

(1962) 01 GAU CK 0008
In the Gauhati High Court

Case No : Civil MiscellaneousSecond Appeal No. 26 of 1960

Amarendra Nath

APPELLANT

Vs

Maharani Kanchan Prava Mahadevya

RESPONDENT

Date of Decision : 09-01-1962

Acts Referred:

Civil Procedure Code, 1908 — Order 20 Rule 6, 151, 152, 47
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 6, 151, 152, 47

Citation : AIR 1963 Tripura 55

Hon'ble Judges : T.N.R.Tirumalpad, J

Bench : Single Bench

Advocate : B.C.Dev Barma, B.B.Gupta, J.K.Roy, Advocates appearing for Parties

Judgement

1. The appellant was the judgmentdebtor in rent suit No. 59 of 1952. The respondentdecreeholder applied to execute the rent decree by auction sale of the property liable for the rent as described in the decree. The appellant objected to the execution stating that the decree was not drawn up in conformity with the judgment.

The respondentdecreeholder had filed the suit alleging that the leasehold land with the appellant, though originally 63 and odd drones on a rent of Rs. 519/ per year, had been reduced to 30 drones on a proportionate rent of Rs. 2597 and odd, as the appellant had surrendered 33 and odd drones to the landlord. The appellant denied in the suit that any land was surrendered by him and according to him 63 and odd drones still continued in lease with him with a liability to pay a rent of Rs. 5197 and odd.

This defence of the appellant was accepted by the Court in its judgment in the rent suit. But as the claim in the suit was for a lesser amount than the rent admittedly due for the 63 and odd drones, the Court had no difficulty In passing a decree for the amount claimed. Thus the decree was for rent due on the 63 and odd drones and not on the 30 drones as claimed in the plaint. But in drawing up the decree the land liable under the decree was still described as 30 drones

and it is this land of 30 drones which was sought to be sold in execution.

The appellant's objection thus was that the decree should show the 63 and odd drones, as the land outstanding on lease with the appellant and that for the rent decreed, this 63 and odd drones, as a whole, alone should be brought for sale and not a part of the leasehold.

The executing Court appears to have perused the judgment and the decree and held that the decree has not been drawn up in conformity with the judgment and that the decreeholder was not therefore entitled to execute the decree as it stood.

(2) The respondent took the matter in appeal to the District Judge. The District Judge also found that the Decree was not prepared in accordance with the provisions of Or. 20, R. 6, C. P. C. as it did not show the particulars of the claim and the relief actually granted by the court and that the decreeholder should be given an opportunity to get the decree amended in accordance with the provisions of Or. 20, Rule 6, C. P. C. But he stated that this should not stand in the way of the execution proceeding and he, therefore, allowed the appeal and stated that the execution case shall proceed from the stage where it was interrupted by the dismissal of the execution by the learned Munsiff.

The learned District Judge also held that nothing would prevent the decreeholder choosing a part of the defaulting leasehold right for the satisfaction of the decree. It is against that order of the District Judge that this appeal has been filed by the appellant.

(3) I am afraid, this appeal has to be dismissed, though not for the reasons mentioned by the District Judge in his judgment in allowing the appeal before him. The decree is a simple rent decree. It is not a decree drawn up as a mortgage decree. The respondent on the strength of the rent decree got the right to proceed in execution by a sale of the leasehold right by virtue of Section 32 of the Law of Landlord and Tenant, Act 1 of 1296 T. E. When such a decree is put into execution, the executing Court cannot entertain an objection by the judgment debtor that the decree has not been drawn in accordance with the judgment and it cannot refuse execution on that ground. If there is a mistake in the decree as it stands, it is for the party affected by the mistake in the decree to apply to the Court which passed the decree to correct the mistake under Section 151 or 152, C. P. C. At best, the executing Court can only be asked to stay the execution until the mistake is corrected. If after the mistake is corrected, the executing Court finds that the corrected decree is different from the decree sought to be executed, it cannot execute the decree which suffers from the mistake. The only decree which can be executed thereafter will be the decree which has been corrected.

(4) The question whether there is a mistake in the decree as it stands is a matter which cannot be gone into by the executing Court but only by the Court which passed the decree. The fact that the executing Court and the Court which passed the decree happen to be one and the same Court, does not make it permissible

for the execution. Court to say that there is a mistake in the decree as stands and that the decree has not been drawn up in accordance with the judgment. That can be done only by the Court which passed the decree either suo motu or on an application by the party affected by the mistake in the decree. Thus the proper course for the appellant would have been not to raise the objection in the executing Court but to apply to the Court which passed the decree to make the necessary correction. As far as the executing Court is concerned it has to execute the decree as it stands if it is executable.

Reading the decree as it stands and Section 32 of Act 1 of 1296 T. E. it cannot be said that the decree was not executable. Hence the executing Court was bound to execute the decree. On this reasoning it will be seen that the objection raised by the judgmentdebtor in the executing Court was not one which ought to have been "one into in execution under Section 47, C. P. C. The learned District Judge was, therefore, right in "directing that the ; caution shall proceed. I need only say that if either the decreeholder or the judgmentdebtor applies for amendment of the decree to the Court which passed the decree and the decree is amended, then it is only the amended decree which can be put into execution and not the decree as it stood before the amendment. In such an application for amendment the appellant will be entitled to point out that the decree as it stands has not been drawn up in accordance with the judgment.

(5) Thus this appeal has to fail, but not for the reasons stated by the District Judge. Under the circumstances, the parties are directed to bear their own costs of this! appeal.

EF/R.G.D. Appeal dismissed.