



WP No. 103071 of 2017

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 18TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE S.R. KRISHNA KUMAR

WRIT PETITION NO. 103071/2017 (GM-CPC)

R

BETWEEN:

1. SIKANDAR MOHAMMAD ALI DALAL,

2. MOHAMMAD UMMAR MOHAMMAD ALI DALAL,

- PETITIONERS

(BY SRI. A P HEGDE JANMANE AND
SRI. VIJAY MALALI, ADVOCATES)

AND:

1. BABU HANUMANTH MINDOLKAR
DECEASED BY HIS LRS.
 - 1(A) SMT.SHARADA,

 - 1(B) SRI HANUMANT S/O BABU MINDOLKAR,

 - 1(C) SRI NAMDEV S/O BABU MINDOLKAR,

 - 1(D) SRI SHIVAJI S/O BABU MINDOLKAR,

CHANDRASHEKAR
LAXMAN
KATTIMANI


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CHANDRASHEKAR
LAXMAN KATTIMANI
Location: High Court of
Karnataka, Dharwad
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1(E) SRI NAGRAJ S/O BABU MINDOLKAR,

1(F) SMT.VASANTI W/O NARAYAN GODIMANI,

1(G) SMT.ANNAPURNA,

1(H) SMT.RENUKA HANUMANT GOUDA,

- RESPONDENTS

(BY SRI. R.V. ITAGI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED ON I.A.NO.12 DATED:01.12.2016 BY CIVIL JUDGE HALIYAL IN EX.PET.NO.18/2012 PRODUCED AT ANNEXURE-'G', ISSUE DIRECTION TO CIVIL JUDGE HALIYAL TO ISSUE POSSESSION WARRANT IN EX.PET.NO.18/2012 FORTHWITH & ETC..

THIS PETITION COMING ON FOR PRELIMINARY HEARING- B GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:



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ORDER

This writ petition is directed against the impugned order passed on I.A. No. 12 dated 01.12.2016 in E.P. No. 18/2012 on the file of the Civil Judge, Haliyal whereby the said application filed by the respondent-judgment debtor under Order 21 Rule 29 CPC seeking stay of further proceedings in the execution petition till disposal of O.S. No. 22/2016 pending on the file of the Sr. Civil Judge, Yalapur sitting at Haliyal, was allowed by the executing Court.

2. The brief facts giving rise to the present writ petition are as follows:

The petitioners herein instituted a suit in O.S. No. 3/1971 against the respondent herein for possession, mesne profits and other reliefs before the Civil Judge, karwar. The said suit was subsequently transferred to the Court of Civil Judge, Haliyal (trial Court) and re-numbered as O.S. No. 79/2003. By judgment and decree dated 07.09.2006, the trial Court decreed the suit in favour of the petitioners against the respondents, thereby directing the respondents to hand over possession of



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the suit 'A' schedule property to the petitioners within a period of three months and granted mesne profits in their favour.

Aggrieved by the said judgment and decree passed by the trial Court, the respondent herein preferred an appeal in R.A. No. 8/2006 on the file of the Civil Judge, Yallapur. The said appeal was allowed by the first appellate Court vide judgment and decree dated 13.12.2007, as a result of which the suit filed by the petitioners came to be dismissed.

Aggrieved by the judgment and decree passed by the first appellate Court in R.A. No. 8/2006, the petitioners herein preferred an appeal in R.S.A. No. 520/2008 before this Court. By judgment and decree dated 15.07.2011, this Court allowed the appeal preferred by the petitioners and restored the judgment and decree of the trial Court, thereby directing the respondent to hand over possession of the suit schedule property in favour of the petitioners.

Aggrieved by the judgment and decree passed in R.S.A. No. 520/2008 dated 15.07.2011, the respondent herein preferred SLP No. 28413/2012 before the Apex Court. By order dated 05.10.2012, the Apex Court dismissed the Special Leave Petition preferred by the respondent, consequent upon which



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the judgment and decree passed by the trial Court and confirmed by this Court in R.S.A. No. 52S/2008 became conclusive and binding upon the respondent, who became liable to quit, deliver and hand over the possession of the suit schedule property in favour of the petitioners.

Subsequently, the petitioners instituted execution proceedings in E.P. No. 18/2012 before the trial Court (executing Court) to enforce the aforesaid judgment and decree passed in their favour against the respondent. In the said execution proceedings, the respondent/ judgment debtor filed an application under Section 47 CPC seeking dismissal of the execution petition. The said application was allowed by the executing Court, aggrieved by which the petitioner approached this Court in W.P. No. 81052/2013 which was allowed vide order dated 17.07.2014 and set aside the order passed by the executing Court. Aggrieved by the same, the respondent/ judgment debtor preferred SLP No. 28181/2014 before the Apex Court which also came to be rejected vide order dated 03.11.2014 thereby confirming the dismissal of the application filed by the respondent.



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Subsequent to rejection of the aforesaid SLP No. 29181/2014 by the Apex Court, the respondent/judgment debtor filed the suit in O.S. No. 22/2016 on the file of the Civil Judge, Yallapur sitting at Haliyal for declaration that the aforesaid judgment and decree passed in favour of the petitioners was a nullity and for other reliefs. In this context, it is relevant to note that the petitioner No.1 executed a registered gift deed dated 03.07.2014 in favour of the petitioner No.2 and consequently both of them are continuing the instant execution proceedings.

3. During the pendency of the aforesaid execution proceedings, the respondent-judgment debtor filed I.A. No. 12 dated 21.03.2016 under Order 21 Rule 29 CPC seeking stay of further proceedings in the execution proceedings pending before the executing Court, i.e., Civil Judge, Haliyal, till disposal of the suit in O.S. No. 22/2016 pending before the Sr. Civil Judge, Yallapur sitting at Haliyal. The said application having been opposed by the petitioners, the trial Court proceeded to pass impugned order allowing I.A.No. 12 thereby staying further proceedings in the execution petition till disposal of O.S. No. 22/2016. Aggrieved by the impugned order passed by the



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trial Court, the petitioner is before this Court by way of the present writ petition.

4. A perusal of the impugned order passed by the trial Court will indicate that the trial Court has come to the conclusion that since the aforesaid suit in O.S. No. 22/2016 filed by the respondent/ judgment debtor against the petitioners herein was pending adjudication, it was necessary to stay further proceedings in the execution petition pending disposal of the said suit. In this context, it is significant to note that Order 21 Rule 29 CPC reads as under:

"29. Stay of execution pending suit between decree-holder and judgment-debtor – Where a suit is pending in any Court against the holder of a decree of such Court (or of a decree which is being executed by such Court), on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided."

5. A plain reading of the said provision will clearly indicate that in order to enable the executing Court to stay execution proceedings pending a suit between a decreeholder and the judgment debtor, it is essential that both the execution proceedings and the suit are pending before the very same



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Court and not before two different Courts. In other words, if the execution proceedings are pending in one Court and the suit between the decreeholder and judgment debtor is pending before another Court, which is not of co-ordinate jurisdiction, the provisions contained in Order 21 Rule 29 CPC would not be applicable and the same cannot be invoked for the purpose of seeking stay of the execution proceedings.

6. In the case of **M.K. Chintamani Vs. M.K. Jayadeva reported in (1991) 3 KLJ 42** this Court held as under:

1. *This Civil Revision Petition is preferred against the order dated 19.6.1987 passed by the XIX Additional Small Causes Judge, Court of Small Causes, Bangalore City, rejecting I.A.No. III filed by the petitioner under Order 21 Rule 29 read with Section 151 C.P.C. to stay further proceedings in Execution No. 2146 of 1986 pending decision in O.S.No. 2251 of 1987 on the file of the City Civil Court, Bangalore.*
2. *The Execution Court has rejected the application on the ground that the Order 21 Rule 29 of the C.P.C. is not attracted; that as far as Section 151 of the C.P.C. is concerned, it has not stated anything though it has referred to the contention of the petitioner raised under Section 151 C.P.C.*
3. *Sri Rama Rao, learned Counsel appearing for the petitioner has putforth two contentions; 1) That the provisions of Order 21 Rule 29 of the C.P.C. are attracted as the requirements of those provisions are satisfied, that in the event it is held that the provisions of Order 21 Rule 29 of the C.P.C. are not attracted in the facts and circumstances of the case, it is just and appropriate to exercise the inherent power under Section 151 C.P.C.*



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4. Expanding the first contention, it is contended that the Court which passed an order of eviction in H.R.C.No. 2462 of 1984 against the petitioner and the second respondent, is none other than Civil Court and the Court in which the suit is filed, is also a Civil Court and the Court in which the execution is filed by the first respondent for execution of the order of eviction passed in H.R.C.No. 2462 of 1984, is also a Civil Court, therefore, the execution case and the suit are pending in the same Court i.e., Civil Court, hence Order 21 Rule 29 of the C.P. Code are attracted. Learned Counsel also placed reliance on the Decisions of this Court in *M.M. MATHEW v. PRAFULCHAND AMRITLAL AND ANR.*, and *SIDDAPPA v. ASST. COMMISSIONER, SHIMOGA AND ANR.*, 1981 (2) KLJ 201

5. It is not possible to accept the contention. The scope and effect of Order 21 Rule 29 of the C.P. Code as amended by the *Central Act 104/1976*, has been considered by this Court in *P.B. SHANTHAPPA v. MEHBOOBI*, . On taking into consideration the conflicting Decisions of various High Courts on the interpretation of the provisions contained in Order 21 Rule 29 C.P. Code before the enactment of *Central Act 104/1976* and in the light of the Decision of the Supreme Court in *SHAUKAT HUSSAIN @ ALI AKRAM AND ORS. v. SMT BHUNESHWARI DEVI*, the C.P.C. (Amendment) Act 104 of 1976 effected amendment to the provisions contained in Order 21 Rule 29 of the C.P. Code. This Court taking into consideration all these aspects in *P.B. Shantappa's* case has held thus:

"5. The provision under the Civil Procedure Code which empowers the Court to stay the execution proceedings is contained in Rule 29 of Order 21 which reads thus:

Stay of execution pending suit between decree holder and Judgment debtor.

Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court on the part of the person against whom the decree was passed, the Court may,



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on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Provided that if the decree is one for payment of money the Court shall if it grants stay without requiring security, record its reasons for so doing."

The underlined words and the proviso have been inserted by C.P.C. (Amendment) Act 104/1976.

6. The learned Civil Judge after referring to a Decision of the Supreme Court in [Shaukat Hussain @ Ali Akram and others v. Smt. Bhuneswari Devi \(Dead by L.Rs. and others\)](#) has held that the aforesaid Decisions does not govern Rule 29 of Order 21 of the C.P.C. as it stands after the C.P.C. (Amendment) Act 104/1976. The Supreme Court in the aforesaid Decision has held thus:

"For the applicability of Order 21 Rule 29 there should be two simultaneous proceedings in one Court viz 1) a proceeding in a execution of the decree of that Court started at the instance of the decree-holder against the Judgment debtor and 2) a suit at the instance of the same Judgment debtor against the holder of the decree of that Court."

7. It is not possible to agree with the learned Civil Judge that the amendment effected by C.P.C. (Amendment) Act 104/1976 has taken away the Rule 29 of Order 21 C.P.C, out of the purview of the aforesaid Decision. In fact Rule 29 Order 21 has been amended by the C.P.C. (Amendment) Act 104/1976 only to give effect to and bring it within the ambit of the aforesaid Decision of the Supreme Court. The words 'such Court' used in Rule 29 of Order 21 indicate that the Court which has passed the decree the execution of which is sought in that Court and the Court in which the suit is pending must be the same. Prior to the amendment, there was a conflict of Decisions on the question as to whether the Court to which a decree is transferred for execution can act under Rule 29 of Order 21 C.P.C. One view was that a Court to which the decree of any Court was transferred could act under Rule 29 of Order 21 of the C.P. Code. Another view was that the transferee Court



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had no power to act under Rule 29 or Order 21 of the C.P. Code. in order to put an end to this controversy, the Law Commission in its 27th Report recommended for amendment of Rule 29 of Order 21 of the C.P. Code. In its 54th Report, the Law Commission further proposed for insertion of a Proviso. In the light of both these Reports, Rule 29 of Order 21 of the C.P. Code came to be amended by C.P.C. (Amendment) Act, 104/1976 by inserting the underlined words and adding the Proviso as pointed out earlier. That being so, the learned Civil Judge is not correct in holding that he has jurisdiction to stay the proceedings in execution pending before another Court.

8. Therefore, in order to attract the provisions contained in Order 21 Rule 29 of C.P.C., it is necessary that the decree must have been passed by the same Court in which the execution is pending and the suit filed subsequent to the decree must also be pending in the same Court between the same parties. The expression "same Court" used in the Rule takes into its fold the Principal Court and the Additional Court such as the Court of Principal Munsiff and the Court of Additional Munsiff, the Court of Principal Civil Judge or Court of Additional District Judge and the Court of Additional District Judge, because in such case, the Court will be the same but there will be more than one Presiding Officers. However, the expression "such Court" does not cover a case in which the proceedings are pending in two different Courts, such as Munsiff Court and Civil Judge Court or District Court or any other Courts.

9. In the instant case, the order of eviction is passed by the Court of Small Causes Judge and the execution is also pending before that Court. Even taking into consideration of the fact that the order passed under the Karnataka Rent Control Act has to be executed and is executable by a Civil Court, even then the requirements of Order 21 Rule 29, is not satisfied because the suit is pending before the City Civil Court which cannot be equated to the Court of Small Causes or a Civil Judge Court which is empowered to exercise the powers of a Small Cause Court. Therefore, requirement of Order 21 Rule 29 of C.P.C. is



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not satisfied. Hence the Court below is correct in holding that the provisions of Order 21 Rule 29 of C.P.C. are not attracted. In the Decisions and 1981(2) KLJ 201 this question did not come up for consideration. Therefore, those two Decisions do not have any bearing on the question raised in this case. Hence they are of no assistance to the petitioner. Accordingly, the first contention is rejected.

10. Now the question for consideration is whether in a case like this inherent powers should be exercised. The petitioner and the respondent No. 2 who are the wife and husband respectively have suffered an order of eviction in HRC No. 2462 of 1984 as joint tenants of the schedule premises. That order of eviction has been confirmed by this Court in C.R.P.No. 1714 of 1986 decided on 15-1-1987. Therefore, it is not open to the petitioner and the second respondent to contend that they are not bound by the order of eviction. Consequently the executing Court cannot also Refuse to execute the order of eviction and cannot stay the execution proceeding pending decision by the Civil Court in the suit tiled by the petitioner. The inherent powers cannot be exercised if it results in defeating the decree or order of eviction or results in violation of the specific provisions of the Act. The fact that the petitioner is the sister of the 1st respondent does not absolve her from the order of eviction suffered by her. The fact that a suit for partition is filed, cannot also be made aground to exercise inherent power to defeat the order of eviction confirmed by this Court. Therefore, in the facts and circumstances of the case, there is no scope for exercising the inherent power in the instant case. Hence the contention is rejected.

For the reasons stated above, the Civil Revision Petition is dismissed.

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7. As is clear from the aforesaid judgment of this Court, in order to attract and invoke Order 21 Rule 29 r/w Sec. 151 CPC to seek stay of further proceedings in execution proceedings, it



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is absolutely essential that the decree must have been passed by the same Court in which the execution case is pending and the suit filed subsequent to the decree must also be pending in the same Court between the parties. It is also held that the expression "such Court" does not cover a case in which proceedings are pending in two different Courts, such as Court of Civil Judge or District Court or any other Courts.

8. In the instant case, it is an undisputed fact that execution proceedings are pending before the Civil Judge, Haliyal whereas the suit filed by the respondent-judgment debtor in O.S. No. 22/2016 is pending on the file of the Sr. Civil Judge, Haliyal sitting at Yallapur, which are two completely different Courts and not the same Court for the purpose of Order 21 Rule 29 CPC.

9. A perusal of the impugned order will indicate that despite referring to the said judgment, the executing Court has completely misdirected itself in not applying the principles laid down in the said judgment and this has resulted in erroneous conclusion.



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10. Under the circumstances, I am of the considered opinion that the finding recorded by the executing Court in E.P. No. 18/2012 that the execution proceedings need to be stayed till disposal of O.S. No. 22/2016 pending before a different Court, i.e., Sr. Civil Judge, Yallapur sitting at Haliyal, deserves to be set aside.

11. A perusal of the aforesaid judgment in **Chintamani** supra, will also indicate that this Court has also adverted to Sec. 151 CPC in order to hold that inherent power of the Courts to stay proceedings in one more case cannot be exercised to defeat a decree or eviction order in violation of the Act. Under these circumstances also, Sec. 151 CPC is also not available to the respondent-judgment debtor to seek stay of further proceedings in E.P. No. 18/2012 pending disposal of O.S. No. 22/2016.

12. A similar view has been expressed by the Bombay High Court in the case of **Kum. Aniketh Anant Lale & Ors. Vs. Shri Prakash Balu Lale & Ors. (W.P. No. 9418/2017)** wherein it is held as under:

"15. In this case, there is no dispute as regards basic facts. The decree in RCS No. 319 of 2000 has declared the sale deed in favour of



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Anant Lale, the predecessor-in-title of the petitioners as null and void and has further directed, Anant Lale to restore the possession of the suit property to the decree-holders. This decree has attained finality upto the level of the Hon'ble Supreme Court in the year 2008 itself. There is also no dispute that Mr. Anant Lale during the period between 2008 and his demise in the year 2015 was very much a party to the execution proceedings in the Court of Civil Judge, Junior Division. During this period of 7 years, Anant Lale neither instituted any suit to question decree in RCS No. 319 of 2000 nor did he take out any other application to delay or resist execution of the decree in RCS No. 319 of 2000. Possibly, Anant Lale was satisfied taking benefit of the Law's proverbial delays in execution of decrees for restoration of possession. After the demise of Anant Lale in the year 2015 his legal representatives i.e. the petitioners herein were brought on record since, they were also bound by the decree in RCS No. 319 of 2000.

16. It is only in the year 2016 that the petitioners, instituted RCS No. 229 of 2016 in the Court of Civil Judge, Senior Division, Jaysingpur seeking for relief of injunction simplicitor to restrain the 6 of 17 skc 926-WP-9418-17 decree-holders in RCS No. 319 of 2000 from taking forcible possession of the suit property otherwise than by the due process of law.

17. After the institution of this suit, the petitioners, took out the application at Exhibit 65 in the executing court i.e. the Civil Judge, Junior Division seeking a stay on execution proceedings by invoking provisions of Order XXI Rule 29 of the CPC. By the impugned order, it is this application at Exhibit 65 which has been dismissed by the executing court.

18. Order XXI Rule 29 of the CPC provides that where a suit is pending in any court against the holder of a decree of such court or of a decree which is being executed by such court, on the part of the person against whom the decree was passed the court may, on such terms as to security or otherwise, as it thinks fit, stay the execution of the decree



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until the pending suit has been decided. The proviso, with which we are not concerned in this case deals with stay of a decree for payment of money.

19. The petitioners' application at Exhibit 65 invoking the provisions of Order XXI Rule 29 of the CPC was entirely misconceived and therefore was rightly dismissed by the executing court by the impugned order. In the first place, the suit instituted by the petitioners i.e. RCS No. 229 of 2016 was not instituted in the Court of Civil Judge, Junior Division at Jaysingpur where the execution petition was pending. Secondly and in any case, it is apparent that the RCS No. 229 of 2016 was entirely misconceived 7 of 17 skc 926-WP-9418-17 since, the decree-holders in the present case, were only executing the decree in RCS No. 319 of 2000 and therefore, there was no question of they seeking restoration of possession of the suit property, otherwise than by due process of law. In such circumstances, the executing court, has quite correctly exercised the discretion which was undoubtedly vested in it in terms of Order XXI Rule 29 of the CPC and declined to stay the execution proceedings which are pending since the year 2008 for no fault of the decree-holders.

20. From the plain reading of the provisions of Order XXI Rule 29 of the CPC it is quite clear that a judgment debtor may invoke the provisions of Order XXI Rule 29 of the CPC only when the suit is pending in any court against the decree-holder of such court or of a decree which is being executed by such court. This means that the suit and the execution proceedings must be pending in one and the same court in order to invoke the provisions of Order XXI Rule 29 of the CPC.

21. The expression 'such court' as it appears in Order XXI Rule 29 of the CPC has been interpreted by the Hon'ble Supreme Court in the case of [Shaukat Hussain @ Ali Akram & Ors. vs. Bhuneshwari Devi \(dead\) by L.Rs. & Ors.](#)¹ to mean the Court in which the suit is pending. At paragraph 6, the Hon'ble Supreme Court, after analyzing the provisions of Order XXI Rule 29 of the CPC has held that it is obvious from a mere



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perusal of the rule that there should be simultaneously two proceedings in one court. One is the proceedings in execution at the instance of the decree-holder against the 1 AIR 1973 SC 528 & of 17 skc 926-WP-9418-17 judgment debtor and the other, a suit, at the instance of the judgment debtor against the decree-holder. That is the condition under which the court in which the suit is pending may stay the execution before it. Besides, it is not enough there is a suit pending filed by the judgment debtor. It is further necessary that the suit must be against the holder of a decree of such court. The words 'such court' are important. 'Such court', means in the context of that rule the court in which the suit is pending. In other words, the suit must be one not only pending in that court but also one against the holder of a decree of that court. That appears to be the plain meaning of the rule.

22. In Shaukat Hussain (supra), the Hon'ble Supreme Court has also explained the purpose for enactment of Order XXI Rule 29 of the CPC. At paragraph 7, the Hon'ble Supreme Court has observed that it is true that in appropriate cases a Court may grant an injunction against a party not to prosecute a proceeding in some other Court. But ordinarily Courts, unless they exercise appellate or revisional jurisdiction, do not have the power to stop proceedings in other Courts by an order directed to such Courts. For this specific provisions of law are necessary. Rule 29 clearly shows that the power of the Court to stay execution before it flows directly from the fact that the execution is at the instance of the decree-holder whose decree had been passed by that Court only. If the decree in execution was not passed by it, it had no jurisdiction to stay the execution. In fact this is emphasized by Rule 26 already referred to. In the case before the Supreme Court the decree sought to be executed was 9 of 17 skc 926-WP-9418-17 not the decree of Munsif 1 st Court Gaya but the decree of the Subordinate Judge, Gaya passed by him in exercise of his Small Cause Court jurisdiction. In these circumstances, the Hon'ble Supreme Court held that the order staying execution passed by the Munsif, Gaya would be incompetent and without jurisdiction.



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23. The principle in *Shaukat Hussain (supra)* was reiterated in *Krishna Singh vs. Mathura Ahir & Ors.*² In the said case, a suit for recovery of possession of property belonging to a Math was decreed by Munsif and said decree was finally affirmed by the Supreme Court holding that the plaintiff was in de facto management of the property though his title as Mahant was left open. The decree also held that the defendant in the suit was a trespasser. The defendant not satisfied with the decree which attained finality upto the level of the Supreme Court and in order to nullify the decree which had already attained finality filed a civil suit in which he raised almost the same pleas which he had taken in defence of the previous suit. This suit was encouraged by the observation made by the Hon'ble Supreme Court itself that the title of the plaintiff as Mahant was left open. Such suit was filed before the Civil Judge at Varanasi. Thereafter, the defendant, filed application under Order XXI Rule 29 of the CPC seeking for a stay to the execution of the decree which had already attained finality upto the level of the Supreme Court. The stay as sought for was granted in purported exercise of power under Order XXI Rule 29 of the CPC.

24. The Hon'ble Supreme Court, in the aforesaid facts and 2 AIR 1982 SC 686 10 of 17 scs 926-WP-9418-17 circumstances, not only set aside the stay order but also directed the judicial officer to explain as to why, despite clear orders, of the Hon'ble Supreme Court, the execution was halted by an extra ordinary and palpably wrong order under Order XXI Rule 29 of CPC. The Court observed that the defendant seems to have adopted a subterfuge in order to nullify the execution of the decree. The Court held that there was very formidable defect in the order passed under Order XXI Rule 29 of the CPC because jurisdiction is vested only in the court which had passed the decree to stay its execution. The Court relied upon its earlier ruling in *Shaukat Hussain (supra)* and explained that the additional words 'or of a decree which is being executed by such Court' introduced by [section 72](#) of the Amendment Act



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104 of 1976 in order XXI Rule 29 of the CPC, did not make any difference to the legal position explained in *Shaukat Hussain (supra)*.

25. In *Balasaheb s/o. Gulabrao Salunke vs. Anil s/o. Raosaheb Deshmukh & Ors.*³, the learned Single Judge of this Court, following *Shaukat Hussain (supra)* has held that there should be simultaneously two proceedings in the same court, i.e. execution proceedings must be at the instance of the decree-holder against the judgment debtor and the other suit at the instance of the judgment debtor against the decree-holder for invocation of the provisions of Order XXI Rule 29 of the CPC.

26. In the present case, the execution proceedings are pending before the Civil Judge, Junior Division at Jaysingpur and the RCS No. 229 of 2016, on the basis of which the provisions of Order XXI Rule 3 2017 (4) *Mh.L.J. 399 11 of 17 skc 926-WP-9418-17 29 of the CPC* were sought to be invoked, is pending in the Court of Civil Judge, Senior Division at Jaysingpur. In such circumstances, the petitioners attempt to invoke the provisions of Order XXI Rule 29 of the CPC was entirely misconceived.

27. That apart, the learned executing court has referred to the number of rulings in the impugned order which explain that the provisions of Order XXI Rule 29 of the CPC only confer a discretion upon the executing court to stay the execution proceedings. This is on the basis that the provision employs the expression 'may' and not 'shall'. This means that even if the predicates of Order XXI Rule 29 of the CPC stand complied with, it is not obligatory upon the executing court to stay the execution proceedings. The power of the executing court is discretionary and the executing court is duty bound to exercise such discretion in a judicious manner.

28. In the present case, the decree-holders seek to recover possession from the petitioners - judgment debtors by instituting execution proceedings to execute the decree in RCS No. 319 of 2000 which has attained finality upto the level of the Hon'ble Supreme Court. This is certainly not a case where the decree-holders seek to recover possession of the suit property from the judgment debtors either forcibly



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or otherwise than by due process of law. The decree itself has attained finality in the year 2008 itself. The suit on basis of which the provisions of Order XXI Rule 29 of the CPC were sought to be invoked was instituted in the year 2016. The suit was instituted not by the original judgment debtor who succeeded in delaying the execution proceedings from 2008 to 2015, but, by the legal 12 of 17 skc 926-WP-9418-17 representatives of the deceased judgment debtor, after they were brought on record in the year 2015.

29. Taking into consideration all these factors, it cannot be said that the executing court in declining stay, has exercised the discretion, which was undoubtedly vested in it, either unreasonably or arbitrarily. In fact, this is a case where discretion has been exercised in a judicious manner, taking into consideration the fact that the decree which has attained finality in the year 2008 right upto the level of the Hon'ble Supreme Court, is yet pending in execution.

30. In [Shreenath & Anr. vs. Rajesh & Ors.](#)⁴, the Hon'ble Supreme Court was constrained to observe that the seeker of justice, many a times, has to take long circuitous routes, both on account of hierarchy of Courts and the procedural law. Such persons are and can be dragged till the last ladder of the said hierarchy for receiving justice but even here he only breaths fear of receiving the fruits of that justice for which he has been aspiring to receive. To reach this stage is in itself an achievement and satisfaction as he, by then has passed through a long arduous journey of the procedural law with may hurdles replica of mountain terrain with ridges and furrows. When he is ready to take the bite of that fruit, he has to pass through the same terrain of the procedural law in the execution proceedings the morose is writ large on his face. What looked inevitable to him to receive it at his hands distance is deluded back into the horizon. The creation of the hierarchy of Courts was for a reasonable objective for 4 (1998) 4 SCC 543 13 of 17 skc 926-WP-9418-17 conferring greater satisfaction to the parties that errors, if any, by any of the lower Courts under the scrutiny of a higher Court be



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rectified and long procedural laws also with good intention to exclude and filter out all unwanted who may be the cause of obstruction to such seekers in his journey to justice. But this obviously is one of the causes of delay in justice. Of course, under this pattern the party wrongfully gaining within permissible limits also stretches the litigation as much as possible. Thus, this has been the cause of anxiety and concern of various authorities, Legislators and Courts. How to eliminate such a long consuming justice? We must confess that we have still to go long way before true satisfaction in this regard is received. Even after one reaches the stage of final decree, he has to undergo a long distance by passing through the ordained procedure in the execution proceedings before he receives the bowl of justice.

31. The Hon'ble Supreme Court after this preface has finally held that in interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding justice is to be adopted. The procedural law is always subservient to and is in aid of justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

32. In [Satyawati vs. Rajinder Singh & Anr.](#)⁵, the Hon'ble Supreme Court recalled the observations of the Privy Council in [General Manager of the Raj Durbhunga vs. Coomar Ramaput](#) 5 (2013) 9 SCC 491 14 of 17 skc 926-WP-3418-17 Sing6 that '.....the difficulties of a litigant in India begin when he has obtained a decree'. In this case, the Hon'ble Supreme Court deprecated the delay in execution of a decree made in the year 1996 and went on to refer to the judgment of the Privy Council in [Kuer Jang Bahadur vs. Bank of Upper India Ltd.](#)⁷ that Courts in India have to be careful to see that the process of the Court and the law of procedure are not abused by judgment -debtors in such a way as to make courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights. The Supreme court noted that inspite of such observations in 1925, the Supreme Court, in [Babu Lal vs. Hazari Lal Kishori Lal](#) 8 was constrained to observe that



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procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree-holder starts in getting possession in thwart the execution by all possible objections.

33. In Satyawati (supra), the Hon'ble Supreme Court made reference to [Marshall Sons & Co. \(I\) Ltd. vs. Sahi Oretrans \(P\) Ltd.](#)⁹, in which the Hon'ble Supreme Court had noted that execution proceedings are dragged for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact 6 (1871-72) 14 MIA 605: 20 ER 912 7 AIR 1925 Oudh 448 (PC) 8 (1982) 1 SCC 525 9 (1999) 2 SCC 325 15 of 17 skc 926-WP-9413-17 that after obtaining a decree for possession of immovable property, its execution takes a long time.

34. The Hon'ble Supreme Court also made reference to its decision in [Shub Karan Bubna vs. Sita Saran Bubna](#)¹⁰, again recalling proverbial observation by the Privy Council that the difficulties of a litigant begin when he obtains a decree and therefore it is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant. The Hon'ble Supreme Court concluded by stating that it strongly feels that there should be no unreasonable delay in execution of a decree because if the decree-holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

35. Applying such principles to the facts and circumstances of the present case it is necessary to observe that there was nothing bona fide



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either, in the application at Exhibit 65 or at least prima facie, in the institution of RCS No. 229 of 2016. As noted earlier, the decree- holders seek to recover possession of the suit property on the basis of decree in RCS No. 319 of 2000 which has attained finality in the year 2008 upto the level of the Hon'ble Supreme Court. In such circumstances, to allege that there is any apprehension that the 10 (2009) 9 SCC 689 16 of 17 skc 926-WP-9418-17 decree-holders seek to recover possession of the suit property forcibly or otherwise than by due process of law, at least prima facie, is quite misconceived. In the facts and circumstances of the present case, a reasonable inference can be drawn that the very institution of RCS No. 229 of 2016 is to prolong or delay the execution proceedings in respect of decree in RCS No. 319 of 2000, which as noted earlier, has attained finality right upto the level of the Hon'ble Supreme Court, way back in the year 2008 itself.

36. Accordingly, there is no merit in this petition, which is hereby dismissed. There shall however be no order as to costs. The interim order, if any, is hereby vacated. The executing court is directed to proceed with the execution expeditiously”.

13. The issue regarding applicability of Order 21 Rule 29 CPC can be examined from yet another angle. It is an undisputed fact that the instant execution proceedings were instituted by the petitioners/ decreeholders against the respondent/ judgment debtor in the year 2012 while the suit in O.S. No. 22/2016 was instituted by the respondent/ judgment debtor subsequently , i.e., in the year 2016. It is relevant to state that Order 21 Rule 29 CPC to be applicable, it is also essential that the suit ought to be pending as on the date of institution of



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the execution proceedings and Order 21 Rule 29 CPC will not apply to suits which are instituted subsequent to institution of the execution proceedings. To put it differently, the power of the executing Court to stay its own proceedings can be invoked only in cases where a suit has already been instituted by the judgment debtor prior to institution of the execution proceedings and the same will not apply to suits which are instituted subsequent to institution of the execution proceedings. Any another interpretation or construction placed on Order 21 Rule 29 CPC will lead to disastrous consequence since every judgment debtor would be in a position to scuttle, stall and obstruct the execution proceedings by filing a suit after institution of the execution proceedings seeking to enforce the decrees which have attained finality and become conclusive and binding upon judgment debtor. Viewed from this angle also, in the undisputed facts of the instant case which disclose that the execution proceedings were instituted prior to institution of the suit in O.S. No. 22/2016 filed by the respondent/ judgment debtor, Order 21 Rule 29 CPC would be inapplicable to the facts of the instant case and on this score also, the application I.A. No. 12 was liable to be dismissed.



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14. It is well settled that invoking the provision contained in Order 21 Rule 29 CPC is discretionary and should be exercised judiciously and not mechanically as a matter of course. It is equally well settled that mere satisfaction of the pre-conditions stipulated in Order 21 Rule 29 CPC is not sufficient for execution proceedings to be stayed and the power under this Rule has to be exercised only in exceptional cases where the interest of justice requires it and the fundamental consideration should be that the decreeholder should not be deprived of the fruits of the decree, except for compelling reasons and unless an extraordinary case is made out, no stay should be granted and the decree should be allowed to be continued.

15. In the case of ***Sundara Bai and Ors. Vs. Sonubai (ILR 2004 KAR 1558)*** this Court has held as under:

1. This Writ Petition by the judgment debtors is directed against the order dated 19.1.2004 passed by the Executing Court rejecting IA-I filed by them under Order 21 Rule 29 of CPC for stay of further proceedings in Ex. Case No. 62/2003 on the ground of pendency of a suit in O.S. No. 314/2003 in the very same Court.

The aforesaid execution case was filed to execute the decree passed in O.S. No. 780 of 1990.

2. I have heard Mr. Ram Bhat, learned Senior Counsel for the petitioners and perused the impugned order. Mr. Ram Bhat, in support of his submission that the impugned order is erroneous has relied on a



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judgment of the Supreme Court in [SHAUKAT HUSSAIN v. BHUNESHWARI DEVI](#) and also a judgment of this Court in [PUJARI SUBBAIAH v. LAKKAPPANAVARA](#).

3. To examine the correctness of the impugned order, it is relevant to notice the scope and ambit of Order 21 Rule 29 of CPC which reads as follows:

"Stay of execution pending suit between decree holder and judgment debtor, Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, instituted by the person against whom the said decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided;

Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing."

The power to stay execution of the decree under Order 21 Rule 29 of CPC is discretionary. The discretion should be exercised judicially and not mechanically as a matter of course. On mere satisfaction of the pre-condition stipulated in Order 21 Rule 29 of CPC, the execution proceeding is not to be stayed. The power under this rule has to be exercised only in exceptional cases where the interest of justice requires it. The fundamental consideration should be that the decree holder is not to be deprived of the fruits of the decree except for good reasons. The decree must be allowed to be executed and unless an extraordinary case is made out, no stay should be granted. As held by the Supreme Court in [KRISHNA SINGH v. MATHURA AHIR](#), the jurisdiction to stay execution of the decree under Order 21 Rule 29 of CPC has to be exercised with very great care and only in special cases.

4. A perusal of the impugned order would show that the Executing Court on a consideration of all the relevant aspects has declined to stay further proceedings in the Execution case. On the facts of the case, I am



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satisfied that the executing Court has exercised its discretion judicially and the discretion exercised cannot be said to be arbitrary or capricious to call for interference under [Article 226](#) and [227](#) of the Constitution of India.

5. At this stage, Mr. Rambhat, learned Senior Counsel submits the certain observations made by the Trial Court in the course of the impugned order would prejudice the suit in O.S. No. 314/2003. Without going into the correctness of the said submission. I direct the Trial Court to dispose of O.S. No. 314/2003 without being influenced by the observations made in the course of the impugned order.

6. In the result, the petition fails and is hereby dismissed. No costs.

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16. It has been repeatedly noticed by the Apex Court, this Court and all other High Courts that the difficulties of a decreeholder commence after obtaining a decree. In a recent judgment in the case of **Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors. (Civil Appeal Nos. 1659-1660/2021)** the Apex Court has held as under:

"23. This court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Counsel in The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing 14 which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in Shub Karan Bubna @ Shub Karan Prasad Bubna v Sita Saran Bubna¹⁵, wherein it recommended that the Law Commission and the Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law



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Commission or the Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to (1871-72) 14 Moore's I.A. 605 (2009) 9 SCC 689 the stage of securing relief after execution proceedings. The execution proceedings which are supposed to be handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice."

Coming back to the facts of the instant case, indisputably, the petitioners commenced the litigation in 1971 and have not been able to realize the fruits of the decree passed in their favour despite more than 50 years and the respondent/ judgment debtor has been successfully thwarting, scuttling and obstructing the petitioner from realizing the fruits of the decree on one pretext or the other and by filing repeated applications and has even gone to the extent of filing a separate suit in the year 2016.

17. As can be seen from the aforesaid judgments, the principles underlying Order 21 Rule 29 CPC can be summarized as under:



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a) That, Order 21 Rule 29 CPC is applicable only if the suit and the execution proceedings referred to in the said provisions are pending before the very same Court and not before two different courts which are not of co-ordinate jurisdiction;

b) That the said provisions will not apply if the suit is instituted subsequent to institution of the execution proceedings: In other words, the said provision would apply only if the suit is instituted prior to institution of the execution proceedings and in the event the execution proceedings have already been instituted, mere institution of suit subsequently and its pendency cannot be made the basis to invoke Order 21 Rule 29 CPC;

c) The power and jurisdiction to stay its own proceeding pending before itself by the executing Court has to be exercised only under extraordinary and exceptional circumstances and not as a matter of course and care/ caution has to be taken by the executing Court to find out if staying its own proceedings would result in abuse of process of law and in that event, the executing Court would not stay further proceedings under these provisions.



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18. Under these circumstances, having regard to the facts of the case on hand, I am of the considered opinion that this is not a fit case which would enable the executing Court to exercise its discretion to stay execution proceedings and on this ground also, the impugned order passed by the executing Court deserves to be set aside.

19. Insofar as the reliance placed by the executing Court on the judgment of this Court in the case of ***U.Sadanand Udupa Vs. Smt. T. Kusuma Shedhi (2011) 5 KCCR 4017*** is concerned, the said judgment is clearly distinguishable on facts and the same cannot be applied to the factual situation obtaining in the instant case. Consequently, the finding recorded by the executing Court relying upon the said judgment is clearly erroneous and unsound.

20. In view of the aforesaid facts and circumstances, I am of the considered opinion that the executing Court clearly fell in error in allowing I.A. No. 12 by passing the impugned order which deserves to be set aside.

21. In the result, I pass the following order.



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ORDER

- i) Writ Petition is hereby allowed;
- ii) Impugned order passed on I.A. No. 12 dated 01.12.2016 in E.P. No. 18/2012 by the file of the Civii Judge, Haliyal is set aside. Consequently, I.A. No. 12 filed by the respondent/ judgment debtor stands dismissed;
- iii) The executing Court is directed to proceed further in Execution Petition No. 18/2012 and conclude the proceedings as expeditiously as possible and at any rate within a period of six months from the date of receipt of a copy of this order.

**SD
JUDGE**

CLK/BVV
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