(2014) 11 AP CK 0035

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 575 of 2014

Nallapati Panduranga Rao	APPELLANT
Vs	
Vempati Venkateshwara Rao	RESPONDENT

Date of Decision: Nov. 20, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 106, 115, 144, 144(1), 151
- Land Acquisition Act, 1894 - Section 26

Citation: (2015) 4 ALD 54 : (2015) 2 ALT 177

Hon'ble Judges: Akula Venkata Sesha Sai, J

Bench: Single Bench

Advocate: T.S. Praveen Kumar, Advocate for the Appellant; B. Chandrasen Reddy and V. Raghu, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.V. Sesha Sai, J.
Defendant No. 1 in O.S. No. 20 of 2007 on the file of the Court of the Junior Civil Judge, Kodad, Nalgonda District is the Revision Petitioner and the present Revision assails the Order dated 21.1.2014 passed by the said Court, dismissing I.A. No. 119 of 2011 filed by the Petitioner under Sections 144 & 151 of CPC.

2. The facts and circumstances, leading to the filing of the instant Civil Revision Petition are as infra:

2.1 The 1st respondent herein instituted O.S. No. 20 of 2007 against the petitioner and the 2nd respondent, arraying them as defendants 1& 2 respectively, on the file of the Court of the Junior Civil Judge, Kodad, Nalgonda District for permanent injunction to restrain them, their agents, servants, heirs etc., from interfering with his possession and enjoyment in respect of the 2170 sq. yards of House Plot bearing Door No. 17-185 (17-140 old) in S. No. 931/E situated in Block No. 17 of Balaji Nagar,

Kodad. Initially on 19.1.2007, ex parte injunction was granted and subsequently the same was vacated on 30.4.2007 and C.M.A. No. 5 of 2007 filed by the plaintiff against the said order was dismissed on 1.4.2009 and the same was confirmed in a revision filed before this Court. The learned Junior Civil Judge, Kodad eventually dismissed the said suit i.e. O.S. No. 20 of 2007 on 18.1.2011. As against the same, plaintiff/1st respondent herein preferred A.S. No. 2 of 2011 on the file of the Court of the II Additional District Judge, Nalgonda at Suryapet and the learned Additional District Judge by way of judgment and decree dated 26.9.2012, dismissed the said Appeal and as against which, the 1st respondent herein preferred S.A. No. 96 of 2013 before this Court and this Court also dismissed the said Second Appeal on 15.3.2013.

2.2 The 1st defendant/petitioner in O.S. No. 20 of 2007 filed the present I.A. No. 575 of 2011 on 18.2.2011 under Section 144 r/w Section 151 of C.P.C., for restoration of possession of the schedule land stating that under the guise of the ex parte injunction order, plaintiff/1st respondent herein forcibly occupied the schedule property. Resisting the said application, plaintiff/1st respondent herein filed counter affidavit, so also additional counter affidavits. The learned Junior Civil Judge, by virtue of an Order dated 21.1.2014, dismissed the said application. Calling in question the validity and the legal acceptability of the said Order, the present Revision has been filed before this Court under Section 115 of CPC.

3. Heard Sri T.S. Praveen Kumar, learned counsel for the petitioner, Sri B. Chandrasen Reddy, learned counsel for Respondent No. 1 and Sri V. Raghu, learned counsel for Respondent No. 2 and perused the material available on record.

4. Submissions/Contentions of the learned counsel for the petitioner:

(1) The Order impugned is erroneous, contrary to law and opposed to the very Spirit and object of the Provisions of the Code of Civil Procedure.

(2) The Court below grossly erred in dismissing the application on the ground of maintainability and the same is not in conformity with the principles laid down by the Hon''ble Apex Court and this Court in various pronouncements.

(3) The learned Judge totally went wrong in not considering the Order of this Court in W.P. No. 16211 of 2007 dated 19.3.2008.

(4) The Court below erred in failing to consider the findings of the Courts in the Judgments in Suit and Appeals.

(5) Since the petitioner brought to the notice of the Court below with regard to the fraud played by the 1st respondent, the learned Junior Civil Judge totally erred in dismissing the application and asking the petitioner to file Civil Suit for recovery of possession and the same is not in consonance with the settled propositions of law.

(6) The learned Junior Civil Judge ought to have ordered restoration of possession in favour of the petitioner under Section 151 of C.P.C., if not under Section 144.

The learned counsel, to bolster his submissions/contentions, places reliance in T. Penchalaiah v. Jaladanki Saroja (died) per L.Rs. and others, State of A.P. v. M/s. Manikchand Jeevraj & Co., Bombay, Mrs. Kavita Trehan and another v. Balsara Hygiene Products Ltd., Yelamarthi Sarath Kumar v. State of A.P., Karnataka Rare Earth and another v. Senior Geologist, Department of Mines and Geology and another and Cheni Chenchaiah v. Shaik Ali Saheb and others.

5. Submissions/contentions of the learned counsel for Respondents:

(1) The Order passed by the Court below which is impugned in the present Revision is in accordance with the provisions of the Code of Civil Procedure.

(2) There is no illegality nor any jurisdictional infirmity in the impugned order, as such the present Revision is not maintainable.

(3) The only remedy available to the petitioner is a Civil Suit and in the absence of any ingredients of Section 144 of C.P.C., the application is not maintainable, as such the learned Junior Civil Judge is justified in dismissing the application.

(4) In view of the admission of the petitioner as D.W. 1 with regard to possession of the plaintiff, there is no infirmity in the impugned order.

(5) The Court below is perfectly justified in rejecting the application in view of the pendency of O.S. No. 128 of 2006 on the file of the Court of the Senior Civil Judge, Suryapet.

(6) In the absence of any particulars as to when the petitioner was dispossessed, the petitioner is not entitled for the relief in the present application.

The learned counsel for the respondents takes the support of the judgments in Kothapalli Suryanarayana v. Bandikatla Anjaneyulu, Ammanabrolu Srinivasulu Reddy v. Yeturu Bhakthavatsala Reddy and another and Mohammed Abdul Sattar v. Shahzad Tahera and another.

6. In the above back ground now the issue that arises for consideration of this Court in the present revision is whether the order under challenge in the present revision is in accordance with law and whether it requires any correction by this Court under Section 115 of CPC?

7. In the present case, there is absolutely no controversy with regard to filing of suit, being O.S. No. 20 of 2007 by the 1st respondent against the petitioner and the 2nd respondent herein for perpetual injunction, grant of ex parte injunction on 19.1.2007 and its vacation thereafter on 30.4.2007, filing of C.M.A. No. 5 of 2007 before the Court of the II Additional District Judge, Suryapet and its dismissal on 1.4.2009 and thereafter filing of CRP before this Court and its dismissal and

dismissal of suit thereafter on 18.1.2011, filing of A.S. No. 2 of 2011 before the Court of the II Additional District Judge, Nalgonda at Suryapet and its dismissal on 26.9.2012 and filing of S.A. No. 96 of 2013 before this Court and its dismissal on 15.3.2013. The petitioner herein filed the present application i.e., I.A. No. 119 of 2011 on 18.2.2011 obviously after dismissal of the suit on 18.1.2011 for restoration of possession, with a plea that the plaintiff forcibly occupied the schedule land in the guise of the ex parte injunction order. Therefore, it can neither be said nor can be concluded that the petitioner approached the Court belatedly and that he should be non-suited on the ground of such delay. In the present case, the 2nd defendant/2nd respondent herein is no other than the husband of the sister of the plaintiff/1st respondent herein. At this juncture, it may be apposite to refer to the litigation initiated by the 1st respondent herein by way of instituting O.S. No. 128 of 2006 against his sister on the file of the Court of the Senior Civil Judge, Suryapet for specific performance of agreement of sale. The said suit initially ended in compromise between them before the Lok Adalat by virtue of Ex. A7 Award dated 4.11.2006 passed by the Lok Adalat in LAC No. 586 of 2006. It is also an admitted reality that challenging the said Award, petitioner herein filed W.P. No. 16211 of 2007 before this Court. This Court, after considering the issues in detail, allowed the said WP by way of an order dated 19.3.2008. The operative portion of the said order at paragraphs 5 and 6 reads as under:

5. In the circumstances, the impugned award dated 4.11.2006 passed in LAC. No. 586 of 2006 relating to O.S. No. 128 of 2006 is set aside and the matter is remanded to the trial Court for consideration afresh on merits in accordance with law. The petitioner is impleaded in the suit O.S. No. 128 of 2006 as a party defendant. It is needless to mention that any steps taken in pursuance of the award dated 4.11.2006 shall be null and void. The trial court shall dispose of the suit O.S. No. 128 of 2006 uninfluenced by any of the observations made by this Court in this order, but on its own merits, in accordance with law.

6. In the result, the writ petition is allowed. No order as to costs.

It is also brought to the notice of the Court that the above said order was subsequently confirmed by the Hon''ble Apex Court in a SLP preferred by the 1st respondent herein.

8. The said O.S. No. 128 of 2006 is now pending adjudication before the Court of the learned Senior Civil Judge, Suryapet. In order to appreciate the rival contentions and for the purpose of examining the sustainability of the claim of the petitioner and the objections taken by the respondents, it would be highly essential to refer to the findings of the trial Court and the appellate Courts. At paragraph 16, the trial Court in its judgment in O.S. No. 20 of 2007 categorically held that as seen from Ex. A5 Challa Vijaya (sister of the plaintiff and wife of 2nd respondent herein) clearly admitted that she executed Ex. B1 on 25.3.2003 and on the same day, possession was delivered to the 1st defendant by her. It may also be appropriate to refer to the

concluding portion of the judgment in O.S. No. 20 of 2007 at paragraph 27, which reads as under;

In view of my above discussion and findings that plaintiff suppressed the real facts and has not approached the Court with clean hands for seeking the equitable relief of permanent injunction, that plaintiff failed to establish his possession over the plaint schedule property as on the date of filing of the suit, that the plaintiff obtained a fraudulent Award under Ex. A7 and that the present suit is a collusive one, plaintiff is not entitled to the relief of permanent injunction in this suit. The two issues are accordingly answered against the plaintiff.

9. It is also relevant to mention that the 1st defendant/petitioner herein as D.W. 1 deposed during the course of cross-examination that at present, the premises is in occupation of Sai Harvestors and there are harvesting machines, lorries etc., in the schedule premises. While referring to the above said deposition, it is contended by the learned counsel for the respondents that in view of the said admission, the petitioner herein is not entitled for any relief in the present application. It is also equally essential to note the subsequent portion of the said deposition, which is to the effect that only after obtaining injunction order, the same took place. Obtaining permission from Kodad Gram Panchayat for construction of shed and compound wall, as deposed by DW 1/petitioner herein, by the plaintiff is of no consequence for resolving the issue in the present revision. Therefore, the contention contra advanced by the learned counsel for respondents does not merit any consideration.

10. It is also noteworthy that this Court in the judgment dated 15.3.2013 in S.A. No. 96 of 2013 categorically found that the plaintiff/1st respondent herein has no better title to the suit property than the defendant and he is not entitled for permanent injunction against him. This Court also held that the plaintiff failed to prove his possession by the date of filing of the suit in the trial Court.

11. Yet another contention of the learned counsel for the 1st respondents that the application filed by the petitioner for restitution under section 144 of C.P.C. is not maintainable as the plaintiff/1st respondent herein did not come into possession of the property by virtue of any order of the Court. On the contrary, it is the contention of the learned counsel for the petitioner that the petitioner herein filed application not only under Section 144, but also 151 of C.P.C., as such the application is maintainable and the contention contra advanced is unsustainable.

12. Section 144 of C.P.C. confers powers on the Courts to order restoration and the said provision of law reads as infra:

Section 144-Application for restitution

(1) Where and in so far as a decree of an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree of order] shall, on the application of

any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree 1 or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

Explanation.--For the purposes of sub-section (1) the expression "Court which passed the decree or order" shall be deemed to include,--

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit]

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

13. Section 151 of C.P.C., on the other hand deals with inherent powers of the Courts. For the purpose of appreciating the respective contentions of the learned Advocates, it may be apt and appropriate to refer to the judgments cited by the learned Advocates.

14. Coming to the judgments relied on by the learned counsel for the petitioner.

(1) In T. Penchalaiahs case (supra), this Court at paragraphs 6 and 10 held as under:

6. Section 144 of C.P.C. lays down that when a decree or order is varied or reversed by appellate/revisional Court, the decreeing Court may order restitution placing the parties in the same position, which they occupied before the decree. There cannot be any doubt that on a true interpretation, Section 144 deals one and only situation where the decree of the original Court is reversed by the appellate/revisional Court. Therefore, in matters of restitution not falling within the scope of Section 144 of C.P.C., would it be correct to say that the civil Court has no such power of restitution? There is abundant authority that there can be number of situations where the Court can exercise its inherent power under Section 151 of C.P.C. to prevent miscarriage of justice by reason of its orders. Such power is to be exercised by the civil Court in discharge of its duty, which is explained by the well known maxim actus curiae neminem gravabit. The power is exercised by civil Court to order

restitution to ensure that no person-whether such person is party to the suit/application or not; gets undue advantage by its orders, is no party grossly prejudiced by its proceedings/orders.

10. Therefore, it is well settled that even in a situation where Section 144 of C.P.C. per se is not applicable, still the civil Court has inherent jurisdiction to order restitution to avoid prejudice to a party who suffered by reason of the orders passed by the civil Court, if it is ultimately found that such orders were passed under mistake of fact or such orders are vitiated by fraud and misrepresentation.

(2) In Government of A.P. v. M/s. Manikchand Jeevraj & Co., Bombay (supra), this Court at paragraphs 9 and 12, held as under:

9. In the light of the aforesaid discussion, we shall advert to the submission of the appellant that the order of attachment was not passed by a civil court and it is not reversed or varied by an appellate court and, therefore, the provisions of section 144, C.P.C. are not attracted in the instant case. True, the original order of attachment of movables of the respondent was made by the Deputy Tahsildar and the claim petition was rejected by the District Collector. It is pertinent to notice that the deposit of Rupees 24,000/- was not made by the respondent pursuant to an order of attachment made by the Deputy Tahsildar or the order passed by the District Collector. Admittedly, that amount was paid to satisfy the conditional order passed by the Civil court in I.A. 152/59 on 25.4.1959 which was merged in the order passed by the civil court. The respondent become entitled to the repayment of the aforesaid sum of Rs. 24,000/- on the passing of a decree in its favour declaring its right to the moveables attached by the revenue authorities and in respect of which a sum of Rs. 24,000/- was deposited by it. True, the term ''order;'' used in Section 144 must be interpreted to be ''the formal expression of any decision of Civil court'' as defined under clause (14) of Section 2 of the Code. Hence, if any order other than the one passed by a civil court is varied or reversed, Section 144 of the Code does not come into play. Section 144 is attracted only where the order or decree of any civil court is reversed or varied, but not otherwise. However, we may state that there are instances where section 144 has been applied to an award passed by Land Acquisition Officer and an eviction order passed under a tenancy statute. In M. Dodla Malliah and Others Vs. The State of Andhra Pradesh and Land Acquisition Officer, Warangal, an award was passed by Land Acquisition Officer under section 26 of the Land acquisition act, 1894 was held to be an order of a court within the meaning of Section 48 of the Andhra Pradesh Fees and Suits valuation Act for the purpose of Court fee. Therein, it was observed that an award was a formal expression of the decision of a civil court, and was, therefore, an order defined under Section 2(14) of the Civil procedure Code. A division Bench of this court, in Puvvada Changayya v. Sub-Collector, Ongole, applied the provisions of Section 144 and Order 21, Rule 106 of the Code of Civil Procedure and directed restitution on a tenancy matter. Therein the tenant who was dispossessed by a wrongful eviction

order of the revenue authorities, which has been reversed subsequently, was directed to be put in possession of the land once again on the application of the doctrine of restitution. We may add that under Rule 14 of the Andhra tenancy Rules, 1957, all proceedings before the Tahsildar or Revenue Divisional Officer under the tenancy act, are to be governed as far as may be by the provisions of the Code of Civil procedure. Similarly, the principle of restitution envisaged under the Section 144 C.P.C. Had been applied by the Allahabad High court in Vindhyachal Tewari Vs. Board of Revenue and Others, the suits under the U.P. Tenancy Act. The court directed the party who obtained possession of the land pursuant to the order of the revenue authorities, to put in possession the party who had possession of the same before the passing of such order which was varied or reversed subsequently. It may be noticed that the provisions of section 243 read with items 1 and 2 of the second schedule of the U.P. Tenancy act and Rule 5 of the Rules framed thereunder made the provisions of the code of Civil procedure applicable to suits under that Act.

12. It is well settled that restitution can be ordered either under Section 144 of section 151 of the code of the Civil Procedure. Vide AIR 1922 269 (Privy Council) : J.P. Rego Vs. Ananthamathi and Others, ; M.P. Palaniappa Chettiar and Others Vs. S.A. Ramanathan Chettiar and Another, ; Alapati Ankamma Vs. Pavuluri Basava Punnayya, and Mohammed Hussain Vs. A.K.M. Pitchai, . Where the ingredients of Section 144, C.P.C. are satisfied, the court has no discretion to refuse restitution as the provisions of Section 144 are mandatory. There may be cases where the provisions of S. 144 are not strictly satisfied but at the same time it is just, proper and equitable to order restitution as no party should be allowed to take advantage or benefit of a wrong or illegal order of the court of law. In such cases, the court must step in and exercise its inherent power invested under Section 151 and do real and substantial justice to the parties, the very intendment and purpose of Section 151 being only to meet the ends of justice and to prevent miscarriage of justice. The power vested under Section 151 being discretionary and to be used to do real and substantial justice to the parties, must be exercised fairly, reasonably and objectively but not arbitrarily. Even assuming that the provisions of Section 144, Civil procedure code are not attracted, it admits of no doubt that the court has inherent jurisdiction under 151 to order restitution and payment of reasonable rate of interest on the amount directed to be paid back to the party from whom it was erroneously or illegally collected. Admittedly the respondent was deprived of the utility and benefit of the sum of Rs. 24,000/- paid by it to the State. The state has had really the advantage and benefit of the use of such sum. Hence, in the circumstances, we are satisfied that this is a fit case where the restitution must be ordered. We are also of the view that payment of 6% of interest on the amount of the deposit i.e., Rs. 24,000/- is just, fair, proper and reasonable.

(3) In Mrs. Kavita Trehans case (supra), the Hon''ble Supreme Court at paragraphs 13 to 15 held as under:

13. The Law of Restitution encompasses all claims founded upon the principle of unjust enrichment. ''Restitutionary claims are to be found in equity as well as at law''. Restitutionary law has many branches. The law of quasi-contract is "that part of restitution which stems from the common Inebriates counts for money had and received and for money paid, and from quantum merit and quantum vale bat claims." [See ''The Law of Restitution''-Goff & Jones, 4th Edn. Page 3]. Halsburys Law of England, 4th Edn. Page 434 states:

Common Law. Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi contract or restitution.

For historical reasons, quasi contract has traditionally been treated as part of, or together with, the law of contract. Yet independently, equity has also developed principles which are aimed at providing a remedy for unjustifiable enrichment. It may be that today these two strands are in the process of being woven into a single topic in the law, which may be termed restitution.

Recently the House of Lords had occasion to examine some of these principles in Woolwich Equitable Building Society v. Inland Revenue Commissioners [1993] A.C. 70.

14. In regard to the law of restoration of loss or damage caused pursuant to judicial orders, the Privy Council in Alexander Rozer Charles Carnie v. The Comptoir D''Escompte De Paris 1869 3 AC 465 stated:

...one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression "the act of the Court" is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case.

In AIR 1922 269 (Privy Council), the Judicial Committee referring to the above passage with approval added:

It is the duty of the Court under Section 144 of the Civil Procedure Code to Place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed.

Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved.

In Binayak Swain Vs. Ramesh Chandra Panigrahi and Another, , this Court stated the principal thus:

...The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from....

15. Section 144 C.P.C. incorporates only a part of the general law of restitution. It is not exhaustive. (See Gangadhar and Others Vs. Raghubar Dayal and Others, . and State Govt. of Andhra Pradesh Vs. Manickchand Jeevraj and Co., Bombay, The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose,..." The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.

We have considered this submission of Sri Grover relying on Sakamma v. Eregowda [1974] 2 KLJ 357 that the mere fact that the suit for permanent injunction was dismissed resulting in the vacation of the interim order of injunction granted during its pendency, would not entitle the successful defendant to seek restitution under Section 144 C.P.C. That principle has no application in this case. In the case before us the injunction granted by the learned Senior Sub-Judge, Chandigarh, was not merely negative in terms interdicting interference from the respondent with the custody of the goods by the appellants; it went much further and expressly enabled the appellants to sell the goods. Pursuant to this order, the appellants disturbed the status-quo as on the date of the suit and sold away respondent''s goods and converted them into money. The High Court while declining the prayer for payment of the sale proceeds to the respondent, however, sought to relegate the parties to the extent practicable, to the same position as obtained on the date of the suit. This the High Court did by directing furnishment of security to the extent of the value of goods sold away under the cover of the interlocutory order. That an appeal filed against the said interlocutory order was withdrawn, does not, in our opinion, make any difference. Upon dismissal of the suit, the interlocutory order stood set-aside and that whatever was done to upset the status-quo, was required to be undone to the extent possible. It is unfortunate that the learned Sub-Judge, Ist Class made an order which, we think, ought not to have been made. If the Trial Judge felt that it

was in the interest of justice that the goods required to be disposed of, he should have ordered the sale by or under the supervision of a Commissioner of the court ensuring that the sale-proceeds were under the court''s control. We are constrained to observe that the order of the learned Sub-Judge, Ist Class, failed to have due regard to the need to protect the interests of the opposite party and, to say the least, an improper order was passed. The ex-pane order granted by the learned Sub-Judge, Ist Class, was not of mere negative import but virtually enabled and authorised the appellants to sell away respondent''s goods of which appellants were mere clearing and forwarding agents. This permission to sell implicit in the form of the order enabled the appellants to purport to convey; respecting the goods, a better title than what appellants themselves had. That such a thing was achieved by an ex-parte order, tends to shake litigants'' faith in the judicial process. The learned Sub-Judge, Ist class ought not to have made an ex-parte order which occasioned serious prejudice and loss to the respondent. On the administrative side, the High Court may have to look into the propriety of the conduct of the learned Sub-Judge, Ist Class, in this case.

(4) In Yelamarthi Sarath Kumars case (supra), the Division Bench of this Court at paragraphs 52 and 53 held as under:

52. Having obtained an interim order, because of which the notice in Form I could not be published and applications could not be received within the 20 day period, it is not open to the 5th Respondent to now contend that as the twenty days period stipulated in Form I, annexed to G.O. Rt. No. 762 dated 24.5.2010, for submission of applications had expired the memo dated 16.06.2010 should be set aside. A party cannot be allowed to take the benefit of his own wrong by getting an interim order in a Writ Petition which is ultimately dismissed. The maxim actus curiae neminem gravabif, which means that the act of Court shall prejudice no one, becomes applicable. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of Court. Any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, ; A.R. Sircar (Dr) v. State of U.P. 1993 Supp.(2) SCC 734; Shiv Shankar and Others Vs. Board of Directors, U.P.S.R.T.C. and Another, ; Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and another Vs. Sree Kumar Tiwary and another, ; M/S. GTC Industries Limited Vs. Union of India and Others, ; and Jaipur Municipal Corporation Vs. C.L. Mishra, . No person can suffer from the act of the Court. In case an interim order has been passed and the Petitioner takes advantage thereof, and ultimately the petition stands dismissed, interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized. Ram Krishna Verma and Others Vs. State of U.P. and Others, ; Grindlays Bank Limited Vs. Income Tax Officer, Calcutta and Others, ; Mahadeo Savlaram

Shelke and Others Vs. Puna Municipal Corporation and Another, .

53. A party who succeeds ultimately is to be placed in the same position it would have been if the Court had not passed the interim order, Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another, , otherwise litigation may turn into a fruitful industry and unscrupulous litigants may feel encouraged to approach Courts persuading it to pass interlocutory orders favourable to them. If the concept of restitution is excluded, from its application to interim orders, the litigant would stand to gain by swallowing the benefits of an interim order even though the battle has been lost at the end. This cannot be countenanced. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court. The test is whether an act of the party persuading the Court to pass an order, held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. The injury, if any, caused by the act of the Court shall be undone. Any opinion to the contrary would lead to unjust if not disastrous consequences. South Eastern Coalfields Ltd. Vs. State of M.P. and Others, ; Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, .

(5) In Karnataka Rare Earths case (supra), the Hon''ble Supreme Court at paragraph 10 held as under:

10. In South Eastern Coalfields Ltd. Vs. State of M.P. and Others, , this Court dealt with the effect on the rights of the parties who have acted bona fide, protected by interim orders of the Court and incurred rights and obligations while the interim orders stood vacated or reversed at the end. The Court referred to the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the Court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an improvement which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost.

(6) In Cheni Chenchaiahs case (supra), this Court at paragraph 17 held as under:

17. Therefore, on a consideration of the decisions referred to above, it can be seen that in the absence of specific provision in the Code which deals with particular situation or unless there is any prohibition either express or implied, the Court is entitled to exercise its inherent powers under S. 151 of Code of Civil Procedure. In this case, as I stated above, S. 144(1) of C.P.C. is not applicable to the facts of the case because possession was not taken by any order of the Court. There is no other provision which applies to the facts of the case i.e. where the possession has been taken forcibly by a party during the pendency of the proceedings i.e. when the application is dismissed by the trial Court and before filing the appeal. In these circumstances, I agree with the contention of the learned Counsel for the petitioner that in such circumstances, the Court would be justified to do justice and put back the parties in the same position in which they were, but for the order of the trial Court by invoking the inherent jurisdiction. Therefore, I agree with the contention that the Court in exercise of its jurisdiction under Section 151 can grant restitution, even though Section 144(1) C.P.C. may not strictly apply. That view of mine, as I have stated above, is supported by the two Division Bench decisions stated supra State Govt. of Andhra Pradesh Vs. Manickchand Jeevraj and Co., Bombay, and (1964) 2 An.W.R. 144.

15. Coming to the judgments relied on by the learned counsel for the Respondents.

(1) In Kothapalli Suryanarayana''s case (supra), this Court at paragraph 5 held as under:

5. It is seen from the facts of this case that the suit was filed by the plaintiff for redemption of the mortgage and for recovery of possession of the property, contending that the registered deed executed in favour of the defendant is only in the nature of an usufructuary mortgage and not a lease deed. He also filed I.A. No. 1575 of 1982 for interim injunction pending disposal of the suit and such interim injunction was granted by the trial Court and such orders of interim injunction were confirmed by the appellate Court in the Civil Miscellaneous Appeal filed against the orders of temporary injunction. But subsequently, the suit was dismissed by the trial Court and the first appeal filed by the plaintiff was also dismissed. Subsequently the plaintiff filed SA No. 779 of 1987 which is also since dismissed on 25-3-1994 thereby confirming the decree and judgment of the trial Court passed in the suit. After the first appeal was dismissed and when the second appeal was still pending in the High Court, the defendant filed EA 638 of 1988 under Sections 144 and 151 C.P.C. seeking restitution of the property from the plaintiff on the ground that the plaintiff dispossessed him by taking advantage of the orders of temporary injunction passed by the trial Court and confirmed by the appellate Court. It is further to be seen that the plaintiff did not take delivery of the property from the defendant through Court on the basis of any orders passed by the Court so as to say that inasmuch as such orders were subsequently set aside, the defendant is entitled to get back possession of the property by way of restitution as contemplated under Section 144 C.P.C.

When there was no delivery of property in pursuance of any order of Court and if the plaintiff had dispossessed the defendant unlawfully on the basis of a temporary injunction order which does not contemplate any such delivery of the property to the plaintiff, the defendant is not entitled to take recourse to provisions of Section 144 C.P.C. for seeking restitution of the property, and his only remedy is to file a suit for recovery of possession. Such view is clearly expressed by various High Courts including our own High Court.

(2) In Ammanabrolu Srinivasulu Reddys case (supra), this Court at paragraphs 8 and 9 held as under:

8. A petition under Section 144 of C.P.C. embodies the doctrine of restitution. Sub-section (1) of Section 144 declares that where a decree or order is set aside, reversed or varied in any appeal, revision or other proceeding, the party entitled to the benefit of restitution may apply to the Court which passed the decree or made the order. On such application, the Court, which had passed the decree, will make an order of restitution by placing the parties in the position, which they would have occupied, but for such decree or order. The doctrine of restitution is based upon the well-known maxim "actus curiae neminem gravabit", i.e., the act of Court shall harm no one. One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to the suitors. It has been held by the Supreme Court in Mrs. Kavita Trehan and another Vs. Balsara Hygience Products Ltd., , as follows:

"The Law of Restitution encompasses all claims founded upon the principle of unjust enrichment. ''Restitutionary claims are to be found in equity as well as at law''. Restitutionary law has many branches. The law of quasi-contract is "that part of restitution which stems from the common indebitatus counts for money had and received and for money paid, and from quantum meruit and quantum valebat claims." Halsbury''s Law of England, 4th Edn. Page 434 states:

"COMMON Law. Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another, which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi contract or restitution.

For historical reasons, quasi contract has traditionally been treated as part of, or together with, the law of contract. Yet independently, equity has also developed principles, which are aimed at providing a remedy for unjustifiable enrichment. It may be that today these two strands are in the process of being woven into a single topic in the law, which may be termed "restitution"."

The jurisdiction to make restitution is inherent in every Court and will be exercised whenever the justice of the case demands. It will be exercised under inherent

powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose....". In the instant case R1/decree holder pleaded in O.S. 3/90 that the petitioner/JDR No. 1 came into the possession of the property after dismissal of the suit in O.S. No. 25/82. In such a situation can it be said that the petitioner/JDR No. 1 entered upon the property under the guise of the decree granted by the Court. In my considered view the possession of the petitioner/JDR No. 1 in such a situation cannot be construed that it is in pursuance of the decree granted by the Court. The decision on which R1/decree holder relies on i.e., Mrs. Kavita Trehan and another Vs. Balsara Hygience Products Ltd., , the properties came to be sold by the plaintiff under the orders of the Court and ultimately the plaintiff was found to be not entitled to exercise such a right. In those circumstances, the Supreme Court held that the restitution could be made under inherent powers Coming to the facts of the case on hand, the petitioner/JDR No. 1 entered into the suit lands is not in pursuance of the orders granted by the Court. Therefore, the cited case has no application to the facts of the case on hand. The Madras High Court in Periyasamy v. Karuthiah, has held that Section 144 of C.P.C. authorizes the grant of relief in order to replace the parties in the position they would have occupied but for the decree. It does not apply to a case where possession is obtained independent of and in opposition to the decree. In the cited case the plaintiffs obtained a decree for injunction and got possession of the property in dispute in some way, but not in the ordinary course of execution. The decree was reversed in appeal. Defendants applied for restitution of possession and for removal of a superstructure erected by the plaintiffs over the property. The Madras High Court held that Section 144 of C.P.C. does not apply, inasmuch as plaintiffs possession was not under the decree, but in opposition to it. Our High Court in Sanampudu Krishna Reddy v. Pattamreddy Kota Reddy and Ors. 1980 (1) ALT 428, following the decision of Madras High Court in Periyasamy Thevan and Others Vs. Karuthiah Thevan and Another, , held that as a rule and rule of practice in India, restitution is ordered on the principle that acts of the Court should not injure any of the suitors.

9. In the instant case it is not as a result through the process of Court that possession was lost. Therefore, the only remedy is that the respondents should have recourse to a suit and not by an application under Section 144 of C.P.C. in execution. Indeed, R1/decree holder had filed O.S. 3/90 seeking for declaration of title and also recovery of possession. Both the execution Court and the appellate Court failed to note this aspect and thereby erred in ordering restitution of the suit lands. With regard to the restitution of the amounts withdrawn by the petitioner/JDR No. 1 there is every justification in allowing the application of R1/decree holder. Admittedly, the suit lands were put to auction pending the suit O.S. 25/82. R1/decree holder being the highest bidder enjoyed the suit lands pending disposal of the suit and deposited

amounts. After dismissal of the suit, it appears the petitioner/JDR No. 1 withdrew the said amounts. It is a matter of record that the dismissal of the suit came to be reversed in an appeal, and the petitioner/JDR No. 1 unsuccessfully questioned the judgment and decree by filing Second Appeal and further by Special Leave Petition. In these circumstances, the petitioner/JDR No. 1 having withdrawn the amounts which he is not entitled is liable to re-deposit the same. To that extent the order of the executing Court and the first Appellate Court cannot be interfered with.

(3) In Mohammed Abdul Sattars case (supra), this Court at paragraph 26 held as under:

26. Needless to point out that an order u/s. 144 C.P.C. is a decree, in view of the definition of decree u/s. 2(2) C.P.C. Sec. 96 C.P.C. envisages that an appeal would lie from every decree with certain exceptions. Sec. 144 C.P.C. does not fall within the exception u/s. 96 C.P.C. Consequently, an order in a petition u/s. 144 C.P.C. is an appealable order. There is no doubt about the law in this regard. The learned counsel for the petitioner indeed accepts that an appeal lies from an order in a petition u/s. 144 C.P.C. His contention is that E.A. No. 14 of 2011 was not an application u/s. 144 C.P.C. but was an application under Section 144 r/w Sec. 151 C.P.C. and that since appeal does not lie from an order u/s. 151 C.P.C., the order in E.A. No. 14 of 2011 is liable to be examined in the revision.

16. The principles laid down in the above referred judgments are patently to the effect that restoration can be ordered by the Courts in exercise of inherent powers conferred under Section 151of the Code of Civil Procedure also. In the instant case, the learned Judge erroneously held that the application is not maintainable either under Section 144 or under Section 151 of C.P.C. The learned Junior Civil Judge, on the other hand directed the petitioner herein to avail the remedy of civil suit for the purpose of obtaining possession. This rejection in exercising the jurisdiction, in the opinion of this Court and in the teeth of the principles laid down in the above referred judgments is neither justified nor can be approved. The further reason assigned by the Court below that only remedy available to the petitioner is a civil suit for recovery of possession is not tenable and is highly unreasonable. It is also the contention of the learned counsel for the 1st respondent that the order passed by the Court below under Section 144 of C.P.C. is a decree falling under the definition of decree under Section 2 of C.P.C., as such, it is appealable but not revisable. The said contention is also highly unreasonable, because it is also the case of the 1st respondent that the application under Section 144 of C.P.C. is not maintainable. In fact, the petitioner in the instant case as observed supra, filed the present application under Section 151 of C.P.C. also and the order passed under the said provision of law is only revisable, but not appealable. Therefore, the Court below should have proceeded under the provisions of Section 151 of CPC.

17. Legislations are made obviously for betterment and welfare of the society and the efforts of the Courts should be in the direction of the creating and strengthening

the faith and confidence of the citizens in the value based system, otherwise there is every possibility of the people loosing faith in the system and the same is undoubtedly not in the interest of the nation at large. Therefore, the endeavour of the Courts should also be in the direction of upholding the majesty and the holiness of the judgments and orders of the Courts. In the instant case, the learned Judge instead of adjudicating the issue basing on the material available before the Court under Section 151 of C.P.C., directed the petitioner herein to approach the Court once again by way of civil suit for redressal of his grievance. There is absolutely no justification on the part of the Court below in dismissing the application filed by the petitioner and this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned order is unsustainable and untenable.

18. For the aforesaid reasons and having regard to the principles laid down in the above referred judgments, this Civil Revision Petition is allowed, setting aside the order passed by the learned Junior Civil Judge, Kodad, Nalgonda District in I.A. No. 119 of 2011 dated 21.1.2014 and consequently I.A. No. 119 of 2011 stands allowed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.