
(1919) 12 MAD CK 0034
In the Madras High Court

Mazumdar Ramakrishna Rao Panthulu APPELLANT
Vs
Mazumdar Balakrishna Rao Panthulu RESPONDENT

Date of Decision : 11-12-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2

Citation : 56 Ind. Cas. 289

Hon'ble Judges : Seshagiri Aiyar, J; Oldfield, J

Bench : Division Bench

Judgement

Oldfield, J.—The lower Court's conclusion as to items Nos. 2, 3, 7, 8, 9 is based on petitioner's admission in evidence and we have been shown no reason for dissent. The appeal on this point fails.

2. The remaining argument is as to Exhibit I and the question whether it constitutes an adjustment and the Court can take notice of it, if it was never certified to it, as Order XXI, rule 2 Civil Procedure Code, requires. It was a sale by petitioner to the other decree-holder, respondent, of part of the property, which was to be divided; and we have no doubt that the transfer was an adjustment of the decree. On the question whether Exhibit I should have been certified to the Court, several decisions have been quoted regarding the application of Order XXI, rule 2, to decrees, which, like the case before us, include provision for payment of money as well as for other relief. Of the two cases referred to by the lower Court, it is not clear that the decree in *Krittna Hande v. Padmanabha Hande* 21 Ind. Cas. 177 : 25 M.L.J. 442 : 14 M.L.T. 233 : (1913) M.W.N. 802 contained any provision of the former description and in *Abdul Latif Sahib v. Bothnia Bibi Ammal* 23 Ind. Cas. 530 : 15 M.L.T. 338 : (1914) M.W.N. 346 Order XXI, rule 2, is applied to all decrees, under which money is payable; and there is nothing in it to support the restriction of its application proposed by the lower Court to provisions for payment of money. That interpretation of it was in fact rejected in *Sethurama Sahib v. Srimantha Chotta Raja Sahib* 40 Ind. Cas. 820 : (1917) M.W.N. 327. In the latter case a

previous unreported decision of my own is referred to, Civil Miscellaneous Second Appeal No. 11 of 1915; but it was founded on a judgment of Sadasiva Aiyar, J., in *Kelu Nair v. Meenakshi* 21 Ind. Cas. 639 : 25 M.L.J. 586 : 14 M.L.T. 574 the principle of which he statedly reconsidered in *Sethurama Sahib v. Srimantha Chotta Raja Sahib* 40 Ind. Cas. 820 : (1917) M.W.N. 327. The recent course of decisions of this Court is strongly marked and in a matter of this nature, I should not depart from it except for far stronger reason than is available. In these circumstances, following the case last mentioned, I think that the lower Court should have applied Order XXI, rule 2, to the adjustment evidenced by Exhibit T. It is said, however, that in fact the decree, to far as the properties dealt with in Exhibit I are concerned, was adjusted at a later date by the presentation by all the parties to it of Execution Appeal No. 369 of 1913, dated 8th July 1913. That application certainly certifies satisfaction as between the present parties and their brother, the defendant in the suit. But it is not possible to say on the information before us whether it involved any satisfaction as between the preterit parties, or whether all the properties in Exhibit I being in the schedule A referred in Execution Appeal No. 369 of 1913, the divisions of schedule A properties between them still have to be effected and the decree in respect thereof remained unexecuted.

3. Again respondent a opportunity to ascertain whether Exhibit I was certified to the Court within the time allowed by Order XXI, rule 2; and in the absence of any categorical statement by the lower Court on the point, we think that he should be allowed an opportunity to show that there was such certification by production of documentary evidence regarding it.

4. We, therefore, call on the lower Court to submit findings on the issues:

1. Did Execution Appeal No. 369 of 1913 effect a valid satisfaction of the decree, so far as it related to Immovable properties, which renders it unnecessary for respondent to prove that Exhibit I was certified to the Court?

2 Was Exhibit I ever certified to the Court and, if so, were the provision of Order XXI, rule 2, complied with?

5. Fresh evidence may be taken with reference to the first issue and fresh documentary evidence with reference to the second. The finding should be submitted within six weeks after the re-opening of the lower Court after the midsummer vacation and seven days will be allowed for filing objections.

Sehsagiri Aiyar, J.

6. As regards Exhibit I, the learned District Judge was right in holding on the authority of *Kelu Nair v. Meenakshi* 21 Ind. Cas. 639 : 25 M.L.J. 586 : 14 M.L.T. 574 that the adjustment relating to the partition of the Immovable properties was not within the mischief of Order XXI, rule 2. But one of the learned Judges who decided that case, has receded from the position taken up by him, following the decision of the learned Chief Justice and Aiyar, J., and my learned brother

who followed *Kelu Nair v. Meenakshi* 21 Ind. Cas. 639 : 25 M.L.J. 586 : 14 M.L.T. 574 in C.M.S.A. No. 11 of 1915 is prepared to accept the later view.

7. If the matter were *ret integra* I would have had some hesitation in holding that the words in Order XXI, rule 2, "or the decree is otherwise adjusted in whole or in part," related to portions of a decree in respect of which " money is not payable." However, acting on the principle that there should be uniformity on a question of procedure, I follow the two later decisions, namely, *Abdul Latif Sahib v. Bathnla Bibi Aninal* 23 Ind. Cas. 530 : 15 M.L.T. 338 : (1914) M.W.N. 346 and *Sethurama Sahib v. Srimantha Chotta Raja Sahib* 40 Ind. Cas. 820 : (1917) M.W.N. 327 and hold that the present case is covered by Order XXI, rule 2, Clause (1). I agree with my learned brother in his conclusion and direction on the other points argued before us.

8. In compliance with the order contained in the above judgment the District Judge of Ganjam at Berhampore submitted the following

1. FINDINGS.--With regard to the first of the two issues referred to me, it has been admitted before me on behalf of the counter-petitioner that Execution Appeal No. 369 of 191 did not effect a satisfaction of the decree as between petitioner and counter-petitioner; and this is shown too by the terms of the petition filed in those proceedings. The settlement was between the petitioner and counter-petitioner, collectively on the one side, and the defendant Narasinga Row on the other. My reply to this issue is accordingly in the negative.

2. On the second issue, also, it is admitted (hat no documentary evidence exists to show that Exhibit I was ever certified to the Court. This issue too, therefore, I answer in the negative.

3. No costs have been incurred in this Court after remand.

4. his appeal coming on for final hearing after the return of the findings of the lower Court upon the issues referred to by this Court for trial, the Court delivered, the following

5. The appeal is allowed to the extent that the lower Court's order will be modified by insertion of a direction that the Immovable properties mentioned in Exhibit I should be divided in addition to those already specified. There will be proportionate costs here and in the lower Court.