

(1991) 12 MAD CK 0021
In the Madras High Court

Canara Bank

APPELLANT

Vs

Asha Engineering and Company and Another

RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 14

Citation : (1992) 1 MLJ 513

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Judgement

Venkataswami, J.—An interesting question arises out of the order passed by the learned Subordinate Judge, Kumbakonam in E.P. No. 22

of 1984 in O.S. No. 143 of 1982.

2. The question is, whether a money decree containing a charge over the suit properties (movables) of the due realisation of the amount decreed

can be put into execution straightaway, or as decided by the learned Subordinate Judge, the decree cannot be executed as no preliminary decree

had been passed giving time for the defendants.

3. Briefly stated, the facts are the following: The petitioner herein obtained a decree against the respondents by filing a suit (O.S. No. 143 of 1982)

on two promissory notes executed by the respondents, promising to repay the principal with interest at the rate stipulated therein. It appears, the

respondents admitted the suit claim, and the court passed the decree on 4.11.1982 as follows:

(1) That the defendants do pay to the plaintiff on or before 4.5.1983 the sum of Rs. 41,327-73 p. with interest on Rs. 25,445-10 p. at 13-5% per

annum and on Rs. 12,769-86 p. at 14% per annum from the date of plaint till

realisation.

(2) That there be charge over the suit properties for due realisation of the amount decreed.

(3) And that the defendants do also pay to the said plaintiff the sum of Rs. 3,643-50 p. being the costs of the suit."" (schedules containing list of machinery omitted)

When this decree was put into execution by the petitioner the respondents resisted the petition contending inter alia that the decree is not

executable without a final decree. The Court below, purporting to follow a judgment of this Court in Vuddagiri Ammanna v. Gada Subbayya 69

M.L.J. 854 held that the decree was not executable. Aggrieved by the decision of the executing court, the present civil revision petition is filed.

4. Mr. K.Srinivasan, learned Counsel appearing for the petitioner, submitted that the decision in Vuddagiri Ammanna v. Gada Subbayya 69

M.L.J. 854, will not apply to the facts of this case. On the other hand, the judgment in RamaswamiNaidu v. Subbaraya Thevar 49 M.L.J. 490, is

directly on point.

5. Mr. B.Kumar, learned Counsel appearing for the respondent, contending contra, submitted that the court below was right in following the

decision reported in Vuddagiri Ammanna v. Gada Subbayya 69 M.L.J. 854.

6. In Ramaswami Naidu v. Subbaraya Thevar 49 M.L.J. 490 the head-note brings out the ratio as well as the facts of that case, and the same is

set out below:

Where a decree was not a decree for sale at all but one for payment of money and declared that the plaintiff had a charge on the scheduled

property for unpaid purchase money, due to him in connection with a sale-deed executed in favour of defendants, in such case the decree-holder

could not bring the property to sale without getting a preliminary decree for sale under Order 34, Rule 14.

7. In Ramaswami Naidu v. Subbaraya Thevar 49 M.L.J. 490, a Division Bench of this Court has taken the following view:

The fact that in a suit for money a charge has been created by the decree does not convert the suit into a mortgage suit and make the provisions of

Order 34 of C.P.C. applicable. There can be no question of a preliminary decree and a final decree in such a case.

8. In A.C. Dastoor v. H.A. Kandawalla I.L.R (1933) Cal 1467 wherein a charge on movables was created, the court while holding that separate

suit for enforcing the charge is unnecessary, observed as follows:

The present suit has been brought for the purpose of enforcing the charge created by the second term in the terms of settlement. The defendant

maintains that the suit is unnecessary, and that the plaintiff could have obtained all the relief to which he is entitled by executing the consent decree.

I am of opinion that the defendant's contention is correct. It is not uncommon for suits to be brought to enforce a charge upon immovable property

created by a decree. The reason for this is that, owing to the provisions of Order 34, Rule 14, the person, in whose favour the decree creates a

charge, is precluded from enforcing it by execution, unless the decree specifically makes provision to the contrary. I do not think that the rule

applies to the case before me. It is not accurate to say that, in the former suit, the plaintiff ""obtained a decree for payment of. money in ""satisfaction

of a claim arising under a mortgage."" The whole of the order is in fact inapplicable to the circumstances of the present case, since it is explicitly

concerned with suits relating to mortgages of immovable property.

In our case, the charge was created under the decree over movable property and not immovable property. Further, the respondents admitted the

liability and on that basis, the decree was passed. The ratio laid down in Vuddagiri Ammanna v. Gada Subbavva 69 M.L.J. 854 relates to

immovable property, and the ratio laid down in Ramaswami Naidu v. Subbaraya Thevar 49 M.L.J. 490 though related to immovable property,

directly helps the petitioner herein. I therefore, hold that the decision in Vuddaigiri Ammanna v. Gada Subbavva 69 M.L.J. 854, is distinguishable

on facts, and, on the facts of this case, the decree is executable, and the view taken by the court below in the light of the ratio laid down in

Ramaswami Naidu v. Subbaraya Thevar 49 M.L.J. 490 and A.C.Dastoor v. H.A. Kandawalla I.L.R (1933) Cal 1467, cannot be sustained.

9. In the result, the civil revision petition is allowed, and E.P. No. 22 of 1984 in O.S. No. 143 of 1982 is restored to the file of the executing court,

and the executing court is directed to proceed with the execution in accordance with law. No costs.