

BURNISHED LAW JOURNAL

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Critical analysis on Restitution

ABSTRACT:

The concept of restitution is a legal doctrine which plays a very important role in restoring the benefit which by the erroneous judgment was given to the former decree holder but that person is not the entitled person for the same. Therefore, the concept of restitution is in existence in the Code under Section 144. Furthermore, not only giving the right decree is important but the execution plays an important role too.

The concept of restitution is into active role when the subsequent suit is reversed in the favour of person who sought for appeal then only restitution is possible but is it always necessary that court will order for restitution? No, because the ultimate aim of the court is to reach to the acme, i.e. the end of the justice and for that in the cases of Supreme Court, many times it is opined that though the court is under obligation to order restitution but it is not always depending from the case and circumstances.

As to why this doctrine is in existence? The answer goes in the rule of perfection. No one is perfect and hence the courts. Even Lord Cairns stated that the primary duty over the judicial hierarchy is to harm no one and not to injure the suitors and as a result the obligation first goes to the court to enforce the justice by providing the entitled claim or benefit to the entitled person. Moreover, this is to provide justice to every seeker and to stop the unscrupulous activities and to do justice to the one suffered.

Moreover, restitution concept is applicable not only to the parties in question but as well to legal representatives too because it is ultimately a bona fide action of the court. The doctrine is not at all exhaustive and it also takes into consideration the limitation provisions so we can never say the order of restitution is ultimate and it is also imposed with certain bars. An unjust benefit is of none and is temporary too.

This research work will be dependent on Doctrinal Research and I will rely on all the secondary sources such as articles, commentaries, precedents, books and research papers and the basic knowledge of the topic I have.

KEYWORD: restoration of benefit, justice, equity and good conscience, theory of Perfection.

SYNOPSIS

STATEMENT OF THE PROBLEM:

The whole project revolves around the basic dimensions of the concept of restitution which is exercised after the reversal of the former decree. The subsequent research covers all aspects relating to the process of the court as to how the court offers the order of restitution and whether or not, the power is inherent with the court to abide by the aforementioned doctrine or not. All issues hence are further elaborated in the main context.

RESEARCH QUESTIONS:

The legal rule of restitution throws up many questions like

- (a) Is the power of the court discretionary or obligatory?
- (b) Whether the party can relinquish the benefit?
- (c) How Res judicata and restitution goes parallel to each other?

And there are many too interrogatives which are dealt in the subsequent text taking into context with the literature.

OBJECTIVE AND SCOPE OF PROJECT

The project made tried to cover the legal consequences after the erroneous judgment. With this regard only the concept of restitution emerges. In the leading cases too, the concept is generally highlighted as our judiciary even at the lower and higher lever faces certain discrepancies as result the end of justice can never be received and hence doctrine plays a

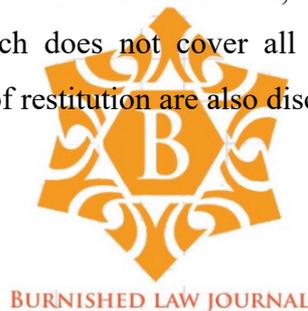
vital role as the principle of equity too promotes justness and fairness, so the benefit restoration will be only possible once the issues are reflected and such former order is held as erroneous.

RESEARCH METHODOLOGY ADOPTED:

In the text further, the research methodology adopted is ~doctrinal approach of research standards. The focus was made primarily on the library research on basis of the secondary work of different authors. Moreover, the strategy adopted goes genera to particular i.e. deductive scheme are applied.

PROBABLE OUTCOME:

With the completion of the research, it is made visible all the solutions to the project problems as also stated few in the above text. Moreover, the concept of restitution is defined in Section 144 of the Code which does not cover all maters and hence the illustrative characteristics for the application of restitution are also discussed.



CHAPTER 1: INTRODUCTION

“Any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep.”¹

Application for restitution.—Where and insofar 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 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 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.² Explanation.—For the purposes of sub-section (1), the expression — “Court which passed the decree or order” shall be deemed to include,— (a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance; (b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order; (c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit

¹ Halsbury's Laws of England (4 th Edn.) at p.434.

² Concise Oxford English Dictionary (2002) at p. 1220

wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.³

Restitution is not a new concept and section 144 is merely recognition of the principle of equity and justice prevalent for a long time. The objective behind the Section 144 is that no person should be allowed to enjoy a benefit derived pursuant to an order/judgment of a court if such order/judgment is ultimately finally not sustained. The provision relating to s.144 only intends to regulate the inherent power of the court in that behalf, which the court can exercise *Suo motto* whenever justice of the case demands so⁴. The Court in a very landmark judgement of ***Binayak Swain v. Ramesh Chandra Panigrahi***⁵, laid down the doctrine as follows-

“The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from.”

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CHAPTER 2 : IMPORTANCE OF THIS DOCTRINE

Throwing light on the importance of this doctrine, the Supreme Court in ***South Eastern Coal Fields Limited v. State of M.P.***⁶ Said-

“Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in any litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced.”

³ C.K. Takwani, Civil Procedure with Limitation Act, 1963 (8th edn, Eastern Book Company 2017) 726.

⁴ Citibank N.A. v. Hiten P. Dalal (2016) 1 SCC (Civ) 342.

⁵ AIR 1966 SC 948

⁶ AIR 2003 SC 4482

It will be wrong to assume that it is the act of the court being wrongful or a mistake or error committed by the court which attracts the applicability of the doctrine of restitution. The real test is whether on account of an act of the party persuading the court to pass an order, or an unsustainable holding by the Court, there has resulted one party gaining an advantage which it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the court and the act of such party. So far as the quantum of restitution is concerned, it depends upon the facts and circumstances of a given case and the Court may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made.

If we exactly look into the Code of Civil Procedure, we can never find the elaborative meaning of the term Restitution but if we go to the dictionary meaning of the said term, it states, the act of restoring a thing to its proper owner.¹ Take for example, when any person who should have a possession over the land but he/she is unlawfully dispossessed from the possession, so the rule of restitution comes into play. In other words, when the benefit is restored to the party who having the right over such benefit.

In a more elaborative context, the Doctrine of restitution implies that when a decree is reversed, the law imposes the obligation on the party to suit who received unjust benefit from the erroneous decree formerly passed to restore the benefit to the real entitled person i.e. decree holder in subsequent suit. The obligation to restore arises automatically on the reversal or modification of such erroneous decree, while the court in making the restitution is bound to restore the benefit as much as can be restored to the subsequent decree holder from former decree holder⁷. The court is bound to see that if a person is by mistake of the court is harmed then the court is bound to restore that person to the position he would have occupied⁸. On the other hand, it is the obligation too on the subsequent judgment debtor to restore any benefit made to him by the former erroneous judgment. Here the duty arises of the court to enforce such obligation unless it is shown that if restitution would be done, it will be antithesis to the real justice of the case.⁹

Section 144 in the Code of Civil Procedure deals with the Doctrine of Restitution. It also states that the section does not give the substantive right. It merely regulates the power of the

⁷ Kavita Treban v. Balsara Hygiene Products Ltd., (1994) 5 SCC 380: AIR 1995 SC 441.

⁸ Jang Singh v. Brij Lal, AIR 1966 SC 1631 at pp.1632-33 : (1964) 2 SCR 145.

⁹ Prithvinath Singh v. Suraj Ahir, (1970) 3 SCC 794 at p.799

court.¹⁰ Moreover, the jurisdiction to make restitution is inherent in every court and can be exercised whenever justice of the case requires.¹¹

CHAPTER 2: REQUISITE CONDITIONS FOR THE APPLICABILITY OF RESTITUTION

The restitution sought must be in respect of that decree or order which had been varied or reversed;

- The applicant has lost, or been deprived of, something by reason of the decree or order which has been subsequently varied or reversed;
- The party applying for restitution must be entitled to a benefit under a reversing decree or order;
- The relief claimed must be properly consequential on such variation of the decree or order; and
- The applicant must be a party to the litigation which has terminated according to law.
- If the aforesaid conditions are satisfied, it gives no choice or discretion to the Court, and the only course it has to follow is to order restitution to the party which had suffered loss on account of the erroneous decree or order.
- Section 144, Civil Procedure Code, imposes no limitations on the rights of the judgment-debtor to get back the benefit, to which he is entitled under the appellate Court's decree, which has reversed or varied the trial court's decree. On a perusal of S. 144, it is obvious that the question whether the balance of convenience is in his favour or not, is irrelevant for the purpose of granting restitution.
- Section 144 obviously consists of two parts. The first part postulates the variation or reversal of a decree or an order in an appeal. The second part is more important. Restitution can be granted on the application of any party entitled to any benefit by way of restitution, and it has to be determined by the court granting restitution that the party who has given the application is entitled to the benefit of restitution.

¹⁰ Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584 (671-72)

¹¹ Supra note 6

- Such an inference cannot be drawn in favour of a person who is a mere trespasser. Where the lower appellate court as well as the High Court held that the sale deed in favour of the appellant was null and void and no rights were conferred on him by virtue of the same, the appellant was a mere trespasser and he did not fulfil the second condition of section 144, C.P.C.
- In *S.N. Banerji v. Kuchwar Lime and Stone Co. Ltd.*¹², it was held that where the persons who have been dispossessed were found to be trespassers and persons in subsequent possession were lawfully in possession by virtue of a valid lease in their favour, it was not necessary for the ends of justice that the trespasser should be restored to possession though they might succeed in a suit for possession. That case was followed in *Mahaden Prasad v. Calcutta Dyeing and Cleaning Co.*¹³

CHAPTER 4: SECTION 151 INHERENT POWERS TO GRANT RESTITUTION:

Sec 151. Saving of inherent powers of court. -

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the court

Explanation:

- It is a saving clause and only gives legislative recognition of an age-old and well-established principle that every court has inherent power to do that real and substantial justice between the parties for the administration of which alone it exists. It does not confer any substantive right on parties but is meant to get over the difficulties arising from rules of procedure.
- Section 151 gives no right to a party to make an application. It gives power to the court to pass such orders as it thinks fit. Section 151 is really intended to prevent courts from being rendered impotent by any omission in the Code; but it is not intended to override the main enactment of the law.
- The court has inherent powers, in order to advance the cause of justice and not to allow justice to be defeated, to issue orders in the nature of even injunctions. Therefore, it cannot be said that the court has no power to issue stay of a suit under its

¹² (1942) 44 BOMLR 324

¹³ AIR 1961 Cal.70

inherent powers unless the case clearly falls within the four corners of Order XXXIX, Rules 1 and 2.

- The Code of Civil Procedure is not exhaustive and S. 151 does not confer any new powers but only makes statutory recognition of the inherent power of the court to do certain things *ex debito justitiae* (to act as justice demands). It is in the ends of justice to avoid needless expense and inconvenience to
- Parties So, the court will not refuse relief merely because the application there for is made under a wrong section or because there is some technical defect.
- The abuse of the process of the court may be the result of an act of courts itself (default its officers) or may be done by the party (misrepresentation). In all such cases the court is empowered to remedy the wrong.
- The inherent powers exercised under S. 151, C.P.C. are discretionary. In considering the question of propriety in invoking the power, the court should take into account several matters, some of which are the complexity of the question involved, availability of a more complete and efficacious remedy by means of a suit and the apparent justice of the claim. These are not exhaustive but merely illustrative. They would vary according to the facts and circumstances of each case. No hard and fast rule can be laid down.
- Where the averments in the application did not make out a case as to how the exercise of the inherent power of the court was necessary for the ends of justice or to prevent abuse of the process of the court and the applicant did not come to the court with clean hands and had suppressed the facts and the case involved complexity of facts and the justice of the claim was adverse to the applicant, it was held that there was no case for the exercise of inherent powers in favour of the applicant.
- Where the possession has been taken forcibly by a landlord/defendant during the pendency of the proceedings, i.e., when the application for temporary injunction restraining landlord/defendants from interfering with possession is dismissed by the trial court and before filing the appeal, even though S. 144 of the Code of Civil Procedure may not strictly apply, the court in exercise of its inherent jurisdiction under S. 151 can grant restitution. 'By invoking the inherent jurisdiction, the Court would be justified to do justice and put back the parties in the same position in which they were, but for the order of the trial court.

- The Court has power and jurisdiction under section 151 of the Code to grant police help to implement its order of injunction.

CHAPTER 5: DOCTRINE OF RESTITUTION WITH RESPECT TO RES JUDICATA AND REVISION

If an application is made before the court and that application is subsequently dismissed the doctrine of res judicata shall apply and the subsequent application for restitution shall be barred and shall not be maintainable but if such dismissal was on the ground of some technical discrepancies then res-judicata shall not bar another application to be produced before the court for seeking restitution.

Doctrine of restitution with respect to revision: An order under Section 144 is appealable therefore no revision is maintainable under the court of law but if an order under section 144 does not fall within four corners of Section 144 then a revision can be made. When we emphasize upon the term “Court” as stated, it is to be seen that it includes the primary or trial court or intermediate court of appeal to the higher final court which ultimately disposes off the case.

In the case of *Chinnammal v. P. Arumugham*¹⁴, the court held that the aim or motive of this doctrine is to lessen the litigation and to afford speedy remedy to the party adversely affected and therefore the proviso in Section 144 is construed liberally.

The doctrine is only ordered by the court provided three conditions are mandatory to be satisfied. Includes:

1. The restitution asked must be in respect to the prior decree which had been reversed or modified.
2. The party who is applying for restitution must be appropriately entitled for benefit after the reversal or modification of decree and lastly,
3. The relief claimed must be properly consequential on the reversal of decree or order.

These three aforementioned conditions implies that firstly there should be erroneous judgment and the benefit out of such erroneous judgment has been received by one party to the suit and later the erroneous judgment has been reversed or varied or modified. If such conditions are

¹⁴ 1990 AIR 1828

satisfied, the court is bound to order restitution. Therefore, the court is having this inherent power not in nature of discretion but obligatory.

Application of Restitution lies with the court. The court which had passed the decree or made the order has the ultimate say that to whom the restitution may be granted.

Coming to the concept of res-judicata, it is applicable on the execution proceedings i.e., restitution. But is such application of restitution is dismissed on some technical ground, a fresh application can be filed and comes into play after this. No relief can be claimed by bringing a separate suit where the restitution could be claimed by an application for such relief.

Limitation over Section 144: An application of restitution under section 144 is an application for execution of a decree and is the limitation period as prescribed is 12 years and it will start from the date of appellate decree or order.

The Decree under section 2(2) of the code is appealable and has been expressly declared to be a decree under section 144. As it is appealable no revision lies against such orders. But where the order does not come in the ambit of section 144, a revision is maintainable and is said to a “decided case” under section 115 of the code of Civil Procedure.

Even if the decree is executed or implemented, proceedings for restitution under Section 144 of the Code will not become infructuous. It is after the decree is executed and enforced then the question of restitution arises. Therefore, it is not open to the court to dispose off an application for restitution that the order has already been given effect and nothing requires to be made. However, it is open to the party to show that “restitution will be contrary to the real justice of the case”.

CHAPTER 6: EXISTENCE OF THIS DOCTRINE

As to why this doctrine is in existence?

The answer goes in the rule of perfection. No one is perfect and hence the courts. Even Lord Cairns stated that the primary duty over the judicial hierarchy is to harm no one and not to injure the suitors and as a result the obligation first goes to the court to enforce the justice by providing the entitled claim or benefit to the entitled person. Moreover, this is to provide justice to every seeker and to stop the unscrupulous activities and to do justice to the one suffered.

Moreover, restitution concept is applicable not only to the parties in question but as well to legal representatives too because it is ultimately a bona fide action of the court. The doctrine is not at all exhaustive and it also takes into consideration the limitation provisions so we can never say the order of restitution is ultimate and it is also imposed with certain bars. An unjust benefit is of none and is temporary too.

CHAPTER 7: CONCLUSION

The doctrine of restitution as envisaged under the CPC is an enabling provision in consonance with the principles of equity and justice. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. Section 144 tries to restore the aggrieved party in the original position as far as possible. But, wherever it is impossible to restore the aggrieved party to the earlier position or undo the effect of a wrong order, the court can simply choose to not disturb its earlier order.

The doctrine of restitution is critically based upon the maxim “actus curiae neminem gravabit”, i.e. any act of the court should not harm anyone. Moreover, it is the primary duty of the court to do no harm to the suitors and the court should always be vigilant over the powers that are given to the court.¹⁵ Whenever any party received the benefit out of erroneous judgment, he is under the obligation to repay the benefit to the person who lost it and such duty to enforce the obligation is upon the court to see at the end whether the benefit has been restored or not.¹⁶ A wrong should never be alive and therefore this rule is in existence.

The jurisdiction to grant restitution is not only confined or limited to the cases given under Section 144 rather as already stated in the text, the power of the court is inherent to order restitution in cases whenever the question of justice demands. So, we can interpret that the power of the court can supervene over all cases irrespective whether the case is mentioned in Section 144 or not.¹⁷

¹⁵ Chinnammal v. P.Arumugham, (1990) 1 SCC 513: AIR 1990 SC 1828.

¹⁶ Chander v. Bodh Raj, AIR 1969 J&K 8.

¹⁷ Guran Ditta v. T.R.Ditta, AIR 1935 PC 12 at p. 13.