

(1982) 01 MAD CK 0034

In the Madras High Court

Case No : C.M.P. No's. 12420 and 12427 of 1981 in O.S.A. 45 of 1975

A.G. Venkatanarasiah

APPELLANT

Vs

Vijayalakshmi and Others

RESPONDENT

Date of Decision : 25-01-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 10, Order 21 Rule 31(2), 152

Citation : AIR 1982 Mad 329

Hon'ble Judges : Gokulakrishnan, O.C.J.; Ratnam, J

Bench : Division Bench

Advocate : N.C. Raghavachari, for C.S. Prakasa Rao, for the Appellant; R. Mohan, for the Respondent

Judgement

Ratnam, J.—The second defendant in C. S. No. 141 of 1971 on the file of the Original Side of this Court is the petitioner in these

applications. In that suit instituted by the first respondent in C. M. P. No. 12420 of 1981 and the sole respondent in C. M, P. 12427 of 1981

(hereinafter referred to as the decree-holder) she prayed for partition and separate possession of 1/28th share in the A and B Sch. properties and

for partition and separate possession of half share in the C and D Schedule properties and for recovery of possession of E Schedule Stridhana and

other movable properties from the petitioner in these applications or such of the defendants as may be found to be in possession of the Stridhana

and other movable properties and also for declaration of her title to the F Schedule properties and for recovery of possession thereof from

defendants 2, 11 to 13 in the suit. In addition, the relief of rendition of accounts by. defendants I to 7 in the suit in respect of the income realised

from the A and B Schedule properties from 19-91961 and a similar relief as

against the petitioner herein in respect of C and D schedule properties and also F schedule properties was prayed for by her certain defences were set up to this suit and for purposes of the present applications, it is unnecessary to notice them in detail, as. we are now concerned only with Item 3 of the E Schedule. In relation to this item, in para 30 of the written statement filed by the petitioner in the course of the suit, the petitioner denied the presentation thereof at the time of the marriage of Vijayalakshmi

The custody of the E Schedule items was denied by the petitioner, Issue No. 8 in the suit covered the dispute between the parties in relation to the E Schedule stridhana properties. Sethuraman J. who tried the suit found that Item No. 3 of the E Schedule belonged to the stepmother of the petitioner in these applications mid was given to the decree-holder merely for the purpose of being worn by her at the time of her marriage and, therefore, that item cannot be claimed by her. Items 6 and 8 of the plaint E Schedule were found to belong to the decreeholder and she was held entitled to recover them, As regards Items 14 to 17 and 19 in E Schedule, the petitioner was found to be in possession of those items and the decree-holder was declared entitled to a half share therein. In accordance with these findings, the decree in the suit under Cls. 7 and 8, thereof provided as under-

7. That the plaintiff is exclusively entitled to the return or recovery from the second defendant of Items 6 and 8 of plaint E Schedule (Schedule VI hereunder) since they belong to her;

8. That the plaintiff and the 8th defendant herein, are entitled to Items 14 to 17 and 19 of plaint E Schedule (Sch. VI hereunder) and that the same be divided between them.

2. Aggrieved by this decree dt. 13-9-1974, which negated the claim made by the decree-holder, she preferred an appeal in O.S.A. 45 of 1975 and the petitioner and others filed a memorandum of cross-objections objecting to the decree in favour of Vjayalakshmi in relation to certain items.

The appeal as well as the memorandum of cross-objections were heard by a Division Bench consisting of Gokulakrishnan and Varadarajan JJ an 29-8-1979. Dealing with Item 3 of the E Schedule property, the Division Bench held thus-

Regarding the E Schedule properties, Mr. Mohan restricted his argument only to

Item 3 which has been stated by DW 4 in his evidence to have belonged to the first defendant's third wife and to have been merely lent to the plaintiff for being worn by her at the time of her marriage. There is no specific plea in the written statement of defendants I to 9 that Item 3 of the E Schedule properties belonged to the second defendant's stepmother and had been merely lent to the plaintiff for being worn by her at the time of her marriage. Nor has any such suggestion been made to

PW 1. We, therefore, agree with Mr. Mohan that Item 3 of the R Schedule properties belongs exclusively to the plaintiff.

3. in accordance with this conclusion arrived at with reference to Item 3 of the It Schedule, the decree provided as follows--

That in Cl. 7 of the decree of this Court in CS 141 of 1971. after the words of Item and before the words and figures "6 and 8" the figure T be added." Aggrieved by the judgment and decree of the Division Bench, the petitioner and others preferred SLP (Civil) No. 63a4 of Y978 before the Supreme Court of India and on 29-1-1979 the Supreme Court granted special leave to appeal, but stated that the appellants therein shall not be entitled to challenge the findings reached by the High Court on the question of partition of 1960 and also with regard to the properties found to be Stridhana properties of the decree-holder, Some other directions with reference to the enquiry into the mesne Profits and the payment of certain amounts by the appellants therein to the decree-holder were given. Thereafter on 20-8-1979, the decree-holder filed application No. 3229 of 1979 in C.S. 141 of 1971, for a direction to the petitioner to bring to court and deliver to her Item 3 of the E Schedule properties. That application was resisted by the petitioner and others denying their possession of Item 3 of the E Schedule and stating that even on the footing that the decree-holder is entitled to item 3 of the E Schedule, she can at best recover the money value thereof admitted by her in the plaint at Rs. 3000 and that, in fact, a draft for that amount was also sent to her counsel, which was refused. In that application, Shanmukham J. passed an order granting a final decree in favour of Vijayalakshmi directing the petitioner and others to deliver to her item 3 of the E Schedule in specie. This order was passed on 10-9-1979, and it is not now in dispute that this order had become final. It is after the aforesaid proceedings the petitioner has filed C.M.P. 12420

of 1981 purporting to be u/s. 152, C.P.C. praying for an amendment of the decree in O.S.A, 45 of 1975. According to the petitioner, this court,

while directing the return of the Jewel mentioned as Item 3 of the E Schedule to the decree-holder, had not in the alternative directed the payment

of the value of the jewel as required by O. 20, R. 10, C.P.C. and the decree has to be amended accordingly. This application is resisted by the

decree-holder on several grounds. The decree, according to her, is quite in accordance with the judgment and does not require to be amended in

any manner, An objection that under the guise of the amendment, the petitioner is seeking a review of the judgment in O.S.A. 45 of 1975 after

having filed a SLP to the Supreme Court, was also raised- There is no error, clerical or arithmetical, which requires to be corrected by the

amendment. It was also stated that at no time. the plea that the alternative relief of recovery of money should have been provided for was raised

and that such a plea should not be allowed to be raised at the time of execution, There being no dispute about the availability of the jewel, the

question of setting out the value thereof in accordance with the provisions of O. 20, R. 10, C.P.C. did not arise, according to the decree-holder. In

addition, she contended that the jewel had a special sentimental value and that mere money compensation cannot be an adequate substitute for the

return of the jewel in specie. The attempt of the petitioner was characterised as one to defeat her rights under the decree passed by the Division

Bench of this Court and also confirmed by the Supreme Court. No case for the application of O. 20, R 10, C.P.C. would arise, according to her,

especially after the order directing delivery of jewel in specie passed in application No. 3229 of 1979 had become final.

4. In C.M.P. 12427 of 1991, the petitioner prayed for stay of further proceedings in Application No. 1665 of 1980 against the order for arrest

passed in E.P. 90 of 1979 in C.S. 141 of 1971. In execution of the decree in O.S.A. 345 of 1975 the decree-holder in &P. 80 of 1979 in C.S.

142 of 1971, had prayed for the arrest of the petitioner and that was ordered and an appeal there from in Application No. 1665 of 1980 had been

preferred by the petitioner, Stating that the petitioner had filed CALP. 12420 of 1981 for an amendment of the decree in O.S.A. 45 of 1975, by

fixing the value of Item 3 of the E Schedule and that application is pending, the petitioner prayed for stay of further proceedings in Application No.

1665 of 1980 filed against the order of arrest in E.P. No. 80 of 1979 in C.S. 141 of 1971 that application is resisted by the decree-holder on that

ground that no question of fixing up the value of the jewel would arise and that the application for amendment filed by the petitioner is

misconceived. It is also further pointed out that the order had been passed after recording evidence and that the petitioner had avoided the box. It

is also further stated that only after being satisfied that the plea of non availability of the jewel put forth by the Petitioner was false orders were

Passed in E.P. No. 80, of 1979 as prayed for. No ground had been made out, according to the decree-holder, to stay the hearing of Application

No, 1665 of 1980.

5. The learned counsel for the petitioner contended that in cases where the suit is for recovery of movable property and the court grants a decree

for recovery of such movable property, it is incumbent upon the court to state the money value of such movables as required under the provisions

of O. 20, R. 10, C.P.C. A further point was also taken that the decree-holder in the instant case had valued the movable at Rs.3000 in the plaint

and that she can recover only that amount, from the petitioner as the return of the jewel in specie is not, possible, Reliance in this connection was

placed by the learned counsel for the petitioner upon the decision in Gopal Vs. Jagdish Singh and Others, . On the other hand, the learned counsel

for the decree-holder submitted that in the present case the petitioner did not put forth any plea with reference to the non availability of item 3 of the

E Schedule and the appellate court has. Therefrom held that the decree-holder is entitled to the return of the jewel in specie and it is not necessary

under those circumstances that there should be a direction fixing the money value thereof in accordance with O. 20, R. 10, C.P.C. It is also further

pointed out by a reference to the language of O. 20, R. 10, C.P.C. that the alternative of stating the money value would arise and may have to be

incorporated in the decree only if the Court comes to the conclusion that delivery of the movable property in specie cannot be had and not in all

cases, as such a course would enable the judgment-debtors to retain valuable movable properties and pay money compensation only, which may

not be adequate at all compared to the value of the movables, Attention was also invited by the learned counsel for the decree-holder to O. 21, R.

31, C.P.C. which provides even for a case where the decree does not fix the amount as an alternative to the delivery of movable property and

from this it was contended that it is unnecessary in every case that the decree should provide for the alternative, Yet another submission made by

the learned counsel for the decree-holder is that a plaintiff, under the Provisions of O. 7, R. 2, C.P.C is called upon to state approximately. the

amount or the value of the movables in the possession of a defendant sued for and that therefore the, plaintiff cannot be pinned down to the value

so stated, especially when under the provisions of O 21, R, 31 (2), C.P.C. the court is empowered to fix the compensation.

6. Before proceeding to consider these rival contentions, it is necessary to refer to the provisions of the C.P.C. O. 20, R. 10, C.P.C. runs as

under-

Where the suit is for movable property and the decree is for the delivery of such property shall also . , the decree state the amount of money to be

paid as an alternative If delivery cannot be had.."" Order 21, R. 31 provides for the mode of execution of a decree for specific movable property.

That provision runs as under-

31. (1) Where the decree is for any specific movable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of

the movable or share and by the delivery there"" of to the party to whom it has been adjudged, or to such person as he appoints to receive delivery

on his behalf, or by the detention in the civil prison of the Judgment-debtor, or by the attachment of his property or by both.

(2) Where any attachment under subrule (1) has remained in force for three months, if the judgment-debtor has not obeyed the decree and the

decree-holder has applied to have the attached property sold such property may be sold and out of Ole proceeds the court may award to the

decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount,

and, in other cases such compensation as it thinks fit, and shall pay the balance if any to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing it which, he is bound to pay, or where, at the end of three

months from the date of attachment, no application to have the property sold

has been made, or if made has been refused, the attachment shall
cease,,

(4) The court may on application extend the Period of three months mentioned in sub-rules, (2) and (3) to such period not exceeding six. months
on the whole as it, may think ,fit."".

A conjoint reading of the aforesaid provisions in the C.P.C. would indicate that in a suit for recovery of movable property, where a decree is

passed for recovery of such property, the need to state the amount of money to be paid would arise only in the event of the Court being sated that

it is not possible to effect delivery in specie. In other words, an obligation is cast upon the court to mention the money value of the movable only

when it is found either that the movable does not exist in specie or delivery of the moveables cannot be had for some reason. Even if it is not so

done, it is not as if the decree-holder is without any remedy, for, as seen from O. 21, R. 31 (2), C.P.C it Would be open to the decree-holder to

realise such compensation as the court may think fit as an alternative to delivery of possession of the movable -property. To accept the contention

of the learned counsel for the petitioner would be to give the benefit of an option as it -were to the decree-holder as well as the judgment-debtor in

every case, which, in our opinion, is not warranted by the language of the provisions referred to ,above, Indeed, that there is no such option has

been pointed out in an early judgment of a Division Bench of this court in Manavikraman v. Moyankutti, 13 MLJ 444. The Bench has pointed out

that the judgment-debtor gets no option under a decree for the return of the movable property. Further, if the amount of money to be paid should

in every case be stated in the decree, it would also enable the judgment-debtor to withhold the priceless Immovable and pay only a niggardly sum

by way of money equivalent which might have been stated as the approximate value thereof "in the plaint. This Would result in gross injustice and

cannot, therefore, be countenanced at all. In Shivaprasad Singh Vs. Prayagkumari Debee and Others, , the. question arose whether the permission

to assess the value of certain bonds alternatively in "the form contemplated by O. 20, R. 10, C.P.C. would vitiate a decree. There also it was urged

that in view of O. 20, R. 10, C.P.C., it was obligatory to state the money value of the bonds. Repelling this contention, it was pointed out that O.

21, R. 31 (2), C.P.C. shows, that a decree for delivery of a specific movable need not necessarily be in the alternative from and that an enquiry as

to damages in cases of this kind may more profitably be stated by the courts in execution cannot be disputed. Again in Sundararajulu Pillai Vs.

K.S. Dorai Rani, , Horwill J. pointed out that under O. 21, R. 31, C.P.C., the court has to make every reasonable attempt to execute the decree

and to obtain for the decree-holder the movables, if that is possible, which the decree-holder is entitled to have under the decree and it is only

when such an endeavor is fruitless, the question of compensation under O. 21, R. 31 would arise. This decision also thus recognises that in every

case there need not be the incorporation of the money value of the movables in the decree itself in accordance with O. 20, R. 10, C.P.C.,

Reference may also usefully be made to the decision in Motilal v. Mandir Jankinivas, AIR 1953 Vind Pra 20, wherein the identical question as in

the present case arose for decision. Krishnan J. C. in dealing with this objection, after referring to the decision in Shivaprasad Singh Vs.

Prayagkumari Debee and Others, , observed as follows-

Order 20, R. 10 is no doubt mandatory but the failure to state the amount of money to be paid in the alternative does not render the decree

unexecutable, The order and rules in Schedule to C.P.C. operate in two ways. Some of them like O. 2, R. 2, for example, create an immunity in

one of the parties; non-compliance with them debars one of the parties from proceeding in future. On the other hand, there are some rules of

convenience, failure to comply with which, no doubt, leads a party concerned to the inconvenience and the expense of having to start further -

proceedings or to choose a more lengthy and difficult course, but they do not give immunity to the other. O. 20, R. 10, is a provision of the latter

kind. Obviously, it is reasonable and convenient that the decreeing court should mention in the decree itself that the plaintiff shall recover such and

such specific movables and in case of inability to do so shall, get so much of money in the alternative, Thus when the goods are not forthcoming

from the defendant, the Plaintiff may straightway claim the amount. It, on the other hand, the court fails to do so, its decision that the goods should

be recovered, is not in the least "altered. The only difficulty is that when the recovery is, made impossible the decree-holder will have to prove is

further proceedings the money value or damages or compensation O 20, R. 10 provides for the courts anticipating this during the decision of the suit self. Upon its failure to do we cannot hold that the decree is unexecutable for it is still possible for the executing Court to fix the compensation and recover it for the decree-holder.

7. This decision also fully supports the view taken by us as regards the relative scope mid content of O. 20, R. 10 mid O. 21, R, 31, C.P.C. In the view which we have taken supported by the decisions referred to already, in our view, the decision in Gopal Vs. Jagdish Singh and Others, relied on by the learned counsel for the petitioner cannot be of any assistance to him. In addition, it is also seen that the court was dealing with a second appeal against the decree, unlike in the present case. In the instant case, therefore, the mere omission to mention the money value of the movable in the alternative cannot be taken advantage of by the petitioner to seek an amendment of the decree.

8. Further, there are also other obstacles in the way of the petitioner in securing the amendment, As noticed earlier, there has been no finding either during the trial of the suit or in the course of the appeal that item 3 of the E Schedule movables is not available with the petitioner and, therefore it not open to him to now say that the decree-holder might to be satisfied merely with the money value- It has already been seen that in the course of the Application No. 3229 of, 1979 filed by the decree-holder the petitioner denied possession of item 3 of the E Schedule with him but in spite of it, Shanmukham J. directed the return of the jewel in specie to the decree-holder and that order has become final. This would mean that, the liability of the jewel for being non-availability delivered to the decree-holder has not been established and it would be unnecessary, therefore, for the court to set out the money value thereof under the terms of O. 20, It 10, C.P.C.

9. The learned counsel for the petitioner relied upon the decision of the Full Bench reported in Jaldu Venkatasubba Rao v. Asiatic Steam Navigation -Co. of Calcutta, ILR (1916) Mad 1: AIR 1916 Mai 314L md contended that the decree-holder had not alleged and established the facts and circumstances which would compel the delivery of movables and that, therefore, the decree-holder cannot demand delivery of item 3 of

E Schedule in specie. It is true that the Full Bench decision referred to held that in order to entitle a plaintiff to obtain delivery of specific movable

property by a suit and to enforce the decree so bottomed by the stringent method provided under O. 21, R. 31, C.P.C. it is necessary that the

decree-holder should allege and prove facts which would entitle him to compel the delivery of specific movables under the provisions of S. 11 of

the Specific Relief Act. But the Full Bench was dealing with an appeal against the decree itself and it was in that context the Full Bench stated the

legal position as it did. The question of the need, to state alternatively the money value of the movables as contemplated under O. 20, R. 10,

C.P.C. did not arise for decision therein. On the other hand, in this case, the decree granted by the Division Bench of this court has also been

affirmed by the Supreme Court by its order referred to earlier and the decree entitling the decreeholder to recover in specie the item 3 of the E

Schedule can no longer be assailed. Under those circumstances, the decision relied upon by the learned counsel for the petitioner cannot be of any

assistance to him.

10. As pointed out earlier, O. 21, R. 31 (2), C.P.C. provides that the compensation payable to a decree-holder in lieu of movable property

directed to be delivered under a decree has to be fixed by the executing court, while dealing with that matter and, therefore, the decree-holder

cannot be precluded establishing his claim towards quantum of compensation as he make before the other words, the from -such may executing

court. In decree-holder cannot merely be pinned down to the statement of the value of the movables as given in the plaint for purposes of payment

of court-fee. At the worst, the executing court may, before making available the compensation to the decree-holder, insist that court-fee should be

paid upon the amount of compensation so awarded, but that cannot mean that decree-holder is not entitled to anything - more than what is

mentioned in the plaint as contended by the learned counsel for the Petitioner No prejudice is also likely to be caused to the judgment-debtor, as

he will also be afforded an opportunity of proving that the compensation is not what is claimed by the decree-bolder, but is much less -than

perhaps what has been stated even in the plaint. We are also satisfied in the instant case, that no for an amendment u/s. 152, C.P.C. has been

made out. There is no clerical or arithmetical error in the judgment arising therein from any accidental slip or omission which requires to be

corrected- It cannot be readily assumed that this court when it passed the decree, in O.S.A. 45 of 1975 was unaware of the provisions of O. 20,

R. 10, C.P.C. The decree as drafted fully brings out and represents the intention of the Division Bench and S. 152, C.P.C. under the

circumstances cannot be used to correct a so-called omission, which certainly has not been made out to be unintentional. For the aforesaid reasons

we are satisfied that no case for amendment of the decree as such has been made out. Consequently, these petitions fail and are dismissed with

costs of the decree-holder in C.M.P. 12420 of 1981, with counsel's fee which we fix at Rs. 250.

11. Petitions dismissed.