

(2006) 01 KL CK 0067
High Court Of Kerala
Case No: C.R.P. No. 353 of 2000

Varghese and Others

APPELLANT

Vs

Chief Secretary and
Others

RESPONDENT

Date of Decision: Jan. 17, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 32, Order 21 Rule 32(5), 151
- Easements Act, 1882 - Section 22

Hon'ble Judges: K. Thankappan, J

Bench: Single Bench

Advocate: Biju Abraham, for the Appellant; Susheela R. Bhat, Spl. Govt. Pleader, Forests,
for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Thankappan, J.

The decree-holders in O.S. No. 21 of 1976 on the file of the Munsiffs Court Thodupuzha are the revision Petitioners.

2. The suit was filed for perpetual prohibitory injunction restraining the first Defendant-State and its officers, namely, Respondents 2 and 3 herein from trespassing into the decree schedule property and interfering with the peaceful possession of the revision Petitioners. As per judgment dated 30-11-1977, the Defendants in the suit were restrained from trespassing into the decree schedule property and committing any mischief in the said property. Alleging violation of the injunction order, the revision Petitioners filed E.P. No. 110 of 1984 before the court below for execution of the decree. Prior to the present execution petition, the revision Petitioners had filed E.P. No. 5 of 1987 which was later withdrawn as there was no evidence to prove violation of the decree. Now, the revision Petitioners have

filed the present execution petition for taking action against the Respondents under Order XXI, Rule 32 CPC for violation of the decree. After hearing the parties and considering the oral and documentary evidence, the court below as per order dated 23-9-1999 dismissed the execution petition against which this revision is filed.

3. Heard learned Counsel for the revision Petitioners as well as the learned Special Government Pleader (Forests) appearing for the Respondents. The question agitated before this Court is regarding the obligation on the part of the court below to take action against the Respondents under Order XXI, Rule 32 CPC for having violated the decree.

4. Learned Counsel appearing for the revision Petitioners submits that the Respondents have violated the injunction order passed by the court below by trespassing into a portion of the decree schedule property and destroying the vegetables and other improvements. Counsel further submits that as per the provisions of Order XXI, Rule 32 Code of Civil Procedure, the court below is empowered to take all possible action against the Respondents for violation of the decree granted by the court. While considering the issue, an ancillary question is also raised before this Court with regard to the procedure to be followed by the court below under Order XXI, Rule 32 read with Section 151 CPC in case of violation of prohibitory injunction or mandatory injunction. Order XXI, Rule 32(5) CPC reads as follows:

(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 expense 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 prohibitoiy as well as mandatory injunctions.

5. Areading of Sub-rule (5) of Rule 32 of Order XXI CPC would indicate that a court of law is empowered to follow any procedure to give effect to an order passed by the court, if it is found that the order is violated or disobeyed by any person who is obliged to obey the same. In this context, attention of this Court is invited to the decisions of the Apex Court reported in [Jai Dayal and others Vs. Krishan Lal Garg and another](#), and [Delhi Development Authority Vs. Skiper Construction Company \(P\) Ltd. and another](#), and also the decisions of this Court reported in *Narayani v. Thankappan* 1991 (2) KLT 704 and [Ajayakumar Vs. Damayanthi](#), . The power of the court to take all possible steps to enforce a decree for permanent injunction was considered in the decision reported in *Narayani v. Thankappan* 1991 (2) KLT 704. In this decision, this Court had taken the view that Order XXI, Rule 32 CPC was not

intended to punish a contumacious party and that the said rule can be invoked only for enforcement of a decree. This Court also held that the only remedy available in law for violation or disobedience of a decree for injunction is to initiate proceedings under the law of Contempt of Courts Act against the person concerned and there is no other provision for imposing punishment for disobedience of a term or command contained in a decree for injunction either prohibitory or mandatory. In [Ajayakumar Vs. Damayanthi](#), this Court had taken the view that the procedure contemplated under Order XXI, Rule 32 CPC can be enforced to a practicable extent in the case of prohibitory injunctions also as in the case of mandatory injunctions.

6. In [Jai Dayal and others Vs. Krishan Lal Garg and another](#), the Apex Court expressly concluded that the power under Order XXI, Rule 32 CPC can be invoked for implementation of both prohibitory injunction as well as mandatory injunction. In paragraph 6 of the above judgment, the Apex Court held as follows:

It is contended that the High Court has proceeded on the premise that the rights of parties are required to be adjudicated u/s 22 of the Easements Act. The view of the High Court is clearly in error. It is seen that once the decree of perpetual injunction and mandatory injunction has become final, the judgment-debtor is required to obey the decree.

In the above case, the Apex Court had considered a situation where the court below had granted both perpetual prohibitory injunction as well as mandatory injunction and held that the decree is required to be complied with failing which the judgment-debtor is liable to be detained in civil prison and also to proceed against the property under attachment. The same dictum was laid down in the decision reported in [Delhi Development Authority Vs. Skiper Construction Company \(P\) Ltd. and another](#), wherein the Apex Court following the decision reported in [Mohammad Idris and Another Vs. Rustam Jehangir Babuji and Others](#), held that the contemner should not be allowed to enjoy or retain the fruits of his contempt.

7. In the light of the legal pronouncements referred to in this order, this Court is of the view that a court of law is empowered, under Order XXI, Rule 32 Code of Civil Procedure, to take action against a person who violates the orders of the court, be it perpetual prohibitory injunction or mandatory injunction, or who is obliged to comply with the direction given by a civil court. Action can also be taken against such persons by invoking the inherent power of the court contemplated u/s 151 Code of Civil Procedure.

8. Coming to the facts of the case in hand, it is the case of the revision Petitioners that they obtained a decree in their favour as early as in 1972. The execution petition filed by the revision Petitioners was dismissed by the court below finding that there was no evidence to show that the Respondents had violated the order passed by the court. The court below also found that there was no proper identification of the decree schedule property.

9. It is seen that identity of the decree schedule property has not been established. Even though the case of the revision Petitioners is that the Respondents have violated the order of injunction passed by the court below and trespassed into the decree schedule property, to come to a conclusion regarding violation of the order, the identity of the decree schedule property should "be established by evidence. There is no acceptable legal evidence with regard to the identity of the decree schedule property. It is for the revision Petitioners to adduce further evidence to prove the identity of the decree schedule property. Hence, the order under challenge is liable to be set aside. The impugned order is accordingly set aside and the matter is remanded to the court below for fresh consideration with regard to the identity of the property in question. The parties are allowed to adduce further evidence, if any, in support of their respective contentions.

The Civil Revision Petition is allowed by way of remand. The parties shall appear before the court below on 24-1-2006. There will be no order as to costs.