

(1959) 10 AHC CK 0008
In the Allahabad High Court
Case No : Ex. Second Appeal No. 331 of 1954

Bhagwati Mahraj

APPELLANT

Vs

Shambhu Nath

RESPONDENT

Date of Decision : 20-10-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1960 All 562

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : Nafees Ahmad Kazmi, for the Appellant; R.B. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This second appeal raises the question whether the agreement between the judgment-debtor and the decree-holder under which the decree-holder foregoes his right to execute the decree in consideration of the judgment-debtor's foregoing his right to appeal against the decree is a matter for investigation by the execution court u/s 47 of the Code of Civil Procedure. The appellant is the judgment-debtor. When the decree-holder applied for execution of the decree he raised two objections. First, he Contended that the decree-holder was not entitled to execute the decree as he had agreed not to do so provided the judgment-debtor did not appeal against the degree. Secondly, he objected to the attachment and sale of certain items of his property for which he claimed exemption under the category of cooking vessels and weaving apparels.

The first objection was rejected by the execution court on the ground that it was "absurd". The second objection was partly allowed and 28 items of articles were held not liable for attachment and sale. On appeal by the judgment-debtor the learned Additional Civil Judge, Sultanpur, confirmed the decision of the execution court on both the points. It was contended before him that the judgment-debtor should have been allowed to lead evidence to prove the agreement not to

execute the decree but the appellate court took the view that this agreement was in the nature of an adjustment of the decree, and could not, unless certified by the court under Order XXI Rule 2, C. P. C. be permitted to be set up u/s 47, C. P. C. Accordingly he dismissed the appeal. Aggrieved by this decision the judgment-debtor, has now come to this Court in Second Appeal.

2. After hearing learned counsel for both the parties I am of the opinion that the decision of the courts below is erroneous and is based upon a misconception of the nature of the agreement alleged by the judgment-debtor. He was not claiming that the decree had been adjusted or satisfied. He or his counsel may have used the word "adjustment" but it was the duty of the court to ascertain the nature of the agreement. Its terms have been described by the execution court thus:

"..... after the passing of decree the J. D. applicant was going to file an appeal but the appeal was not filed on account of the D. H.'s promise that he would not execute his decree....."

A promise by the decree-holder not to execute an appealable decree if the judgment-debtor agrees not to file an appeal against it is a compromise of a dispute and not an arrangement resulting in the satisfaction or the extinguishment of the decree. The decree remains in tact even after the agreement, which is merely a promise by the decree-holder not to execute the decree. But the promise is enforceable in law because it is supported by consideration. The judgment-debtor had the right of appeal which he surrendered in return for the decree-holder's promise not to execute the decree. Under such a compromise, each party avoids the hazards of litigation. The judgment-debtor gave up his chance of victory in the appeal and the decree-holder avoided the risk of having to pay costs of a successful appeal. In any litigation, both parties face the hazards of litigation and if to avoid this, they make an agreement under which one gives up his right of appeal and the other his right to enforce the appealable decree, the compromise is enforceable under the law.

3. The question before me is whether a judgment-debtor can set up such an agreement as a bar to execution or has to file a separate suit restraining the decree-holder from executing the decree in breach of the contract. The words of Section 47, C. P. C. are, in my opinion, wide enough to include an agreement of this kind. It provides that

"all questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit."

The Privy Council in AIR 1939 80 (Privy Council) had occasion to interpret the scope of the powers of the execution Court u/s 47, C. P. C. They observed

"the Code contains no general restriction of the parties" liberty of contract with" reference to their rights and obligations under the decree and that if they do contract upon terms which have reference to and affect the execution, discharge or satisfaction of the decree, the provisions of Section 47 involve that questions relating to such terms may fall to be determined by the executing Court....."

4. The agreement set up by the judgment-debtor in this case did not have the effect of satisfying or discharging the decree, which was left unsatisfied, but the decree-holder surrendered his right to execute it in consideration of the judgment-debtor giving up his right of appeal. The decree could still be executed under certain circumstances. If the judgment-debtor had violated the agreement and filed an appeal the decree-holder would have been released from his promise and could have executed the decree. Thus the appellant did not allege that the decree had been satisfied but that it could not be executed. The executing Court had the power, in view of the wide provisions of Section 47, to decide this question.

5. The decree of the Courts below lay in regarding the agreement as one of the adjustments of the decree. There was no question of adjustment in this case as the judgment-debtor was not claiming that he had done anything which could be regarded as satisfaction or extinguishment of the decree. He simply alleged that the parties had compromised their dispute and the decree-holder had agreed not to execute his decree.

6. Learned counsel for the respondent contended that the appellant's story of an agreement was rejected by the Courts below, but this is contradicted by both the judgments. The trial Court has summarily rejected the ground as "absurd" and the lower appellate Court rejected the appellant's contention that he should have been allowed to lead evidence to prove the agreement.

7. For these reasons I allow the appeal, and remand the case to the execution Court with a direction that it shall give an opportunity to the judgment-debtor to lead evidence in support of, his allegation that the parties made an agreement. The decree-holder too will have an opportunity of leading evidence in support of his case, whatever it may be. The judgment-debtor shall have his costs of this appeal as well as of the appeal before the lower appellate Court. Costs before the trial Court shall be within the discretion of that Court.

8. In my opinion this is not a fit case for special appeal. Leave to appeal is refused.