

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज Revision/TA/2001/4948/Tonk Baloo & anr. Vs Gaindya & anr.	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
23.04.2019	<p style="text-align: center;">S.B. Shri Rajinder Kumar, Member</p> <p>Argued by:- Shri V.S. Rathore, counsel for the Revisionists Shri Gourav Dave, counsel for the Respondents.</p> <p style="text-align: center;">****</p> <p style="text-align: center;"><u>J U D G M E N T</u></p> <p>1. This is a revision against the order dated 6-07-2001 passed by the Executing Court of the learned Assistant Collector, Todaraisingh District Tonk in Execution Application no. 33/01 by which the Station House Officer, Police Station Malpura was directed to give necessary police aid for implementing the court decree passed on 27-09-2000 in revenue suit no. 224/91.</p> <p>2. Facts of the case in nutshell are that in a suit for permanent injunction filed by the plaintiffs/respondents, a decree was passed restraining the defendants/revisionists from interfering into the possession of the plaintiffs/respondents over the suit lands. The defendants/revisionists did not mend their ways even after the passing of the decree, therefore, the plaintiffs/respondents filed the execution application under Order 21 Rule 32 r/w section 151 CPC for implementation of the decree and for allowing them to cultivate the suit lands with police assistance. The learned Executing Court after hearing the learned counsel for the plaintiffs/respondents passed ex parte order granting police aid in the manner indicated</p>	

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	<p>above. The said order of the Executing Court has been assailed by filing this revision petition.</p> <p>3. I have heard the learned counsels.</p> <p>4. On behalf of the defendants/revisionists, it was argued that a party who has obtained Permanent Injunction decree and complains of violation of the same, may file execution application under Order 21 Rule 32 CPC seeking attachment and/or arrest of the Judgment Debtor or an application for contempt of court under the provisions of the Contempt of Courts Act, 1971. But he cannot file an application seeking police protection under Section 151 CPC. He further argued that if Police aid is granted in such matters, the provisions of Order XXI Rule 32 CPC or the provisions of the Contempt of Courts Act, 1971 would become otiose. Therefore, the order granting Police Aid by taking recourse to section 151 CPC is <i>exfacie</i> illegal.</p> <p>4A. The learned counsel also argued that the execution petition would stand in the way of the trial of suit pending between the parties under Section 183 B of the Tenancy Act, 1955. It was also argued that there is no provision in the Rajasthan Tenancy Act, 1955 for granting police protection for implementing the Injunction decree. On this count also, the impugned order is not sustainable. In this regard, the learned counsel has placed reliance on judgment of the Single Bench of this Board in Revision no. 6/95 decided on 14.02.1995.</p>	

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	<p>4B.Learned counsel also argued that decree for permanent injunction was passed in respect of the lands comprised in as many as 10 khasra numbers including the lands of khasra no. 6/1 and 6/3 whereas Police protection has also been granted for cultivating the land of khasra no. 28 measuring 0.75 hectare. Therefore, the learned Executing Court has exceeded its jurisdiction by going beyond the decree. Therefore, a prayer was made to allow the revision petition and set aside the impugned order dated 6-07-2001.</p> <p>5. Per contra, the learned counsel for the plaintiffs/respondents has supported the impugned order.</p> <p>6. I have given my utmost consideration to the rival submissions and perused the records carefully.</p> <p>7. It is true that decree for permanent injunction was passed in respect of the lands comprised in as many as ten khasra numbers, including the lands of khasra no. 6/1 and 6/3. It is revealed from the record that after fresh survey the lands of khasra no. 6/1 and 6/3 have been given new khasra no. 28. Although the defendants/revisionists have denied this fact yet they are not able to tell what is the new khasra number of these lands. Therefore, it cannot be said that the court below has gone beyond its jurisdiction in executing the decree. Even otherwise, the Girdawar/Halka Patwari would be accompanying the Police authorities in</p>	

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	<p>implementing the decree and thus, they would also see that the decree is implemented in its true letter and spirit and only in respect of the lands forming the subject matter of the decree.</p> <p>8. Undisputedly, a decree for permanent injunction was passed and the same had become final. The question is whether the Executing Court has jurisdiction for implementation of the decree through Police? The controversy is no longer <i>res-integra</i>. Recently, on 30-07-2017, the Hon'ble Supreme Court in Civil Appeal no. 9916 of 2017 'Raja Venkataswaralu Vs Mada Venkata Subbaiah and another' has considered the entire issue and held that the Executing Court has jurisdiction to order Police Protection under Order XXI Rule 32 CPC. It was also observed by the Hon'ble Supreme Court that the relevant question in such a case is whether the judgment debtor has suffered any injury or whether any prejudice was caused to him. If the answer is in the negative, the execution must proceed. In the instant case also, no prejudice or injury will be caused to the defendants/revisionists by implementing the decree through Police aid.</p> <p>9. The argument of the learned counsel for the defendants/revisionists that the revenue courts have no jurisdiction for ordering Police Aid in implementing the order/decreed is noted for rejection. The provisions of Order 21 Rule 32 CPC are applicable to the revenue courts also as per the Fourth Schedule of the Rajasthan</p>	

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	<p>Tenancy Act, 1955.</p> <p>10. A Single Bench of this Board in the matter of Rughnath (Supra) has not upheld the trial court's order allowing police aid in implementation of the decree. However, the said decision was passed ignoring the relevant legal provisions discussed above. In my considered opinion, the very purpose of granting decree for permanent injunction may be frustrated in a give case, if police assistance in its implementation is withheld. Thus, the action of the executing court in the instant case deserves to be withheld.</p> <p>11. However, the execution in the instant case shall not stand in the way of suit pending for eviction of the plaitiffs/respondents under Section 183 B of the Rajasthan Tenancy Act, 1955 being tried on its own merits.</p> <p>12. In view of the above, the instant revision petition is dismissed being devoid of merits.</p> <p>Pronounced.</p> <p style="text-align: right;">(Rajinder Kumar) Member</p>	