

(1925) 11 MAD CK 0014
In the Madras High Court

Munuswami Pillai

APPELLANT

Vs

Mahdi Hussain Khan Sahib

RESPONDENT

Date of Decision : 10-11-1925

Acts Referred:

Citation : AIR 1926 Mad 516 : 94 Ind. Cas. 453 : (1926) 50 MLJ 655

Hon'ble Judges : Spencer, J

Bench : Division Bench

Judgement

Spencer, J.—The respondent brought O.S. No. 225 of 1920 under the Madras City Tenants' Protection Act to eject the appellant. u/s 9 of

that Act, the appellant applied for an order that the landlord should be directed to sell the land for a price to be fixed by the Court. The result of

the suit was that the appellant got a decree on 12th May 1922 directing the respondent to convey the land to him upon his paying Rs. 615-6-10,

being the value of land at the rate of Rs. 1,100 per ground, and that the appellant should pay the respondent his costs and past and future mesne

profits. On 10th July, 1923, in E.P. No. 249 of 1923 the respondent applied for execution by attachment and sale of the superstructure. On 18th

December, 1923, the appellant applied in C.M.P. No. 1814 of 1923 for a direction of the Court to the respondent to execute and register the

conveyance and got an order that respondent should execute a conveyance in three weeks. On 5th December, 1923 the decree was entered as

satisfied and the execution petition noted as disposed of. On 24th September, 1924, the respondent applied u/s 152 of the CPC for an

amendment of the decree by altering the amount to be paid as the price of conveyance from Rs. 615-6-10 into Rs. 756-4-0. The appellant filed a

counter affidavit alleging that the respondent was vexatiously attempting to get more money out of him by this means and delaying to attend the Registrar's Office for registration of the conveyance. The City Civil Court Judge observed that the amendment asked for was the rectification of a slip due to the mistake of a clerk and that the petitioner was not estopped from applying, and accordingly he made the order from which this appeal has been preferred.

2. Now Section 152 of the CPC permits clerical or arithmetical mistakes in judgments and decree to be corrected at any time, but it is

questionable whether a Court would be justified in making a correction which involved the payment of a larger sum of money by one party to

another, long after satisfaction had been recorded, and when nothing remained to be done and the decree had become dead. Under the old Code

of Civil Procedure, before errors in decrees were permitted by Section 152 to be corrected "at any time," and when the making of corrections was

u/s 206 made obligatory and not discretionary, the High Court of Calcutta in *Fakru-din Mahomed Ahsan v. The Official Trustee of Bengal* ILR

(1884) C. 538 held that matters, which might have been discussed¹ in the course of execution proceedings, could not be re-opened after

execution had been closed and the decree satisfied. The learned Judges observed that, if a judgment-debtor desired to show that more money had

been levied from him under the execution than was due from him under the decree, the only course open to him was to apply for a review of the

order which declared the decree to be satisfied and the execution proceedings struck off. Under the present Code, the Allahabad High Court in

Pitam Lal v. Balwant Singh (1925) 23 ALJ 518, revised an order of a Subordinate Court amending a money decree which had been completely

satisfied. Daniels, J. observed: "When a decree for money, has been finally satisfied and discharged, the Court, is *functus officio* and can no longer

entertain an application for amendment u/s 152 of the Code of Civil Procedure." In *Sheo Prasad Rai v. Dharam Sen Rai* (1918) 49 IC 948 it was

stated that "the dictum in *Fakrudin Mahomed Ahsan v. The Official Trustee of Bengal* ILR (1884) C. 538 to the effect that where a decree had

been completely executed the Court executing the decree is *functus officio* has not found complete favour in subsequent decisions." Nevertheless,

on the facts of that case, the Court dismissed the second appeal of the judgment-debtor against an order of an executing Court, confirmed by the

District Court, refusing to cancel the execution proceedings on the ground that lands not covered by the decree had been delivered.

3. I am of opinion that the ground upon which Pathambi Vs. Mytheen Bibi and Another, was disposed of, namely, that an amendment of a decree

after satisfaction has been entered up is a mere nullity unless steps are also taken at the same time to set aside the order recording satisfaction, is a

sound objection to the procedure of the Lower Court, in this case in amending its decree at the stage when the respondent applied for amendment.

I also think that this application should have been rejected on the ground that it involved a substantial alteration of the terms upon which the land

was to be conveyed.

4. It is contended that, because the lands were found to measure 1,650 sq. ft. the price necessarily had to be varied, after the rate had been fixed

at Rs. 1,100 per ground. In answer to this contention, the appellant stated in his counter-affidavit that the land measured only 1,386 sq. ft. The

Judge has not decided, in his order now appealed against, which figure is correct. He only says: "If the land is 1,650 sq. ft., the plaintiff is entitled to

Rs. 756-4-0." Moreover, the method by which the sum given in the decree was arrived at is not of consequence after the decree has been

executed without objection. If the defendant had known, before he took a conveyance for the land, that he would have to pay Rs. 150 more than

the sum ordered in the decree, it would have been open to him to have given up possession of this land and taken compensation u/s 3 of the Act

instead of getting conveyance executed by Court and registered. The plaintiff, having taken all that was due to him for costs and mesne profits, and

having allowed this petition to be entered as disposed of and the decree as satisfied cannot plead mistake and demand a larger sum as

consideration for doing that which has been done already. Section 9, Clause 3 declares that "upon a final order being passed directing the

conveyance of the land by the landlord to the tenant, the suit shall stand dismissed." The respondent's application may thus be regarded as an

attempt to re-open a closed suit, and he is estopped from putting forward a plea that the decree is wrong by his conduct in not taking the objection

earlier.

5. The appeal is therefore allowed with costs and the Lower Court's order directing an amendment of the decree is quashed.