

(1963) 02 KL CK 0019
In the High Court Of Kerala
Case No : Second Appeal No. 1197 of 1959

Devaru Vasudevaru

APPELLANT

Vs

Raman Pillai Neelakanta Pillai and Another
 Raman
Pillai Neelakanta Pillai and Another Vs Devaru Vasudevaru

RESPONDENT

Date of Decision : 14-02-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 47
Evidence Act, 1872 — Section 44

Citation : AIR 1963 Ker 217

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : T.N. Subramonya Iyer, for the Appellant; T.K. Narayana Pillai, for the Respondent

Final Decision : Allowed

Judgement

M. Madhavan Nair, J.—This appeal has arisen in a suit for setting aside a decree and for consequential avoidance of the execution proceedings that followed it. For arrears of michavaram due for the same period the defendant had Instituted two suits against the 2nd plaintiff on 19-5-1110 which were registered as O. S. Nos. 1461 and 1538 on the file of the Munsif, Kottarakara. The plaint in O. S. No. 1461 is Ext. E, and the decree thereon dated 14-3-1111 is Ext. H. The plaint in O. S. No. 1538 is Ext. D, and the decree thereon dated 21-12-1111 is Ext. G. On 20-3-1115 the decree-holder executed a receipt, Ext. C, acknowledging satisfaction of the first decree, Ext. H. He executed the later decree in O. S. No. 1538, and purchased the property in court-sale on 13-8-1124, confirmed on 3-10-1125. When delivery of possession was sought, the 1st plaintiff, who in the meanwhile had purchased the property from the 2nd-plaintiff, resisted but was overruled by the Appellate Judge by the order Ext. 1 dated 25th October 1951. The plaintiffs have thereupon instituted this suit to set aside the decree in O. S. No. 1538 as having been vitiated by mistake or fraud and for consequential reliefs.

The defendant contended that on 19-5-1110 he had to institute a large number of suits on arrears of michavaram due from several tenants, that it was by a mistake that two suits came to be filed on the same cause of action against the 2nd plaintiff, and that when the mistake was brought to Ms notice after both the suits had been decreed, he had given a receipt (Ext. C) in discharge of the decree in the first case, keeping the other for execution on non- payment of the dues. The Munsif held, as the claim in O. S. No. 1538 was covered by O. S. No. 1461:

"It has to be presumed that O. S. No. 1538 of 1110 is filed fraudulently and without any bona fides and the defendant is not competent to execute the said decree after the decree in O. S. No. 1461 of 1110 is satisfied by the execution of Ext. C. So the decree and execution proceedings in O. S. No. 1538 of 1110 are fraudulent, and hence the said decree and execution proceedings in O. S. No. 1538 of 1110 are liable to be set aside in the result plaintiff is given a decree in terms of plaint with costs."

On appeal the Additional District Judge considered only the question if the suit was barred by Section 47, C. P. C. and field;

"Section 47, C. P. C. can be no bar to plaintiff seeking relief on the ground of mistake in a fresh suit. His real objection is not that the decree in O. S. No. 1538 of 1110 has been discharged by payment but that it is inexecutable by reason of the passing of earlier decree which alone could be a valid and effective decree."

and therefore dismissed the appeal with costs. Hence this second appeal by the defendant.

2. it may at once be said that the view of the Additional District Judge that when there are two decrees on the same matter, the first one is the valid and effective decree is incorrect. When on the same matter two decrees have come to be passed "inter partes", the later decrees must be deemed to have superseded the earlier one and therefore the effective decree is the later one, and not the earlier. See *Raman v. Narayanan* 1957 Ker LJ 197 . No argument is advanced before me on Section 47, C. P. C. which alone was the subject of consideration in the Court below, nor on fraud as a ground of relief as the case does not come within the limits laid in *Papavinasom Subrahmoniam Vs. Daivani Nagaramma and Others*, .

3. Counsel for the plaintiffs, supporting the decree of the Courts below, submitted that a clear mistake in the cause of action, persisting in the decree passed thereon, is sufficient ground to invalidate the decree. He relied on *Jayanthi Rudrayya Vs. Jayanthi Subbarayappa and Others*, and *Macha Koundan v. Kottora Koundan* AIR 1936 Mad 50 to contend that the Court has jurisdiction to give relief to parties affected by mistakes in adjudications. Those two decisions related to suits instituted by stranger auction-purchasers for refund of purchase money, paid by them for Court sales which conveyed to them no interest at all, as the judgment-debtors had no saleable interest in the properties sold. It is not disputed that, if the judgment-debtor had any little interest in the property sold,

the sale would be binding on the auction purchaser and the latter would not be entitled to return of the purchase money or any portion thereof, and that it is only in case the judgment-debtor had no saleable interest at all that a claim for refund would lie. If mistake was the ground for relief, a sale of property in absolute right must be liable to be set aside if it is found Incompetent to convey such absolute right, but a nominal interest only. The consistent view of the precedents is that an auction purchaser, who paid a large sum for a Court purchase of property in absolute right, will not have any relief if it ultimately turned out that the judgment-debtor had only a nominal right, say, a mortgage for a very low amount. It is then clear that the ground of relief in such cases is only the total failure of consideration, and not mistake.

In *Sarab Sukh v. Prem Datt* AIR 1937 Lah 465, where the decree amount was collected from the judgment-debtor, once by an assignee of the decree-holder, and again by the decree-holder himself, who challenged the validity of the assignment, it was held that the judgment-debtor can sue for refund of the amount paid to the assignee of the decree-holder as "the judgment-debtor cannot be made to pay the same sum twice over". The facts of that case bear little comparison with those of the present case. It is not the second execution of the same decree that is canvassed here, but the passing of two decrees on the same cause of action against the same person. The law that applies to orders in execution, is not on a par with the law applicable to judgments and decrees.

Certain passages were cited from Halsbury's Laws of England, 3rd Edn., Vol. 14, page 481, and Vol. 26, page 892 where mistake as a ground for relief has been discussed at length; but nowhere in those passages is mentioned, that a decree of a Court can be challenged in another action, on the ground of mistake in its adjudication. Counsel read page 533 of Volume 14 of Halsbury's Laws of England to impress that equity would not allow a statute to be made an Instrument of fraud. Apart from the inapplicability of that proposition in India, it is not of the ground of fraud, but on the ground of mistake, that relief is sought in this case. None of the citations made from Halsbury's Laws of England is therefore of any assistance in this case.

4. Section 44 of the Evidence Act allows decrees and judgments to be challenged in collateral proceedings only on grounds of fraud or collusion in obtaining them, or incompetency of the Court which delivered them. Mistake as such does not find mention as a ground therefor. One of the maxims in statutory interpretation is "expressio unius est exclusio alterius" (the express mention of one thing Implies the exclusion of another.) When incompetency, fraud and collusion have alone been mentioned as grounds for avoidance of decrees, the implication is that no other ground is available therefor. Mistake must therefore be ruled out as a ground for relief against adjudications in civil decrees. In *Papavinasom Subrahmoniam Vs. Daivani Nagaramma and Others*, , I have pointed out:

"A matter decided is decided once for all That the claim urged by the defendant was a false one or that the defendant had secured the decree by

letting in false or perjured evidence, even if true, would not amount to a fraud of the kind that would nullify the decree in the suit. The falsity or truth of the claim must be deemed to have been adjudicated by the Court when it decreed the claim."

The basis for the above dictum is the fundamental assumption in jurisprudence that every decree represents the truth of facts and the fundamental rule in administration of justice that a decree, unless set aside by one of the processes sanctioned by law binds the parties beyond collateral challenge. It must then follow that the Courts below were not right in holding the decree, Ext. G, invalid on the ground of mistake involved therein. Such mistakes can be availed only in a direct appeal or review and not in collateral actions.

In the result, the second appeal succeeds and the suit is held incompetent and dismissed. in the peculiar circum stances of this case, the parties shall bear their respective costs throughout.