

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No. 1862 of 2011

ORDER:

The revision petitioner is the Decree Holder/plaintiff in E.P.No.121 of 2010 in O.S.No.987 of 1997 who impugning the order of the III Addl.Junior Civil Judge, Nellore, dated 25.10.2010 in the said execution petition, maintained the present revision.

2. The execution application supra before the executing Court was filed under Order XXI Rule 22 and 32(1) of C.P.C. That provision applies for enforcement of prohibitory permanent injunction in respect of the property where there is violation. In so far as the petition cause concerned, the plaint filed in fact was for the main relief of declaring that the plaintiff is the original owner of the schedule mentioned shares with consequential reliefs viz; to grant injunction directing the defendant not to transfer the schedule mentioned shares in the name of third parties (though in the prayer 1 clause (b) of the plaint paragraph 10 mentioned as if mandatory, nomenclature is not decisive but for substance of the prayer which is virtually for a prohibitory relief. The other relief under Clause (c) is for transfer of the share certificate in the name of the plaintiff. It is practically a direction mandatory in nature. The suit is no doubt decreed and the operative portion of the decree reads that the plaintiff is declared as rightful owner of the schedule mentioned shares, the defendants are directed by means of mandatory injunction not to transfer the schedule mentioned shares in the name of third parties and also directed to transfer the share certificates in the name of plaintiff. The trial Court also erred in mentioning as if the prayer is mentioning as mandatory injunction instead of prohibitory but for saying in the prayer in (c) as mandatory.

3. The prayer in the execution petition is practically for mandatory injunction relief directing the defendants to transfer the shares in the name of the plaintiff. For that Order XXI Rule 32 has no application as that provision applies for the violation of permanent injunction at any

time in respect of the ownership and title declared in the suit and it is not the case of the Decree Holder/revision petitioner that despite prohibitory injunction under clause(b) violating the same the J.Dr.s in question transferred the same in the name of any third party to take legal recourse for such violation. Once the prayer is for mandatory injunction, the limitation for execution of the decree is only for three years under Article 135 of the Limitation Act. The learned counsel no doubt seeks for relief basing on the expression of **Deep Chand v. Mohanlal**^[1], *where language of the decree is capable of two interpretations, one which assists the decree holder to have the fruits of the decree should be preferred.* No doubt, it is only from that principle the mandatory injunction even referred under (b) and even loosely referred by the trial Court, considered by this Court for the prohibitory relief, rightly and for clause (c) even mandatory is not mentioned, considered by this Court as a mandatory injunction relief. Beyond that this expression no way in assistance to the Decree Holder particularly covered by the revision lis. The other decision placed reliance is in **Babu Lal vs Hazari Lal Kishori Lal**^[2]. In fact, it is the matter arisen out of interpretation of Sections 22 and 28 of the Specific Relief Act(for short, 'the Act') read with Sec.55 of the Transfer of Property Act, where by scanning the law, it was observed that future execution prayer need not be asked in the prayer and whether asked or not, even not a bar for asking in future including once from the wording at any stage of the proceedings used in Section 21 and 28 of the Specific Relief Act, that extends to seek in execution and particularly in a suit for specific performance based on non-possessionary agreement once decreed besides the same is a discretionary relief unless a sale deed is executed, question of seeking possession does not arise thereby in seeking for execution of a sale deed pursuant to the decree even prayer for possession can be asked in the execution proceedings though not asked in the suit, for not a bar apart from any amendment can be made at any stage of the proceedings from the wording of that

section. Thereby that decision is also no way helpful in favour of the revision petitioner/Decree Holder herein.

4. Having regard to the above, the revision petition is disposed of making it clear that so long as the plaintiff/D.Hr. is declared as a owner, the right to seek for transfer even pursuant to the earlier relief of mandatory injunction, not executed within three years, is not be all and end all for regarding execution to seek even so long as he is a owner and having title over it. As such there is no bar under Order II Rule 2 of Code of Civil Procedure, prima facie pursuant to the principle laid down in **Babulal** supra also for maintaining a separate suit for seeking transfer. Needless to say it is only to decide on own merits. There is no order as to costs. Pending miscellaneous petitions, if any, in this revision, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 11.08.2016

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[\[1\]](#) 2000(6) SCC 259

[\[2\]](#) 1982(1)SCC 525