

MURTI BHAWANI MATA MANDIR REP. THROUGH
PUJARI GANESHI LAL (D) THROUGH LR. KAILASH

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v.

RAMESH & ORS.

(Civil Appeal No. 880 of 2019)

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JANUARY 21, 2019

**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Code of Civil Procedure, 1908 – s.144 – When not attracted – Suit for permanent injunction instituted by one ‘GL’ for restraining respondent nos.1, 2 and one ‘G’ from interfering with the possession of the plaintiff over the land in dispute – Suit dismissed by the trial court – Appeals thereagainst were dismissed – ‘G’ filed application u/s.144, CPC inter alia for restoration of possession of the disputed land – Application dismissed by the executing court – Appeal filed by respondent no.1 – Case remanded back to the executing court – Second appeal filed by the appellant before the High Court, which was dismissed – Plea of the appellant that the plaintiff was not placed in possession by the court under any decree or order which was ultimately reversed on the dismissal of the suit for permanent injunction and hence, s.144 was not attracted – Held: s.144 applies to a situation where a decree or an order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose – In the present case, the interim order of the trial court did not require the defendant to hand over the possession to the plaintiff – There was no decree or order of the trial court by virtue of which the appellant was given possession of the property, nor did any decree or order mandate that the respondent hand over possession to the appellant – In these circumstances, the provisions of s.144 were not attracted there being no variation or reversal of a decree or order, as contemplated by s.144 – Executing Court was justified in declining to entertain the application u/s.144 – Judgment of the High Court set aside.

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Suit for permanent injunction was instituted by one ‘GL’, claiming as next best friend of the deity situated at Bhawani Mata Mandir, against the respondent nos.1, 2 and one ‘G’. The suit was dismissed by the trial court. Appeals filed thereagainst were

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A dismissed. 'G' filed application u/s.144, CPC *inter alia* for restoration of possession of the disputed land. The application was dismissed by the executing court. Respondent no.1 filed appeal, which was allowed and the case was remanded back to the executing court. The appellant filed second appeal before the High Court, which was dismissed. Hence, the present appeal.

B Allowing the appeal, the Court

HELD: 1.1 Section 144, Code of Civil Procedure, 1908 applies to a situation where a decree or an order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. In that situation, the Court which has passed the decree may cause restitution to be made, on an application of any party entitled, so as to place the parties in the position which they would have occupied but for the decree or order or such part thereof as has been varied, reversed, set aside or modified. The court is empowered to pass orders which are consequential in nature to the decree or order being varied or reversed. In the present case, the interim order of the Trial court did not require the defendant to hand over the possession to the plaintiff. There was no decree or order of the Trial court by virtue of which the appellant was given possession of the property, nor did any decree or order mandate that the respondent hand over possession to the appellant. [Paras 10, 11] [533-F-H; 534-A]

1.2 In these circumstances, the provisions of Section 144, CPC were not attracted there being no variation or reversal of a decree or order as contemplated by Section 144. The executing court was justified in declining to entertain the application under Section 144, CPC. The order of the first appellate court which was affirmed by the High Court was unsustainable. The judgment of the High Court is set aside. [Paras 12, 13] [534-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 880 of 2019.

From the Judgment and Order dated 03.12.2004 of the High Court of M. P., Bench at Indore in SA No. 407 of 2002.

Alok Bhachawat, K. V. Bharathi Upadhayay, Ms. Pratibha Jain,
H Advs. for the Appellants.

Harshvardhan Jha, Mrs. Yugandhara Pawar Jha, Ms. Mayuri A
Shukla, Abhishek Chaudhary, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y. CHANDRACHUD, J.

1. Leave granted.

2. This appeal arises from a judgment of a learned Single Judge B
of the High Court of Madhya Pradesh at its Bench at Indore. A suit¹
was instituted in the Court of the Civil Judge, Class II, Sardarpur, Dist.
Dhar (M.P.) by one Ganeshi Lal claiming as the next friend of the diety
situated at Bhawani Mata Mandir, Gram Dasai, Tehsil Sardarpur. The
suit was for a permanent injunction against Geetabai (since deceased) C
and respondent Nos. 1 and 2 restraining them from interfering with the
possession of the plaintiff over the agricultural land in dispute.

3. The issues which were framed in the suit for the conclusion
were as follows:

"Sl. No.	ISSUES	CONCLUSION	D
1.	Whether on land bearing Survey No. 1630, 1631 & 1632 belonging to the ownership Murti Bhawani Mata Mandir situated in village Dasai possession of plaintiff is continuously coming through Dulichand son of Shrichand?	No	E
2(a)	Whether plaintiff is Pujari of Bhawani Mata Mandir ?		
2(b)	If plaintiff is Pujari, then in what capacity ?	Judgments not necessary	
3.	Whether on 14.6.77 defendants made an attempt to take possession illegally on suit land and destroyed the crop.	No	F
4.	Whether on Onkarlal was the husband of defendant No. 1 i.e. Pujari of Murti Bhawani Mata Mandir?	Judgment not necessary	
5.	Whether after Onkarlal suit land remained in possession of defendant no. 1 in the capacity of Pujari ?	Judgment not necessary	G
6.	Relief and cost ?	Suit dismissed with cost"	

¹ Suit No. 60/A/77

A 4. The suit was dismissed by the Trial court on 11 April 1981 on the ground that the plaintiff had failed to prove possession over the land in dispute. Both the first appeal as well as the second appeal were dismissed on 23 March 1982 by the District Judge and on 5 May 1984 by the High Court.

B 5. After the disposal of the second appeal, Geetabai filed an application under Section 144 of the Code of Civil Procedure, 1908 (“CPC”) for the restoration of possession of the disputed land and for awarding mesne profits, before the Judge, Civil Court, Class I, Sardarpur².

C 6. The application was dismissed on 24 August 1998 by the executing court. The appeal filed before the Additional District Judge by the first respondent was allowed and the case was remanded back to the executing court. The appellant filed a second appeal before the High Court which was dismissed in limine by the impugned order dated 3 December 2004 on the ground that no substantial question of law arose.

D 7. Assailing the judgment of the High Court, the appellant submits that the provisions of Section 144 of the CPC were not attracted. The Additional District Judge was, it was urged, not justified in remanding the proceedings back to the executing court. Learned counsel appearing on behalf of the appellant submits that the plaintiff was not placed in possession by the court under any decree or order which was ultimately reversed on the dismissal of the suit for permanent injunction. In the circumstances, Section 144 was not attracted. Learned counsel submitted that in order to attract the application of Section 144, three conditions must be satisfied:

F (i) Restitution sought must be in respect of a decree or order which has been varied or reversed;

 (ii) The party applying must be entitled to the benefit of restitution;

 (iii) The relief which is claimed must be consequential to the reversal or variation of the decree or order.

G 8. In the instant case, it has been urged that none of these conditions were satisfied. Moreover, even if it were to be assumed that the plaintiff had taken possession of the disputed land during the pendency of the suit, it was urged that an application under Section 144 would not lie. Moreover, it was urged that the Trial court did not decide the question

H ²M.J.C. No. 21 of 1986

as to whether the respondent was in possession of the disputed land as A
is evident from the fact that on issue No. 5 no finding was returned.

On the other hand, learned counsel appearing on behalf of the
respondent supported the judgment of the first appellate court and the
High Court by submitting that it was the case of the first respondent that B
the appellant had taken possession of the suit land after the order of
injunction was passed at the interlocutory stage. Hence, it was urged
that once the suit for injunction was dismissed, it was open to the defendant
to apply for restitution under Section 144, CPC.

9. In evaluating the rival submissions, it would be necessary to
advert to the provision of section 144 of the CPC: C

“144. Application for restitution – (1) 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 Court which passed the decree or order shall,
on the application of any party entitled to any benefit by way of D
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 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 E
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.....”

10. Section 144 applies to a situation where a decree or an order
is varied or reversed in appeal, revision or any other proceeding or is set F
aside or modified in any suit instituted for the purpose. In that situation,
the Court which has passed the decree may cause restitution to be made,
on an application of any party entitled, so as to place the parties in the
position which they would have occupied but for the decree or order or
such part thereof as has been varied, reversed, set aside or modified. G
The court is empowered to pass orders which are consequential in nature
to the decree or order being varied or reversed.

11. In the present case, the interim order of the Trial court did not
require the defendant to hand over the possession to the plaintiff. There

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A was no decree or order of the Trial court by virtue of which the appellant was given possession of the property, nor did any decree or order mandate that the respondent hand over possession to the appellant.

12. In these circumstances, the provisions of Section 144, CPC were not attracted there being no variation or reversal of a decree or order as contemplated by Section 144.

13. The remedy of the first respondent, if any, did not lie in an application for restitution before the executing court under Section 144, CPC. The executing court was justified in declining to entertain the application under Section 144, CPC.

C 14. The order of the first appellate court which has been affirmed by the High Court was unsustainable.

15. Accordingly, we allow the appeal and set aside the judgment of the High Court dated 3 December 2004. The application filed by the respondent before the executing court shall stand dismissed. No costs.

D 16. Pending application(s), if any, shall stand disposed of.