

entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

67. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

a) That the judgment of acquittal suffers from patent perversity;

b) That the same is based on a misreading/omission to consider material evidence on record;

c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

68. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

69. In the light of above settled proposition of law when we go through the impugned judgment and order, we find that the trial court had given cogent and convincing reasons for recording the finding of acquittal against the accused-respondent and that the acquittal of the accused-respondent is plausible and justifiable view emanating from the discussion of the evidence available on record and does not suffer from any infirmity or perversity. Therefore, we are of the opinion that the impugned judgement and order passed by the trial court is just, proper and legal and do not call for any interference by this Court.

70. The present government appeal lacks merit and is accordingly **dismissed**.

71. Trial court's record be remitted back forthwith.

(2024) 5 ILRA 361
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 31.05.2024

BEFORE

THE HON'BLE AJIT KUMAR, J.

Matters Under Article 227 No. 1807 of 2015
connected with

Matters Under Article 227 No. 1806 of 2015

State of U.P. & Ors. ...Petitioner
Versus
Smt. Kamla Negi & Ors. ...Respondents

Counsel for the Petitioner:
Dr. Madhu Tandon

Counsel for the Respondents:
K.K. Arora, Archit Mehrotra, Pankaj Rai

Civil law – Civil Procedure Code – Sections 47, 50, 51, 146 & 151 - O.9 - Rule13 - O.21 R.16, O.21 R.32, - Limitation Act, 1963 -

Article 135 - Decree holder was in possession of suit property, while in possession, had transferred said property to assignees, who were dispossessed by judgment-debtor/St., during pendency of second appeal against judgment and decree passed by trial court, affirmed in first appeal dismissing their suit for permanent injunction - The assignees of decree holder having a decree of perpetual injunction, dispossessed and execution case filed for restoration of possession - Judgment debtor didn't challenge ex parte judgment and decree - Filed a separate suit for permanent prohibitory injunction on basis of title, suit was dismissed on 24.01.2007, also first appeal was dismissed on 02.06.2008 and against which Second Appeal dismissed - Aforesaid orders challenged in SLP, dismissed on 16.09.2023 - Two execution applications being filed one after another, it would not vitiate execution proceedings, provided it is initiated within time - In the instant case, the executing court rejected the objection filed by judgment-debtors u/s 47 C.P.C., thereafter pass orders u/s 151 C.P.C. directing for Amin report regarding delivery of possession - Matter is remitted to decide afresh, in relation to performance of decree of perpetual injunction. (Para 21, 22, 23, 38, 50, 60) Petition partly allowed. (E-13)

List of Cases cited:

1. Thazhapattathillath Krishnan Namboo-Diri Vs Thazhapattathillath Damodaran Namboodiri (died); AIR (KER)-2005-0-328
2. Dhani Ram Gupta Vs Lala Sri Ram; 1980 (2) SCC 162
3. Dwar Buksh Sirkar Vs Fatik Jali; ILR 26 Cal 250, 253, 254
4. Prabhakar Adiga Vs (2017) 4 SCC 97
5. Rajbahadur Yadav & ors. Vs Rizvi ESt.s & Hotels Pvt. Ltd.; 2014 (Suppl.) CCC 613 (Bombay)
6. Pentapati China Venkanna & ors. Pentapati Bangararaju & ors; 1964 SCC OnLine SC 250

7. Bandhu Singh Vs Kayastha Trading Bank; (1931) ILR 53 All 419

8. N.S.S. Narayana Sarma & ors. Vs Goldstone Exports (P) Ltd. & ors; (2002) 1 SCC 662

9. Kapoor Singh Vs Om Prakash; AIR 2009 P&H 188

10. Chakradhar Paital Deceased by LRs Vs Gelhi Bawa, AIR 2012 Ori 44

11. Ashok Kumar & ors. Vs Khyali Ram & ors; 2023 SCC OnLine Del 2882

12. Nanu Vs Ammalukutty Amma; 1962 KER LT 223

13. Arjun Singh Vs Mohindra Kumar; AIR 1964 SC 993

14. K.K. Velusamy Vs N. Palanisamy; (2011) 11 SCC 275

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Sanjay Kumar Singh and Sri Madhu Tandon, learned Standing Counsel for the petitioners and Sri K.K. Arora, learned counsel appearing for the decree holder-respondents.

2. The petition bearing No.1807 of 2015 under Article 227 arises out of an order dated 25.08.2014 passed by the executing court in execution case No.70 of 2010 directing for delivery of possession of the property in question to the assignees of the decree holder in performance of the decree of permanent prohibitory injunction affirmed in revision No.67 of 2014 whereas petition bearing No.1806 of 2015 arises out of an order dated 29.03.2014 passed by the executing court dismissing the misc. case under Section 47 C.P.C. instituted by the judgment-debtors/ State petitioners,

affirmed in revision petition No.66 of 2014. Since pleadings have been exchanged in petition No.1807 of 2015, the same is taken to be leading petition for the purposes of statement of facts and pleadings raised before the court below and before this Court with consent of learned advocates for the parties and thus both the petitions are being decided simultaneously.

3. Petitioners before this Court are the State of U.P. through District Magistrate, Moradabad, Sub Divisional Magistrate, Moradabad and Tehsildar of Tehsil Sadar district- Moradabad.

4. These petitions invoking supervisory/ superintending jurisdiction of this Court under Article 227 of the Constitution has been filed against the order passed by the Executing Court dated 19.03.2014 and 25.08.2014 in Execution Case No.70 of 2010 (Ashok Kumar Gupta & ors v. State of UP & ors) rejecting the objection filed by the State-petitioners and direction for parvana *bedakhli* inviting Amin report and the order dated 26.03.2015 passed by the Additional District Judge, Court No.5, Moradabad dismissing the two revision petitions of the petitioners against the above two orders.

5. Briefly stated facts as pleaded in the petition are that a suit being O.S. No.705 of 1992 instituted by one Smt. Kamla Negi for permanent prohibitory injunction in respect of suit property impleading the petitioners as defendants, came to be decreed *ex parte* against the petitioners. This *ex parte* decree was never appealed against and the State respondents have just preferred an application under Order IX Rule 13 of C.P.C. seeking recall of *ex parte* order but the same has remained pending consideration by the court concerned.

Subsequently, the suit property came to be sold away by the plaintiff, Smt. Kamla Negi to Mr. Ashok Kumar Gupta and Rajiv Kumar (respondents) vide registered sale-deed dated 01.09.2003. It is Smt. Kamla Negi and these very respondents (subsequent purchasers) who instituted execution case for getting the *ex parte* decree for permanent perpetual injunction.

6. The plaint case as was set up by Smt. Kamla Negi in the suit was that suit property was owned by her father Late S.D Singh who executed a Will in her favour on 20.11.1968 and this is how this building in a dilapidated condition came to be owned by her which was later on repaired and improved upon by Smt. Kamla Negi, the plaintiff and her husband out of their own money and also got the electricity connection sometimes in the year 1985-86. It was claimed that earlier her husband, who was working in Tehsil department, was living in an official accommodation provided to him but when this building got renovated, he shifted in this building and the official accommodation of Nayab Tehsildar which he was occupying was handed over to Sukh Ram Singh. The necessity arose to institute a suit because the then Tehsildar Jitendra Bahadur Singh was envious of her husband and was insisting upon him to vacate the premises of official accommodation which her husband was earlier occupying and then ultimately sent notice on 02.11.1992 asking him to vacate the premises in question. It was also pleaded that later on at around 06.00PM on 03.11.1992, the staff of the Teshil came to the house of petitioner and tried to physically evict the plaintiff and her husband from the house. The petitioners (defendants in the suit) did file their written statement but failed to contest the case by ensuring appearance in their behalf and this

is how the suit continued *ex parte* since 28.08.1997 and got decreed accordingly on 26.11.1997. It is this decree that was put to execution.

7. Besides above, certain more facts had been pleaded by the contesting respondents in this case who were pursuing execution case that these State petitioners had also instituted a suit in respect of the property in question showing it to be a part of plot No.57 as adjacent to it plot No.56 was a government property recorded as women hospital.

8. The aforesaid suit instituted for permanent prohibitory injunction impleading Ashok Kumar and Rajiv Kumar Trehan was dismissed on merits on 24.01.2007. A regular civil appeal being Civil Appeal No.28 of 2007 preferred by the State (petitioners herein) came to be dismissed on 02.01.2008. Against the said order, a second appeal No.829 of 2008 was filed before this Court on the plea that substantial questions of law were involved but the Court declined to entertain the appeal and dismissed the same on 18.03.2010, against which Special Leave to Appeal (Civil) being CC No.14763 of 2012 was filed which was also dismissed by Supreme Court vide order dated 16.09.2013. It is pleaded also in the counter affidavit that two execution cases came to be filed: one being 10 of 2010 and other being 70 of 2010 arising out of same judgment and decree, dated 26.11.1997 passed in O.S. No.705 of 1992.

9. In the objection filed by the petitioners under Section 47 C.P.C., plea was taken that judgment and decree dated 26.11.1997 was inexecutable. A suit for perpetual injunction was instituted for the purposes of possession claimed by Smt.

Kamla Negi and, therefore, the injunction was to be in personam. It is, thus, pleaded that decree for injunction on the basis of possession would operate inter se parties to the suit and upon any third party rights being created, the decree would not stand transferred to the third party automatically to be executed. It was pleaded, if parties seeking execution came in possession later then all the more execution application was not maintainable because it was a decree on the basis of possession of plaintiff. It was further pleaded that as a matter of fact, Smt. Kamla Negi was never in possession, therefore, even if the sale-deed was executed, the possession cannot be taken to have been transferred by Kamla Negi to these very respondents.

10. These very objections were opposed by Smt. Kamla Negi and other respondents taking the plea that false statements of fact have been made. An objection was also taken that if petitioners were in possession of the property and were claiming rights, then they would have succeeded in their original suit No.721 of 2003 which had been dismissed on merits upto the Supreme Court.

11. Thus, according to decree holders, all these objections were being taken to delay the execution of the decree and it was pleaded that Section 47 objection deserved rejection.

12. After hearing the parties to the execution case, upon Section 47 objection filed by the judgment debtors, it was held by the executing court that execution case was rightly filed and since the plaintiff was dispossessed during pendency of the second appeal before the High Court arising out of an unsuccessful suit filed by judgment-debtors, then the decree holder was entitled

to restoration of possession. The Court held that the objection raised under Section 47 of C.P.C. to resist the execution of the decree, was meritless and accordingly, rejected the same vide order dated 29.03.2014. After rejecting the objection, the executing court directed vide order dated 25.08.2014 to Amin Commissioner to submit a report on 02.09.2014 regarding status of the suit property and restoration of possession with the help of police force. This order came to be passed upon a miscellaneous application filed under Section 151 of C.P.C. Two revision petitions were filed against these two orders passed by the executing court that were admitted on 05.09.2014 as Civil Revision Nos. 66 of 2014 and 67 of 2014 and interim protection was also granted to the petitioners. However, both the revision petitions were ultimately dismissed on merits by the Court vide detailed common judgment and order dated 26.03.2015 holding that a decree of permanent injunction was executable by assignees in view of provisions contained under Order 21 Rule 16 of C.P.C. The Court did not find any merit in the argument raised on behalf of revision applicants-petitioners that in light of miscellaneous case being Case No.5/2009 registered under Order IX Rule 13 CPC seeking to set aside the *ex parte* judgment and decree, the execution of such *ex parte* decree be put on hold.

13. Assailing these two orders before this Court in these two petitions, the first argument advanced by learned Additional Advocate General was that execution application for a decree for permanent perpetual injunction was filed beyond the prescribed period under Article 135 of the Limitation Act. The second argument was that the execution of a decree could be made in the manner and method prescribed under Order 21 Rule 32 C.P.C. In other words, it

had been argued that if specific provision providing for execution was there prescribed under Order 21 Rule 32 C.P.C., no order for restoration of possession could have been passed upon an misc. application filed under Section 151 C.P.C. The third argument advanced was that the injunction was always relating to the land of which the possession was continuing with the decree holder and with the transfer of land, possession if transferred and the decree of injunction was neither transferable nor enforceable by a third party.

14. It was argued by Sri Chaturvedi, learned Additional Advocate General that looking to the provisions contained under Order 21 Rule 32, only attachment of the property could have been made to ensure performance of decree on the part of judgment-debtor. Learned Additional Advocate General has relied upon judgment of Kerala High Court in the case of **Thazhapattathillath Krishnan Namboodiri v. Thazhapattathillath Damodaran Namboodiri (died)**; AIR (KER)-2005-0-328.

15. It was further argued by learned Additional Advocate General that the interpretation as had been made of the provisions contained under Order 21 Rule 16 C.P.C. by the Court sitting in revision under the order impugned was an erroneous one. The argument, therefore, was that execution case was not maintainable at the instance of assignees.

16. Yet another argument was that two execution applications were not maintainable at the same point of time being No.10 of 2010 and 70 of 2010 one by Smt Kamla Negi with assignees and other by assignees alone for execution of the same decree. It was also pleaded that *ex parte*

decree in respect of the government property was inexecutable as the trial court that had passed the judgment had no jurisdiction to try a suit of more than valuation of Rs.1 Lac.

17. Meeting the arguments, Sri Arora defended the orders passed by the executing court as well as court sitting in revision and contended that all these legal aspects had been dealt with in detail by the court sitting in revision more especially dealing with principle as contained under Order 21 Rule 32 C.P.C. read with Order 21 Rule 16 C.P.C. He had argued that assignees were equally entitled to get the decree of injunction executed. He had further submitted that as far as limitation to file execution case was concerned, in view of Article 135 of the Limitation Act, 1963 there was no limitation for executing a decree of perpetual injunction. He had contended that though title as such was not declared by the executing court but since the decree was passed on the basis of possession, such a decree was executable.

18. On the question of application filed under Section 151 C.P.C., Mr. Arora argued that inherent powers contained under Section 151 C.P.C. are independent of all the provisions and in order to arrest any miscarriage of justice, the Court had been vested with such inherent power. On the question of restoration of possession, learned Advocate, Mr. Arora argued that for executing a decree of perpetual injunction, the executing court can put back into possession the decree holder, especially in the circumstances when it was established that decree holder was dispossessed by committing trespass at the end of judgment debtors. He had submitted that it was admitted position that during pendency of appeal before this Court arising out of OS.

No.721 of 2023, that decree holders were dispossessed.

19. Besides above, additionally it had been argued by Mr. Arora that petitioners were non suited in their own suit for permanent prohibitory injunction filed by them on the basis of title and possession. This suit being No.721 of 2023 in respect of the same suit property, it did not lie in the mouth of the petitioners to suggest now that they were title holder of the property and therefore, they could have resisted execution of a decree of an earlier suit passed by the decree holder. He had argued that judgment of the trial court as well as court sitting in appeal arising out of Suit No.721 of 2003 was on merits and the High Court had very much dismissed the second appeal having found no substantial question of law to be arising. All these orders had come to be affirmed in Special Leave to Appeal by the Supreme Court and, therefore, now any claim in respect of the suit property in question by the petitioners, did not survive. He had also argued that there was no error apparent in the judgments passed by the executing court as well as the court in revision so as to warrant interference by this Court under Article 227 of the Constitution.

20. Having heard learned counsel for the respective parties and their arguments raised across the bar, I find following points to be arising for consideration by this Court:

(i) Whether execution in question of a decree upon an injunction was barred by time;

(ii) Whether subsequent purchasers/assignees could have maintained the execution case,;

(iii) Whether two execution applications were maintainable in respect of one decree; and

(iv) Whether in the face of the provisions contained under Order 21 Rule 32 C.P.C., the executing court was justified in invoking its inherent jurisdiction/power under section 151 C.P.C. directing for restoration of possession of the decree holders.

21. The above points are to be considered in light of admitted factual background of the case. Admitted fact was that the decree holder was in possession of the suit property and while in possession, had transferred property in question with possession to the assignees and it was assignees who were dispossessed by the judgment-debtor/State-petitioners during pendency of such second appeal against judgment and decree passed by the trial court affirmed in first appeal dismissing their suit for permanent injunction. This specific plea has been taken in paragraph 54 of the counter affidavit and which has not been specifically denied. This fact position also gets confirmed from the objections raised by the judgment-debtor that in execution case, an order for restoration of possession cannot be passed in favour of decree holder for a decree of perpetual injunction. It is also pleaded that land belonged to the State. This plea has been taken in paragraph 51 of the rejoinder affidavit filed in reply to paragraph 54 of the counter affidavit.

22. Thus, it is clear that the assignees of decree holder though having a decree of perpetual injunction and yet came to be dispossessed subsequently and that is how this execution case came to be filed for restoration of possession.

23. Yet another admitted position is that the State petitioners- judgment debtor did not challenge the *ex parte* judgment and

decree in O.S. No.705 of 1992 passed on 28.08.1997. However, they chose to file a separate suit for permanent prohibitory injunction being O.S. No.721 of 2003 on the basis of title as per the records of Khatauni, which they had pleaded before the executing court also, but the said suit came to be dismissed on 24.01.2007 against which first appeal being Civil Appeal No.28 of 2007 was dismissed on 02.06.2008 and against which Second Appeal No.829 of 2008 also got dismissed by this Court. These orders passed by the trial court, court of first appeal and second appeal were all challenged in Special Leave to Appeal which also got dismissed on 16.09.2023 by the Supreme Court.

24. Thus, the judgment debtor lost their case not only for prohibitory injunction against the respondents but also failed to get the *ex parte* decree recalled.

25. In so far as first point (i) is concerned, the limitation for execution of any decree other than the mandatory injunction is prescribed in Article 136 of the Schedule of the Limitation Act, 1963. This Article 136 is reproduced hereinunder in its entirety:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
136. For the execution of any decree (other than a decree granting	Twelve years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made

a mandator y injunctio n) or order of any civil court.	at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought, takes place. <i>Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."</i>
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26. From a bare reading of the aforesaid provision, it is clear from the proviso that an application for enforcement or execution of a decree granting a perpetual injunction, is not subjected to any period of limitation. There is no dispute between the parties to the execution case that the decree sought to be executed is in the nature of prohibitory perpetual injunction restraining the judgement-debtors from interfering with the possession of the plaintiffs qua the land in suit. It is this land in suit in respect of which the enforcement of injunction is sought by instituting the present execution case. It is admitted position of a fact that the assignees of the judgment-debtors who acquired possession in the year 2003 were dispossessed in the year 2008 by the State-respondents/judgment-debtors during pendency of their second appeal before this Court. The execution application was accordingly filed in the year 2010 so that the decree of injunction was violated in the year 2008 only and within two years' time, the execution case was filed.

27. Thus, there being no limitation to get the decree executed for perpetual injunction, I do not see any limitation coming in the way of the executing court in entertaining the execution case for execution of decree.

28. Coming to the point no. (ii) whether the transferee as assignees, the original decree holder could have maintained an execution case or not, the legal position again is very clear that once the property in suit has been transferred by an instrument of sale to a third party along with possession then such third party is entitled to get the decree enforced. Under Order 21 Rule 16 C.P.C., a transferee can apply for execution of decree. Order 21 Rule 16 CPC for ready reference is reproduced hereinunder:

"16. Application for execution by transferee of decree.

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided also that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one

of them, it shall not be executed against the others.

Explanation-

Nothing in this rule shall affect the provisions of Section 146, and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule."

(emphasis added)

29. Thus, the only requirement for the executing court is to hear the other side to whom the notice is sent besides the objections also. It is necessary to refer here 146 CPC at the same time which runs as under:

***"146. Proceedings by or against representatives:* Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him."**

30. A harmonious reading of the two provisions as contained under Order 21 Rule 16 and Section 146 of the C.P.C. would lead to a construction that any right created in the property by operation of law or by an instrument recognised under the law, would bind such party under the obligation arising out of such property and would hold entitled an assignee to all interest arising out of such property. Thus, if by sale of an immovable property duly registered as per requirement of law under the Transfer of Property Act, executed in favour of the party and that property is subject to a decree by a court of law, then such assignee/transferee would be bound by obligations attached to the property and also eligible to rights arising

out of such property as recognised under law.

31. It is further interesting to note here that the sale-deed was executed in favour of the assignees in the year 2003 with the transfer of possession but forceful dispossession of these assignees took place in the year 2008 while the second appeal was pending before the High Court. It is also worth mentioning here that the execution application was initially filed by the original decree holder and the assignees and was registered as Execution Case No.10 of 2010.

32. In a judgment in the case of ***Dhani Ram Gupta v. Lala Sri Ram; 1980 (2) SCC 162***, the Supreme Court citing the judgment of Calcutta High Court in the case of ***Dwar Buksh Sirkar v. Fatik Jali; ILR 26 Cal 250, 253, 254*** held thus:

"the only provision in the Code referring expressly to the assignment of a decree is contained in Section 232, and that no doubt contemplates a case in which the assignee applies for execution. In such a case the Court may, if it thinks fit, after notice to the decreed older and the judgment-debtor, allow the decree to be executed by the assignee. If, however, there is an assignment pending proceedings in execution taken by the decree-holder, I see nothing in the Code which debars the Court from recognising the transferee as the person to go on with the execution. The recognition of the Court is no doubt necessary before he can execute the decree, but it is the written assignment and not the recognition which makes him the transferee in law. The omission of the transferee, if it was an omission, to make a formal application for execution, was merely an error of procedure and does not affect the merits of the case. It is argued

for the respondent that the transferee's title was not complete as express notice of the transfer had not been given to the judgment-debtor. As already observed, the transfer, as between transferor and the transferee, is effected by the written assignment. If the judgment-debtor had no notice of the transfer and being otherwise unaware of it paid the money to the decree-holder, the payment was, of course, a good payment, and he cannot again be held liable to the transferee."

(emphasis added)

33. The issue whether injunction was enforceable by a third party and whether a decree of injunction would end with the land transferred to a third party has been raised on the principle that right to injunction with a person ends with that person extinguishing his rights in the property and does not get transferred to transferee or assignee.

34. Sri Chaturvedi, learned Senior Advocate had cited the judgment of Supreme Court in the case of **Prabhakar Adiga v. (2017) 4 SCC 97**, relying upon a maxim "*actio personalis moritur cum persona*". The Court in that case had held that the maxim was not applicable because the decree was binding upon the heirs of the deceased-judgment debtor under Section 50 C.P.C. read with Order 21 Rule 32 C.P.C. The court there in that case gave a harmonious construction of Section 50 C.P.C. read with Section 146 C.P.C. and Order 21 Rule 16 C.P.C read with Order 21 Rule 32 C.P.C. and held that legal representatives of judgment-debtor would be bound under Order 21 Rule 32 for the performance of decree. Section 50 arrests a situation from a decree getting frustrated if the judgment-debtor dies and, therefore, to meet that contingency, it has provided specific powers for execution of decree by

legal representatives and heirs. The legal representatives and heirs may not be transferees strictu sensu but the transferees by virtue of transfer once stepped into the shoes of the vendor, therefore, whatever rights and obligations are there with the vendor become binding upon the vendees as well in view of Section 146 C.P.C.

35. In the case of **Rajbahadur Yadav & ors v. Rizvi Estates & Hotels Pvt. Ltd.; 2014 (Suppl.) CCC 613 (Bombay)**, a Single Judge of the Bombay High Court dealt with various provisions of C.P.C. and held that it was not necessary for the decree holder to assign the decree in favour of the subsequent purchaser. The Court observed that subsequent purchaser who purchases the property in respect of which decree has been passed, acquires a right to execute the decree.

36. Reading down section 51(3) with Section 146 C.P.C., Order 21 Rule 16 C.P.C. and Order 21 Rule 32 (5) C.P.C., the Court has an ample power to get the decree executed in the manner it is required including power to ensure delivery of possession to dispossess the decree holder.

37. Therefore, in my considered view, the execution application by the transferee/assignees in the present case was maintainable. Point no.(ii) is decided accordingly.

38. So far as the point No.(iii) is concerned regarding two execution applications being filed one after another, whether it would vitiate the execution proceedings, I would hold that two applications would not vitiate the entire execution proceedings. In one execution application being No.10 of 2010 both the decree holder and the assignees/transferees

are party while in the second execution application being 70 of 2010, only assignees/transferees are applicants. In both the execution applications, State respondents/ judgment-debtors are party and the property is the same. When no new cause is shown in the subsequent application filed and they relate to the same decree merely because a subsequent application has been filed by assignees alone, it would not vitiate the execution proceedings provided of-course, the execution proceedings have been initiated well within time.

39. In the case of **Pentapati China Venkanna & ors Pentapati Bangararaju & ors; 1964 SCC OnLine SC 250**, such an issue arose about two execution petitions filed being Nos.58 of 1953 and 13 of 1939. Though of course in that case, about the same property in suit, one execution was filed for one part earlier and for another part, execution case was filed subsequently but the property remained the same. The Court held that *a comparison of the two execution petitions shows that the parties are the same: the new parties added in the present execution petition are either the legal representatives of the deceased parties or the representative of a party who has become insolvent. In the present execution petition the decree-holders are not proceeding against any property against which they did not seek to proceed in the earlier proceeding; they only omitted some of the properties.* The Court distinguished the judgment of **Bandhu Singh v. Kayastha Trading Bank; (1931) ILR 53 All 419** wherein the execution application was filed after 12 years and so was taken a fresh application to be barred by time but where both the applications relate to same subject matter of a decree, then subsequent application cannot be treated to be a fresh application and order can be passed

thereupon. The second application was taken to be only continuation of earlier application. Vide paragraph 10, the Court held thus;

"10. In this case, as we have pointed out, the parties are substantially the same in both the proceedings, and the decree-holders are only proceeding against properties included in the previous application. It cannot, therefore, be treated as a fresh application within the meantime of Section 48 of the Code. It is only an application to continue EP No.13 of 1939 which is pending on the file of the executing court."

40. In view of above, I do not find any error in the order passed by the executing court rejecting the objection of State respondents, the opposite parties in Execution Case No.70 of 2010 while the earlier execution application had remained pending. Thus, point no.(iii) is decided in favour of the respondents.

41. As far as the point no.(iv) for consideration is concerned, it is to be seen whether for execution of a decree for perpetual injunction, a restoration of possession could have been ordered or not. Order 21 Rule 32 C.P.C. is reproduced hereinunder:

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

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by

the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunctions been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation s it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or here, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(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.]"

42. From the bare reading of sub-rule (1) of Rule 32, it is absolutely clear that a decree for an injunction is enforceable and for enforcing the same, vide sub-rule (2) of Rule 2 property can be attached. Even for satisfaction of decree, it can be sold out. Sub-rule (5) empowers the executing court to direct an act required to be done may be done, as far as the practicable. The explanation attached to the sub-Rule (5) states that the expression 'act required to be done' covers prohibitory as well as mandatory injunction.

43. In my considered view, the legislature has very consciously and rightly so in its wisdom empowered the executing court to get the performance of decree achieved, whatever manner it is feasible and possible. The intendment behind incorporation of sub-Rule (5) and the explanation attached to it is that even in the case of prohibitory or mandatory injunction, the Court has to ensure full satisfaction of the decree. In other words, the court has to ensure a decree does not go to waste. The attachment of the property, as has been argued by learned Additional Advocate General, does not warrant delivery of possession to the decree holder, appears to me a highly misplaced argument. The attachment of the property basically as contemplated under sub-rule (3) and directing for its sale by the court is intended only to ensure decree of specific performance of contract. This coercive measure, therefore, will ensure performance

of decree where a judgment debtor does not perform as per the decree for specific performance of contract. The legal position, therefore, would be that in the matter of mandatory/perpetual/prohibitory injunction, the Court can exercise power to direct for delivery of possession of the property by the judgment-debtor to the decree holder if he is dispossessed after the decree is passed in the suit.

44. In the case of **N.S.S. Narayana Sarma & ors v. Goldstone Exports (P) Ltd. & ors; (2002) 1 SCC 662**, Supreme Court has very categorically held that any objection if raised as to the execution of a decree, has to be decided by the executing court to ensure that litigation finally ends in the matter of objections raised resisting possession by the judgment debtor. Supreme Court has discussed and laid down the scope of provisions contained under the Order 21 Rule 32 CPC and held that the executing court shall be dealing with all these issues relating to execution of the decree and the resistance to possession and their right to recover possession by the decree holder. The court observed that legislature has enacted the provision with a view to remove as far as possible technical objections of an application filed by an aggrieved party whether he is decree holder or any other person in possession of the immovable property in execution and has vested power with the executing court to deal with all questions arising out in the matter whether the court otherwise has jurisdiction to entertain a dispute in the nature.

45. In the case of **Kapoor Singh v. Om Prakash; AIR 2009 P&H 188**, a Division Bench of Punjab and Haryana High Court interpreted the provisions as contained under Order 21 Rule 32 CPC and held that "*in the event of violation of a decree for*

prohibitory injunction by way of dispossession of the decree holder by the judgment-debtors, the executing court has jurisdiction to restore possession in favour of the decree holder as cannot be compelled to file another suit. The contention of the learned counsel for the petitioners that sub-rule (5) with its Explanation has no application to a decree for prohibitory injunction therefore fails."

46. Again, in the case of **Chakradhar Patil Deceased by LRs v. Gelhi Bawa, AIR 2012 Ori 44**, the Court interpreted Sub-Rule (5) of Rule 32 thus:

"5. It is evident from Sub-rule (1) of Rule 32, as quoted above, that a decree of injunction, be it a mandatory injunction or a prohibitory injunction, may be enforced by detention of the judgment-debtor in the civil prison or by attachment of his property, or by both. No other specific mode of execution of an injunction decree has been provided for in the procedure. However, Sub-rule (5) of Rule 32 of Order 21, C.P.C. provides for enforcement of an injunction decree, which has not been obeyed by the judgment-debtor, directing the decree-holder or any other person to do the required act that will have effect of enforcement of such decree, at the cost of the judgment-debtor. This mode of enforcement can be directed by the Court in lieu or in addition to the other modes of enforcement prescribed under Sub-rule (1) of Rule 32.

6. Relying on the decision of this Court reported in ILR 1979 (I) Cuttack 474; **Fakira Pradhan v. Urdhaba Pradhan**, the learned Counsel for the petitioners submits that the manner of enforcement of an injunction decree in accordance with Sub-rule (5) of Rule 32 is limited only to a decree for a mandatory injunction and not prohibitory injunction. No doubt, the

aforesaid decision supports the contention of the learned Counsel for the petitioners. Placing reliance on the decisions of several other High Courts, this Court in the aforesaid case held as under:

"..... Sub-rule (1) of Rule 32 of Order 21, Civil Procedure Code, applies both to mandatory as well as prohibitory injunctions. Sub-rule (5) of Rule 32 on the language used Neutral Citation Number: 2023:DHC:3376 under Sub-rule (5) has been qualified by the words 'has not obeyed' and the rule says that in the event of disobedience of the injunction, the Court may, direct that the act required to be done may be done so far as practicable by the decree holder. This could only be a mandatory direction. A prohibitory direction would be not to do an act. A prohibitory injunction is a negative one restraining the defendant from doing a particular act. The difference between the two is obvious and Rule 32(5) can only be construed as applying to mandatory injunctions and not to prohibitory injunctions....."

7. The aforesaid interpretation of Sub-rule (5) of Rule 32 would not, however, hold good after the incorporation of the Explanation thereto by the Amendment Act of 2002. The Explanation has explicitly made it clear that the expression, 'the act required to be done' in Sub-rule (5) covers both prohibitory as well as mandatory injunction. In case, it is held that Sub-rule (5) with the Explanation will have application to the present case then the decision in *Fakira Pradhan* (supra), will have no application. Learned Counsel for the petitioners has submitted that the C.P.C. Amendment Act of 2002 will not apply to the present execution case in which the decree passed in the year 1995 is being sought to be executed. In this context, he has relied upon the decisions of the Apex Court, reported in

2007 (I) OLR (SC) 406, *State Bank of Hyderabad v. Town Municipal Council and I* (2007) CLT 541 (SC) : IX (2006) SLT 373 : (2006) 13 SCC 295 : AIR 2007 SC 663, *Kamla Devi v. Kushal Kanwar*. The first decision cited by the learned Counsel for the petitioners relates to amendment of pleadings in a suit filed in the year 1998 where the applicability of the proviso appended to Order 6 Rule 17, C.P.C. by the C.P.C. Amendment Act, 2002 which debars amendment of pleadings after commencement of trial of the suit unless the party is able to satisfy the Court that in spite of due diligence he could not have pleaded the new facts prior to the commencement of trial. It was held therein that the proviso will have no application to pleadings filed prior to the proviso came into force as Section 16(2)(b) of the 2002 Amendment Act so provides by way of repeal and saving. In the case of *Kamla Devi* (supra), it was held that a letters patent appeal which was filed prior to coming into force of the C.P.C. Amendment Act of 2002 that inserted Section 100-A prohibiting such appeal would be maintainable as Section 100-A has no retrospective application.

8. This execution case had been filed in 2009 when the judgment-debtors disobeyed the decree of permanent injunction by encroaching upon the suit land and dispossessing the decree holders. Explanation to Sub-rule (5) of Rule 32 of Order 21 C.P.C. came into force with effect from 1.7.2002 and this execution case having been filed after the Explanation came into force, Sub-rule (5) will have application and the decree of prohibitory injunction in question can be enforced by way of recovery of possession where the judgment-debtors have disobeyed the said decree. This Court also in the decision reported in (2006) (II) CLR 368, *Sabitri Khuntia v. Ram* Neutral Citation Number:

2023:DHC:3376 Avatar Modi, has held that a decree for prohibitory injunction can be executed taking recourse to Sub-rule (5) of Rule 32 by removing a cowshed raised by the judgment-debtors in violation of the decree. It is also held in the decision reported in AIR 2009 Punj & Har 188, Kapoor Singh v. Om Prakash, that in the event of violation of a decree for prohibitory injunction by way of dispossession of the decree holder by the judgment-debtors, the executing Court has jurisdiction to restore possession in favour of the decree holder, who cannot be compelled to file another suit. The contention of the learned Counsel for the petitioners that Sub-rule (5) with its Explanation has no application to a decree for prohibitory injunction therefore fails."

47. Following these judgments, very recently the High Court of Delhi at New Delhi in the case of **Ashok Kumar & ors v. Khyali Ram & ors; 2023 SCC OnLine Del 2882** held that executing court taking recourse to the provisions of sub-rule (5) of Rule 32 of Order 21 would entertain the complaint and the executing court was justified in issuing warrants of possession of the suit property while executing a decree of permanent injunction. In the case before Delhi High Court, the decree holders were not in possession and, therefore, the executing court issued a warrant for possession.

48. Thus, in view of above exposition of law, in my considered view, it cannot be held that the executing court cannot direct for delivery of possession of the suit property.

49. However, the question as to whether such power could have been exercised independently under Section 151 C.P.C. raises a serious issue even while the

court has proceeded to reject the objection under Section 47 C.P.C. of the judgment-debtors. As I have already discussed above that sub-rule (5) of Rule 32 of Order 21 specifically provides procedure and method to ensure compliance of decree of prohibitory perpetual injunction and that being the specific provision contained in C.P.C., the Court should not be exercising power under Section 151 C.P.C. taking it as a substantive provision for the court to proceed independently.

50. The language of sub-rule (5) of Rule 32 is clear that court would be requiring the judgment-debtor to perform the decree and it is in the event judgment-debtor still denies to make necessary compliance then he can be arrested or the property can be directed to be attached for the decree holder. So therefore, an opportunity of hearing with an opportunity to perform the decree should be given to the judgment-debtor. Had the court followed this procedure after rejecting the objection under Section 47 C.P.C., there would not have been any ground or plea available to judgment debtors to complain about. But in the instant case, I find that the executing court while on one hand rejected the objection filed by the judgment-debtors under section 47 C.P.C., immediately thereafter proceeded to pass orders under Section 151 C.P.C. directing for Amin report regarding delivery of possession.

51. It is true that at times if the executing court is there seized with the matter and misc. case is filed under section 151 C.P.C., may be it is filed separately under Section 151 C.P.C., the court in order to do substantial justice, may pass orders. But then it could not have by-passed the procedure prescribed for under sub-rule (5) Rule 32 Order 21. The judgment of the

Kerala High Court deals with the situation. The Kerala High Court in the case of ***Thazhapattathillath Krishnan*** (supra), cited an earlier judgment of that very court, *Nanu v. Ammalukutty Amma*; **1962 KER LT 223**, wherein the Court had held thus:

"There were conflicting views expressed in various decisions of different High Courts as to the applicability of Order XXI Rule 32 in respect of decrees for prohibitory injunction. Some of the High Courts took the view that sub-rule (5) of Rule 32 of Order XXI cannot be invoked to enforce a decree for prohibitory injunction, while some other High Courts took the view that as in the case of decree for mandatory injunction, sub-rule (5) of Rule 32 of Order XXI can be invoked for enforcing prohibitory decrees as well. The statement of objects and reasons to the Code of Civil Procedure (Amendment) Act, 2002 makes the position clear that the Explanation to Rule 32 was added on the basis of the report of Law Commission and that this amendment is only clarificatory in nature. Therefore, there can be no doubt that sub-rule (5) of Rule 32 of Order XXI can be applied and used to enforce and implement even a decree for prohibitory injunction. With respect, I do not agree with the view taken by the Delhi High Court in AIR 1986 Delhi 297 and in AIR 1981 Delhi 85.

The Travancore Cochin High Court had taken the view that Section 151 can be invoked for enforcing a decree for perpetual injunction, in the decision reported in AIR 1954 TRA.CO.117 (supra)."

52. The judgment of the Supreme Court in the case of ***Arjun Singh v. Mohindra Kumar***; **AIR 1964 SC 993** was distinguished on facts and circumstances of that very case citing that in that case Court had taken the view that specific provision in

the Code of Civil Procedure being there jurisdiction under section 151 could not be invoked. The Kerala High Court held that though there was a specific provision and recourse to Section 151 C.P.C. could not have been taken but what were the provision is lacking to meet the particular contingency to get the decree enforced or order, court could not be rendered powerless by holding that inherent power under Section 151 would not be invoked.

53. In my considered view, there is no dispute regarding proposition of law as discussed by the Kerala High Court but it will depend upon facts of each case. The view taken by Kerala High Court cannot be taken as a general view to be made applicable as law in every case.

54. It is true that no court can be held to be powerless to remain passive spectator of violation of a decree even while execution case is pending. It is to be seen always whether the power was there and court failed to exercise that power to ensure performance of decree or there was no power and court could not have directed for performance of execution of decree but for section 151 C.P.C. In the present case, the power was available to the executing court under sub-Rule (5) of Rule 32 of Order 21 C.P.C., but I do not see from the recitals of the order impugned passed by executing court on 25.08.2014 that any such step was taken prior to passing the order.

55. In ***K.K. Velusamy v. N. Palanisamy***; **(2011) 11 SCC 275**, the Court has exhaustively dealt with the scope of Section 151 C.P.C. and vide paragraph 12 has held thus:

"12. The respondent contended that Section 151 cannot be used for re-

opening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that Section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of Section 151 has been explained by this Court in several decisions (See : Padam Sen vs. State of UP-AIR 1961 SC 218; Manoharlal Chopra v. Seth Hiralal - AIR 1962 SC 527; Arjun Singh v. Mohindra Kumar - AIR 1964 SC 993; Ram Chand & Sons Sugar Mills (P) Ltd. v. Kanhay Lal - AIR 1966 SC 1899; Nain Singh v. Koonwarjee - 1970 (1) SCC 732; The Newabganj Sugar Mills Co.Ltd. vs. Union of India - AIR 1976 SC 1152; Jaipur Mineral Development Syndicate v. Commissioner of Income Tax, New Delhi - AIR 1977 SC 1348; National Institute of Mental Health & Neuro Sciences v. C Parameshwara - 2005 (2) SCC 256; and Vinod Seth v. Devinder Bajaj - 2010 (8) SCC 1). We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted,

when such exercise is to meet the ends of justice and to prevent abuse of process of court."

(emphasis added)

56. From careful reading of the paragraph 12 above, it is clear that if the provision dealing with particular points/aspects, either expressly or by necessary implication exhausting the scope of power of the court or jurisdiction then that power may be exercised in relation to that matter and inherent power cannot be invoked.

57. Thus, the fundamental rule of judicial procedure is that when a provision is there and it prescribes for a power to be exercised in a particular manner then it should be exercised in that manner alone.

58. In view of above, the point No.(iv) stands partly decided in favour of the judgment-debtor, State-petitioners before this Court.

59. Thus, in view of above, petition filed as Matter under Article 227 No.1806 of 2015 directed against the order dated 29.03.2024 passed by the executing court and the order of the revisional court in Civil Revision No.66 of 2014 arising out of the same, dated 26.03.2015 is ***dismissed*** and the petition filed as Matter under Article 227 No.1807 of 2015 against order dated 25.08.2014 passed by the executing court upon misc. case filed under section 151 C.P.C. and the order of the revision court affirming the same, dated 26.03.2015 is hereby allowed. The order passed by the executing court dated 25.08.2014 and that of the revisional court are hereby set aside.

60. Matter is remitted to the executing court to be decided afresh in so far as

performance of decree of perpetual injunction is concerned in terms of the provisions as contained under order 21 Rule 32 (5) read with Section 51(3) C.P.C. in accordance with law, as expeditiously as possible preferably within a period of three months from the date of production of certified copy of this order.

(2024) 5 ILRA 378

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 31.05.2024

BEFORE

THE HON'BLE AJIT KUMAR, J.

Matters Under Article 227 No. 3470 of 2020

Jyoti @ Heera

...Petitioner

Versus

Omwati @ Sato & Ors.

...Respondents

Counsel for the Petitioner:

Ashish Kumar Singh, Shreya Gupta

Counsel for the Respondents:

Siddhartha Srivastava

Civil Law – Civil Procedure Code, 1908 – Section 9 - O. 8 - Rule 6-A - O. 20 - Rule 5- O. 20 R. 19 (1) and (2) - Limitation Act, 1963 - Section 14 - Petitioner instituted a suit for permanent prohibitory injunction - On suit property, relief claimed, valuation declared was Rs. 50 lacs - Respondent nos. 1 & 2 filed written St.ment, counter claim, valuation was declared at Rs. 16 lacs – Trial court dismissed the suit, decreed the counter claim of respondents - Petitioner filed first appeal before High Court, on the ground that valuation being Rs. 50 lacs, it executed the pecuniary limit of jurisdiction of District Judge which being only Rs. 25 lacs - Regarding decree of counter claim, petitioner preferred first appeal before District Judge – Objection by respondents on maintainability of appeal, on the ground that for purposes of jurisdiction, valuation