
(1981) 02 AHC CK 0051
In the Allahabad High Court
Case No : Second Appeal No. 618 of 1974

Kailash Nath Khandelwal and others

APPELLANT

Vs

Vishnu Saran and others

RESPONDENT

Date of Decision : 11-02-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1981) 02 AHC CK 0051

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

Final Decision : Allowed

Judgement

S. J. Hyder, J.

This is a judgmentdebtor's second appeal. He shall hereinafter be referred to as appellant. Decree holder who is respondent in the second appeal shall be referred to as respondent.

The controversy between the parties lies in a narrow ambit. The respondents had obtained a decree for mandatory injunction and ancillary relief's in O. S. No. 529 of 1979. They applied for the execution of the decree and an order was issued to the Court Amin to give effect to the terms of the decree. It appears that the Amin purported to comply with the terms of the decreed and allegedly did what was necessary to be done in pursuance of the satisfaction of the decree. The Amin is said to have executed the decree on 29/11/1972 and submitted his report to the executing Court. The appellants then filed objections under Section 47 of the C. P. C., as it then stood, on various grounds. The executing Court by its order dated December 13, 1972 rejected the objection on the ground that as the decree stood fully satisfied the objection was not legally maintainable. By the same order the execution Court directed that the execution shall be struck off in full satisfaction. The appellants preferred an appeal against the order of the execution Court dated December 13, 1972. The Additional Civil Judge, Bareilly by his judgment and decree dated October 12, 1973 concurred in the view taken by the execution Court and dismissed the appeal. It is in these circumstances that

the appellants have approached this Court in second Appeal.

Learned counsel appearing for the appellants has strongly contended that the view of law taken by the two Courts below is erroneous and although the decree might have been allegedly satisfied the only remedy of the appellants was to invoke the jurisdiction of the execution Court under Section 47 C. P. C. to ventilate their grievance concerning the execution, discharge or satisfaction of the decree. He submitted that a suit concerning the said grievance is barred by the very terms of Section 47 C. P. C. I find considerable force in the submission of the learned counsel.

In order to appreciate the submission of the learned counsel. Section 47 C. P. C. may be read;

"Questions to be Determined by Court Executing Decree 47. (1) 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.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional Court fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section be determined by the Court.

Explanation. For the purposes of this section, a plaintiff whose suit has been dismissed, a defendant against whom suit has been dismissed and a purchaser at a sale in execution of the decree are parties to the suit."

Now a bare reading of the section discloses 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 on of the decree shall be determined by the Court executing the decree, and not by a separate suit. Institution of a separate suit in relation to matters which can be dealt with by having recourse to Section 47 C. P. C. is expressly barred. The law thus enacted is mandatory and cannot be circumvented in any manner whatsoever. It is further significant to note that Section 47 C. P. C. does not state at what stage recourse can be had to its provisions. The view of the two Courts below that the appellants can seek the aid of the provisions of Section 47 C. P. C, only before the alleged satisfaction of the decree appears to be wholly unjustified and it implies a restriction which cannot be inferred from the terms of Section 47 C. P. C.

The matter may be looked into from another stand point. According to Section 47 C. P. C. as it stood before its amendment in 1976 the execution Court had the power to treat an objection filed under Section 47 as a plaint and proceedings

consequent on the said objection as proceedings in suit itself. The execution Court was, therefore not justified in dismissing the objection of the appellant out of hand on the ground that the Amin had reported that the decree had been fully satisfied.

It is also to be borne in mind that the power to execute decree is vested in the Court. The Amin acts as an agent of the Court in pursuance of the execution of the decree. It would be wholly unreasonable to treat the report of the Amin as final word about the execution of the decree. There may be a case where the duty entrusted to an Amin may not be discharged by him correctly. The execution made by him may be either deficient or excessive. All these questions will ultimately have to be determined by the Court executing the decree on an objection preferred to it by one of the parties to the decree or their legal representatives in accordance with the provisions of law indicated in Section 47 C. P. C.

The view which I am taking, finds support from the decision in the case of *M. P. Srivastava v. Mrs. Veena* A.I.R. 1967 S.C. 1193 Shah J. speaking for the Court in that case observed;

"But there is no warrant for the argument that the expression "Court executing the decree" is used in Section 47 C. P. C. means a Court which is seized of an application for execution of decree at the instance of the decree holder. Section 47 enacts the salutary rule that all questions relating to execution, discharge or satisfaction of the decree shall be determined not by a separate suit but in execution of the decree."

In the said case it was further observed by the Supreme Court that the questions relating to execution, discharge or satisfaction of the decree might be raised by the decree holder, or by the judgment debtor, as the case may be, in the execution department and that the pendency of application for execution by the decree holder is not the condition precedent for the exercise of the powers under Section 47 C. P. C. It follows that if an application for execution by the decree holder is pending and the Amin has reported that he has executed the decree in terms thereof and one of the parties filed an objection under Section 47 C. P. C. the said objection shall have to be decided in the execution department. The view of law taken by the two Courts below in the instant case is patently erroneous and the orders passed by them must be set aside.

The result is that this appeal succeeds and is hereby allowed, The orders passed by the two Courts below are set aside. The case is remanded to the execution Court with the direction that it shall decide the objections of the appellants on merits. In the circumstances of the case there shall be no order as to costs.