nos.5 and 6 held as under:

"5. Sub-clause (5) of Rule 32 of Order 21 reads as under:

32. Decree for specific performance for restitution of conjugal rights, or for an injunction.—

(1) xxxx xxxx xxxx

(2) xxxx xxxx xxxx

(3) xxxx xxxx xxxx

(4) xxxx xxxx xxxx

(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.

Explanation.— For the removal of doubts, it is hereby declared that the expression "the act required



to be done” covers prohibitory as well as mandatory injunctions.”

6. A perusal of the provisions contained in sub-clause (5) read along with explanation appended thereto makes it clear that in addition to the remedy provided under Order 21, Rule 32(1), if a decree holder in whose favour the decree has been obtained complains of its disobedience, then the Court may, in lieu of or in addition to all or any of the processes mentioned in Rule 32 direct that the act required to be done may be done as far as practicable by the decree-holder or some other person appointed by the Court at the cost of the judgment-debtor. The ‘act required to be done’ as has been explained in the explanation appended thereto covers prohibitory and mandatory injunction. Therefore, it is patently clear that if a decree of prohibitory injunction has been violated by the judgment debtor, then the decree-holder can seek restitution by getting the act required to be done carried out by the decree-holder or some other person appointed by the Court. Therefore, what is important is ascertainment of factum of violation of the decree passed. If the executing Court comes to the conclusion that after the decree of permanent injunction was passed defendant violated the decree and laid the road then decree holder would be entitled for restitution of his



land by ensuring as far as practicable the act required to be done to restore the land back to the decree holder was done."

8. In the case of **Sanju @ Payal** (supra), the High Court of Punjab and Haryana has considered various decisions on the orders of the Executing Court under Order 21 Rule 32(5) of CPC and held as under:

"[12] In the given facts, no merit can be found in the submission made on behalf of the appellants that since no specific date or time of dispossession of respondent No.1-decree holder from the suit property was pleaded or established on record, as such the warrants of possession in her favour could not have been issued. In the humble opinion of this Court, once, a concurrent finding of fact was recorded by both the Courts below in the suit that respondent No.1-decree holder was in possession of the suit property, the same carried presumption of her possession as on the date of filing of suit till the date of its adjudication. As such, in any subsequent execution application based on dispossession at the hands of judgment debtor, the non-mentioning of specific particulars in the shape of date or month of forcible dispossession was not of much relevance as the substratum of execution was mere dispossession



of the decree-holder, which was duly established on records of the present case. Strength to the aforesaid view can be drawn from the following observations made by this Court in case of "**Dilbagh Singh Versus Harpal Singh alias Harpal Singh Chela**", reported as **2020 (2) ICC 312:-**

4. Having heard.....It is not even disputed; and it has been so recorded by the Executing Court as well, that the question of possession qua the suit property had been specifically is in issue before the trial Court. The issue had been decided in favour of the decree holder and the possession over the suit property had specifically been held in favour of the decree holder. The said findings were challenged by the present petitioners before the Appellate Court, However, even the Appellate Court upheld the finding of the Trial Court to the effect that the suit property was in specific possession of the plaintiff/decreed holder. Accordingly, the Executing Court has to start with the said finding and with presumption that the property was in possession of the decree holder as on the date of passing of the decree. Starting with any other point or assumption, would tantamount to disputing the finding of the trial Court, which had come in the judgments/decrees after a long and protracted trial, in which both the parties were at liberty to present their respective cases. So far as the Executing Court is concerned, it could not have gone beyond the decree to dispute the possession in favour of the decree holder. Therefore, the Executing Court has not committed any irregularity or illegality in accepting that as on the date of decree, the possession of the suit property was with the decree holder.

5. The petitioners/judgment debtors have not claimed either in their objections; or even before this Court; that the judgment debtors are not in



possession of the suit property; as of today. Rather, it is the case of the petitioners that the petitioners/judgment debtors have throughout been in possession of suit property and the decree holder had got a decree; based upon a factually wrong finding recorded by the Trial Court that he was in possession. I am afraid that this cannot be the scope of objection to be entertained on behalf of the judgment debtor. An execution of a decree, pre supposes the validity of the decree, whereas, the argument of learned counsel for the petitioners is indicative of disputing the validity of the decree itself....."

[13] Moreover, no merit can be found with the submission made on behalf of the appellants-judgment debtors that warrants of possession were not to be issued in exercise of powers under explanation to Order 21 Rule 32 (5) of CPC in favour of decree-holder in a suit for permanent injunction, as this question has already been answered by this Court in case of **"Kapoor Singh Versus Om Parkash"**. reported as **2009 (4) CivCC 586**. Relevant paras-9 to 11 from the said decision are extracted hereunder:-

"9. As discussed earlier, the decree dated 22.10.1994 was in two parts. One concerning the specific performance of the contract and the other concerning restraint order with regard to the forcible dispossession. In respect of the latter part, Order 21, Rule 32 (5) **CIVIL PROCEDURE CODE**, provides that the Court may, in lieu of or in addition to all or any of the processes which are provided under Order 21, Rule 32 (1) to (4), direct that act which is



required to be done which covers prohibitory as well as mandatory injunctions.

10. To my mind, the Act required to be done which is also mentioned in the explanation are prohibitory and mandatory injunction empowers the Executing Court in case of violation of the decree of permanent injunction where the respondents have forcibly taken possession in spite of the decree of injunction.

Thus, an order of mandatory injunction can be issued for restoration of possession as has been done in the present case. The Courts cannot be a party to the illegal designs of a judgment debtor who wishes to carry on with his illegal possession.

*11. The law lies in favour of the interpretation which would prevent multiplicity of the proceedings rather than the one which will generate it. The decree holder is not required to file another suit as he had already obtained a decree in his favour by spending much time and expense. Thus, the Executing Court has the jurisdiction to pass an order on the application under Order 21, Rule 32 (5) **CIVIL PROCEDURE CODE** to restore the possession of land in dispute to decree holder in case the decree of permanent injunction is violated by the judgment debtor."*

*[14] The aforesaid view of **Kapoor Singh's case (supra)** was followed by this Court later in case of "**Dilbagh Singh and others Versus Harpal Singh alias Harpal Singh Chela and others**", **2020 (2) ICC 312** Relevant para-6 from the said decision is extracted hereunder:-*

"6. Although learned counsel for the petitioners has laid much stress on the fact that to seek



*execution of the decree, qua the restoration of the possession in his favour, the decree holder was supposed to plead specifically as to when and in what manner he has been dispossessed. This Court finds this argument to be noted only to be rejected. The provisions of sub Rule (5) Rule 32 of Order 21 CPC do not prescribe any such condition. Rather, Order 21 Rule 32 CPC prescribes that for execution of a decree if any act is required to be done by the judgment debtor, the Executing Court can order that such an act be done by the judgment debtor; as claimed. Sub Rule (5) Rule 32 of Order 21 CPC has been interpreted by the Supreme Court in various judgments viz. "Samee Khan v. Bindu Khan, 1998(4) RCR (Civil) 125 (SC)" to mean that in an execution proceedings of a decree for injunction, if it is found that the decree holder has been dispossessed after the date of decree, the restoration of possession can also be ordered by the Executing Court. Hence, it is no more res-integra that in execution of a decree for injunction, even restoration of possession can be ordered by the Executing Court. This view has also been taken by this court in '**Kapoor Singh v. Om Parkash, 2009(4) PLR 178**'. Hence, no fault can be found, per-se, with the action of the Executing Court in issuing warrants of possession in the execution proceedings."*

*[15] Furthermore, the view expressed by this Court in the aforesaid two judgments was even approved by the Hon'ble Apex Court in case of **Bhudev Mallick alias Bhudeb Mallick and another Versus Ranajit Ghoshal and others**" 2025 SCC OnLine SC 360. Relevant para-40 from the said decision is extracted hereunder:-*

"40. The High Court of Punjab and Haryana in the case of Dilbagh Singh and Others v. Harpal Singh



Alias Harpal Singh Chela and Others reported in 2020 Supreme (P&H) 944, has held as under:-

"6. Although learned counsel for the petitioners has laid much stress on the fact that to seek execution of the decree, qua the restoration of the possession in his favour, the decree holder was supposed to plead specifically as to when and in what manner he has been dispossessed. This Court finds this argument to be noted only to be rejected. The provisions of sub Rule (5) Rule 32 Order 21 CPC do not prescribe any such condition. Rather, Order 21, Rule 32 CPC prescribes that for execution of a decree if any act is required to be done by the judgment debtor, the Executing Court can order that such an act be done by the judgment debtor; as claimed. Sub Rule (5) Rule 32 Order 21 CPC has been interpreted by the Supreme Court in various judgments viz. "Samee Khan v. Bindu Khan, 1998(4) RCR (Civil) 125 (SC)" to mean that in an execution proceedings of a decree for injunction, if it is found that the decree holder has been dispossessed after the date of decree, the restoration of possession can also be ordered by the Executing Court. Hence, it is no more res-integra that in execution of a decree for injunction, even restoration of possession can be ordered by the Executing Court. This view has also been taken by this court in 'Kapoor Singh v. Om Parkash, 2009 (4) PLR 178'. Hence, no fault can be found, per-se, with the action of the Executing Court in issuing warrants of possession in the execution proceedings.

(Emphasis supplied)"

9. Keeping in mind the enunciation of law laid down by this Court and Punjab and Haryana High Court, I am of the considered view that the Executing Court has committed a



grave error in recording the finding with regard to the possession of the petitioner and further finding that the petitioner has to file an independent suit for possession.

10. For the aforementioned reasons, I proceed to pass the following:

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated 14.09.2021 passed in Ex.Case No.2/2015 by the Principal Civil Judge, Virajpet, is set aside.
- (iii) Ex.Case No.2/2015 is restored to file.
- (iv) The Executing Court is directed to consider the petitioners' prayer in accordance with law after detailed enquiry.
- (v) It is open for the Executing Court to take assistance of the Commissioner, if need arises.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE