(1961) 02 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous A. No. 31 of 1959

Deora APPELLANT

Vs

Dhulchand RESPONDENT

Date of Decision : 08-02-1961

Acts Referred:

Citation : (1961) JLJ 1498

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : Balwant Singh, for the Appellant; Waghmare, for the Respondent

Final Decision : Allowed

Judgement

H.R. Krishnan, J.—This is an appeal by the judgment debtor in an execution case. His basic contention is that the decrees passed against him have ceased to exist, the decree passed on compromise, and incorporated in the order of the executing Court, which was sought to be executed is one including a consideration extraneous to the original decree, and as such unexecutable; the so called fresh decree being, no more than a mere agreement upon the basis of which the decree-holder can at best bring a fresh suit. The executing Court and first appellate Court have rejected, this contention, at the same time they have also refused to order to execute a registered sale-deed of a particular house mentioned in the compromise. They have directed the realisation of two older decrees plus a sum of Rs. 80 advanced by the decree-holder to the judgment-debtor on the occasion of the compromise as a simple money decree, by attachment and sale of the house in the usual manner.

2. The judgment debtor has tried to support his position, by caselaw and has urged that it should be examined on a purely legal basis without importing to his disadvantage any notion of morality or fair play.

3. The facts of the case are common grounds. As long ago as 1948, the present decree-holder respondent obtained two money decrees respectively for Rs. 373

and Rs. 210. He put them into execution with two different applications numbers respectively, 212 and 213 of 1949 and attached the house mentioned in these proceedings which was already in mortgage to one Siriniwas Balmukund for Rs. 80. About two years later, when nothing particular had emerged out of the execution cases, the parties entered into a compromise which, on their petition was accepted by the executing Court and made part of its order. It was to the following effect. After adding the inter, and costs, and a sum of Rs. 80 paid by the decree-holder to Sriniwas Balmukund on behalf of the judgment debtor for the redemption of the mortgage, the total payable was Rs. 850 (Rs. 770 on account of the decree and Rs. 80 the additional loan). The total was to be paid in four instalments. On default of any instalment the entirety would be payable; and in addition, the house that had been attached was now separately mentioned and was to be deemed to have been sold to the decree-holder by the judgment-debtor. The parties intended that because of this the new decree was to be registered but it was not registered. This need not be discussed any further, as the lower Courts have turned down the decree holder''s prayer that the judgment-debtor should be directed to execute a sale-deed.

4. As the judgment-debtor who entered into this compromise-arrangement, did not pay the instalments, the decree-holder applied to the Court to execute the decree by issuing the direction already noted, and, if it was not possible, by realising the total amount of Rs. 850, by attachment and sale of the very house, in the usual manner (not because it had been mentioned in the compromise petition) but because it happened to be the property of the judgment-debtor. Now the latter objected that it was a new agreement unconnected with the old decrees, and in any case it included a fresh loan and as such, even though the compromise had been filed and accepted by the Court, the decree-holder would have to bring a fresh suit and get a fresh decree. This was opposed by the decree-holder and the Courts have found for him. Authorities cited on the side of the judgment-debtor are AIR 1937 256 (Privy Council) and Bimala Bala Devi Vs. Batakrishna Das Ghose, . Against these, the decree-holder had placed reliance on AIR 1939 80 (Privy Council) and AIR 1948 35 (Nagpur) , both considered by the first appellate Court, and the more recent rulings reported in Ramnath Vs. Ramnath (1960 JLJ 639) and Kalyandas Vs, Gangabai (1961 JLJ 47). Broadly speaking the principles laid down in these are reconcilable and were properly applied to the circumstances of the respective cases. There is an apparent only apparent difference in view point between the two last judgments as to whether the rule of the Court would justify the realization in the same execution of the additional loan paid at the time of the compromise and incorporated in the new decree.

5. In 1937 PC 256 an outsider to the orginal mortgage decree entered into an arrangement with the parties, the details of which are unnecessary for our present purpose, but which included various new item that were not connected in any manner with the original decree. Thus, he was not an assignee, pure and simple of thedecree under execution, but a new contracting party to a tripartiee

agree- ment. Besides,-this was all outside the Court and there was no rule of the Court accepting the arrangement. So, when he came to execute the new agreement, which he described as decree, it was found that he did not stand in the shoes of the decree-holder. but was claiming through a further agreement unconnected with the decree. Accordingly, he had to bring a fresh suit. On the other hand, in 1939 PC 80, there was a variation, no doubt, but it was intended to govern the liability of the judgment-debtor and related to the time and manner of enforcement. In fact, the passage quoted by the first appellate Court, brings out the distinction quite clearly. An agreement of this nature comes u/s 47, but an agreement bringing into existence a liability extraneous to the suit in which the decree was passed, would be an attempt to substitute a new decree, therefore, not coming u/s 47 and not executable, until a new decree is obtained in a proper form. The Additional sum of Rs. 80/- can be described as extraneous matter intended not merely to enforce the execution of the older decree in a particular manner. The agreement regarding the automatic sale of the house can also be so described but we are no more concerned with it. At all events there was no difficulty about Rs 770/-. The judgment-debtor has relied upon 1957 Calcutta 308, but it was clearly a case of a fresh tenancy calling for a fresh suit. AIR 1948 35 (Nagpur) supports the decree-holder and is besides, based on pure common sense. I am unable to accept the agrument that it supports the judgment-debtor.

6. The recent rulings already mentioned generally follow 1948 Nag. In the earlier of them that is, 1960 JLJ 639 it is clearly provided that the additional consideration, which in that case was a fresh cash loan of Rs. 200/- paid during the stage of execution was extraneous and could be realised only after a separate suit. In 1961 JLJ 47 the additional consideration, while no doubt, outside the scope of the suit, was, before the decree waa passed, included in it as part of the compromise and accepted by the defendant, who did not challenge it in appeal. So it was held, that even this extranaous consideration could be realised along with the subject-matter of the suit, in the same execution. The combined effect is that the extraneous material introduced into the decree, by the Court hearing the suit, will become part of it, unless challenged at that stage- The judgment-debtor cannot at a later stage challenge it when the party seeks to execute it. But, if the extraneous consideration is given during execution it cannot be added on to the decree and realised as part of it. However, the original consideration of the decree can be realised in the execution, leaving it to the party concerned to bring a suit in regard to the extraneous consideration.

7. The result is that the decree-holder can in this execution itself realise Rs 770/- (seven hundred and seventy rupees). For the fresh loan of Rs. 80/-, he shall have to bring a fresh suit.

8. The appeal by the judgment-debtor therefore fails for the most part but is allowed in respect of Rs 80- (eighty rupees). Having lost over the much larger part of the case he shall pay costs and pleaders fee according to rules throughout

to the decree-holder.

