

(1960) 02 AP CK 0010
In the Andhra Pradesh High Court
Case No : A.A.O. No. 96 of 1957

Bethia Venkanna

APPELLANT

Vs

Sait Chunilal Moolchand Registered Firm, Kakinada by
Managing Partner, Chunilal

RESPONDENT

Date of Decision : 29-02-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11, Order 21 Rule 21, Order 21 Rule 30

Citation : AIR 1961 AP 63

Hon'ble Judges : Satyanarayana Raju, J; Anantanarayana Ayyar, J

Bench : Division Bench

Advocate : N.V.B. Shankarrao, for Row, Choudary and M.V. Nagaramayya, for the Appellant; N.V. Suryanarayanamurthy, for N. Bapiraju, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayana Ayyar, J.—This appeal by one of the judgment-debtors (second defendant) is directed against the order of dismissal in E. A. No. 205 of 1957 in O. S. No. 124 of 1934 on the file of the Subordinate Judge's Court, Kakinada. The respondent herein is the decree-holder (plaintiff).

2. The material facts are briefly these: A firm of Sait Chunilal Moolchand filed O. S. No. 124 of 1954 against Chundrapu Lovaraju and the present appellant on an amount due, on a settlement of accounts, towards the principal and interest. The first defendant contended in the suit that he was entitled to the benefits of Madras Act IV of 1938 and the lower court allowed that plea and restricted his liability under the decree to an amount of Rs. 14,619-13-7, while against the appellant, a decree was passed for Rs. 19,282-1-3.

In execution of the decree, the respondent filed E. P. No. 261 of 1956 against Chundrapu Lovaraju, (first defendant) for the full sum of the decree against Mm and got his properties attached and brought them to sale on 25-2-1957. While that F. P. was pending, the respondent filed a separate execution petition (E. P.

No. 42 of 1957) against the appellant for the entire amount of Rs. 19,282-1-3 and subsequent interest and cost of suit and got attached his cargo of fibre bales which had been loaded in the boats of D. S. Narayana and Co., on 17-2-1957.

Thereupon, the appellant filed E. A. No. 205 of 1957 praying that the attachment may be restricted to an amount of Rs. 5,000/- being the difference between the amount payable under the decree by the 1st defendant and the amount payable thereunder by the appellant, i.e., Rs. 19,282-1-3 minus Rs. 14,619-13-7 and that the attachment may be raised after receiving the said amount from the appellant. The respondent Sled E. A. No. 207 of 1957 with which we are not concerned here. The learned Subordinate Judge heard the E. As. together and passed a single common order dismissing E. A. No. 205 of 1957 and allowing E. A. No. 207 of 1957. The second defendant being aggrieved with the order of dismissal in E. A. No. 205 of 1957 has preferred the above appeal.

3. The simple point that arises for consideration in this appeal is as to whether simultaneous execution can proceed in two separate applications against two different judgment-debtors for the same amount due under the decree, at one and the same time?

4. At the outset it may be stated that no direct decision bearing on this point has been placed before us and arguments proceeded only on general lines of reasoning with the aid of some decisions relating to similar matter.

5. Learned counsel for the appellant contends that as an earlier E. P. No. 261 of 1956 against the first defendant for Rs. 14,000/- and odd was pending, a subsequent E. P. 42 of 1957 against the second defendant can only be for the sum which was due from the latter less what was due from the former. In other words, his grievance is that the decree-holder is anyhow going to realise the amount decreed against the first defendant by sale of the house property in that execution petition and hence, he cannot be allowed to execute the decree against the appellant for the entire amount for which a decree was passed against him.

The argument proceeds on the basis that, as regards the sum of Rs. 14,619-13-7, there cannot be two E. Ps. simultaneously pending against the two defendants. We are unable to accede to this contention. For the decree-holder is entitled under law to proceed simultaneously against the different judgment-debtors in execution of his decree and even the specific permission of the Court is not required for such a course. There is nothing in the CPC or in any other law which lays down positively that several applications for execution of a decree cannot be filed simultaneously.

Under Order 21, Rule 11(2) (c), C. P. C., the decree-holder has to mention in an E. P. only "whether any, and (if any), what payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree" and not the amount for which he has filed any E. P. which is pending. Under Order 21, Rule 11(2)(f), C. P. C., every application for execution of a decree should state whether any and (if any) what, previous applications have

been made for the execution of the decree, the dates of such applications and their results.

Certainly this provision does not bar simultaneous executions. Order 21, R. 30, C. P. C., deals with simultaneous execution of a decree in several ways. This provides for the execution of a decree for the payment of money by detention of the judgment-debtor or by the attachment and sale of his property or by both. Even these two modes of execution are mentioned as alternative to other reliefs which were available to the decree-holder and it is for the latter to choose and decide. Rule 21 is general in its terms and it contemplates that the execution of a decree against the person and property of the judgment-debtor can proceed simultaneously. In fact, its implication is that in the absence of a specific provision, the Court may not have any discretion to refuse the simultaneous execution.

6. In *Om Prakash Vs. Sm. Tahera Begam and Others*, , it was held that unless a right to apply for execution of the decree in any of the modes permissible by law is definitely restricted, a bar to such a legal right should not be interred, for it should be fairly laid down by a statute. That case related to simultaneous execution against the same person by arrest in one petition and by proceeding against the property in the other petition. Applying the principle stated in this decision, it has to be seen whether there is any definite bar to simultaneous execution, as contended in the present case.

7. In our judgment, a decree-holder can in law file two execution petitions when it is clear, that the execution in each petition is only for the decree amount due from the defendants concerned in that petition. It is not disputed that the full amount of decree is due from each of them -- as in the present case, when E. P. No. 42 of 1957 was filed against the second defendant, obviously the full amount of Rs. 19,282-12-3 with subsequent interest and costs was due on that decree from the second defendant and the full amount of Rs. 14,619-13-7 with interest and costs was due from the first defendant.

There does not appear to be any reason why in filing E. P. No. 42 of 1957, the decree-holder should exclude, by deducting from the decree amount due from the second defendant, the decree amount which was still due from the first defendant which had not been collected though attempt was being made by the decree-holder to collect the latter amount from the first defendant in the pending E. P. No. 251 of 1956. The position would be different if any amount was collected from the first defendant in E. P. No. 261 of 1956 even prior to the decree-holder filing E. P. No 42 of 1957.

But we are not here concerned with such a contingency. We do not see any logic or force in the contention advanced by the learned counsel for the appellant that the decree-holder should behave in E. P. 42 of 1957 as if he had collected the entire amount due from the first defendant in E. P. No. 261 of 1956. It cannot be pretended for a moment that every Execution Petition filed against every

judgment-debtor succeeds cent per cent and thereby results in the realisation of the entire amount due under the decree.

There is many a slip between the filing and the closing of an execution petition and a decree-holder has ordinarily to face the chance of an execution petition not being successful in full. He has to take a practical view of the matter, realise the undeniable fact that he may meet a stiff contest in that petition and that the amount of effort, ingenuity and tactics which are put forward by the judgment-debtors in that petition can be of large magnitude and can deprive him of realisation of the decree in full or in part.

It is only quite common that not only in suits but also in execution petitions all possible lines of fact and law are explored by parties concerned to gain success for themselves at the cost of the opposite party. Consequently, if the law were to force a decree-holder to treat an execution petition which he has filed for a certain amount as equivalent to having realised the amount, it would be like forcing him to count the chickens before they are hatched. We find that the contentions raised on behalf of the appellant are untenable and agree with the conclusion reached by the lower Court.

8. In the result, the appeal fails and it is accordingly dismissed with costs.