

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4974 OF 2009
(Arising out of SLP(C)No. 19115/2007)

Vasudev Shenoy

...Appellant(s)

Versus

Kshemavathy & Ors.

...Respondent(s)



Leave granted.

The appellant herein is the decree holder arising out of civil suit No. O.S. 83/1997. Consequent to the decree 19 cents, of land belonging to the respondents herein was purchased by the appellant in a Court auction on 4th April, 2000. The possession of the property was delivered to the appellant on 30th January, 2001 by the Court officials with Police help as the respondents had obstructed the

delivery. The respondents, however, on the very next day i.e. 31st January, 2001 re-possessed themselves of the property by breaking open the locks.

The respondents thereafter filed civil suit No.141/2001 in the Court of the Sub-Judge, Cochin and obtained a temporary injunction against the appellant



who was now the owner of the property. The suit was dismissed on

18th June, 2005 with the observation that the plaintiff (that is the respondent herein) had absolutely no right whatsoever to the property. It has been contended by the learned counsel for the respondents today that an appeal has been filed against the judgment and decree dated 18th June, 2005. The appellant in the meanwhile took several steps to repossess themselves of the property but remained unsuccessful. Ultimately, he filed writ petition No. 15525/2006 in the High court seeking the relief of possession. This petition was disposed



of on 6th July, 2006 with the direction that the appellant should approach the civil court. The appellant thereafter filed an application under Sec.151 of the C.P.C. in O.S.83/1997 in the Court of the Munsiff, Cochin for re-delivery of the property in question. This application was dismissed on 7th June, 2007 on the ground that such an application under the said provision did not lie. The appellant thereupon preferred writ petition No. 23954/2007 against the order of the civil Court and this too was dismissed on 7th August, 2007 with the following

observations:

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“Inherent power of the court under Section 151



CPC cannot be invoked by the executing Court after recording the delivery, to deliver the property once again to the decree holder or auction purchaser. Remedy to the writ petitioner is institute a suit for recovery of possession.”

It is against this order that the present appeal has been filed.

We have heard learned counsel for the parties and gone through the record. The facts as stated above, are not disputed. In these facts we are of the opinion that the respondents herein have no

justification legal or in equity in holding on to the property and that they were guilty of taking the law into their hands when they repossessed themselves on 31st January, 2001. Even the civil suit filed by them seeking a temporary injunction has been dismissed and the only argument of the learned counsel for the respondents is that an appeal is pending before the High Court. Be that as it may, the facts clearly show that the conduct of the respondents is completely unacceptable and we are indeed surprised that High Court has not



moulded the relief to the appellant.

The learned counsel for the respondents has, however, argued that the appellant had several

applications for the execution of the decree and filed repeated applications under 151 of the C.P.C. as well and as such the present proceedings were not maintainable and the remedy before the appellant was to file another civil suit as observed by the High Court. We need not go into this suspicion. We are of the opinion that the Court should exercise its jurisdiction under Art.142 of the Constitution in the facts of the case. We, thus, direct that the appellant should be put back in possession of the property within four weeks from today



positively and that all help, including police help, that is required shall be provided. The appellant will also have his costs which are determined as Rs.50,000/-.

The appeal is allowed in the above terms.

..... J.
(HARJIT SINGH BEDI)

.....J.
(J.M. PANCHAL)

New Delhi,
July 31, 2009.

SUPREME COURT OF INDIA



JUDGMENT