
(1926) 02 MAD CK 0018
In the Madras High Court

Narayanaswami Naidu and Others

APPELLANT

Vs

Rangaswami Naidu add Ors.

RESPONDENT

Date of Decision : 05-02-1926

Acts Referred:

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

Citation : AIR 1926 Mad 749 : (1926) ILR (Mad) 716 : 95 Ind. Cas. 731 :
(1926) 24 LW 235 : (1926) 50 MLJ 547

Judgement

1. A. Razinamah decree was passed on 22nd October, 1914 in O.S. No. 11 of 1913 in which it was provided that in case the 1st defendant or the 4th defendant were to pay to the decree-holders Rs. 17,000 within two years the property should be reconveyed to the 1st defendant, but if default be made in such payments the decree-holders themselves should enjoy the properties with absolute rights. The plaintiff-decree-holders entered into an agreement on 19th April, 1916 with the 2nd defendant whereby they relinquished their interest in the property for Rs. 7,000. The 2nd plaintiff applied to the Lower Court for execution of the decree. The learned District Judge held that the decree had been adjusted by the arrangement of 1st April, 1916, evidenced by Exs. A and B and that the 2nd plaintiff was not entitled to execute the decree. He also held that the 2nd plaintiff released his right to the property by another document, Ex. E. dated 15th July, 1922. Against his order plaintiffs 2 to 4 have preferred this appeal.

2. The contention of Mr. Srinivasagopalachari for the appellants is that the decree was a money decree, and any adjustment out of Court not certified to the Court should not be recognised. The sole question in this case is whether the decree is a decree coming within Order 21, Rule 2,

Civil Procedure Code. The terms of the Razi decree are such that the plaintiffs could not recover Rs. 17,000 from the defendants if the latter did

not choose to pay the amount. There is no decree in favour of the plaintiffs for Rs. 17,000. What is stated in the decree is that if the 1st defendant

or the 4th defendant were to pay Rs. 17,000 to the decree-holders they should re-convey the property to the 1st defendant. It is open to the

defendants 1 and 4 not to pay the amount in which case the decree-holders will not be bound to reconvey the property. If the 1st defendant or the

4th defendant did not choose to pay the amount to the plaintiffs the decree did not empower them to realise the amount by execution. The decree

is not one "where any money" is payable under a decree and therefore does not come within the provisions of Order 21, Rule 2.

3. The next contention is that Rule 2 applies to all kinds of decrees whatever may be the nature of the relief granted and reliance is placed upon

Gharry v. Ghourya ILR (1921) 46 Bom 226. In that case the learned Chief Justice and Mr. Justice Shah held that Rule 2 applied to all kinds of

decrees. With very great respect to the learned Judges we are unable to accept this view. There is no discussion in the case of the decisions

bearing; on the question. The learned Judges contended themselves by merely saying the words, "Where any money payable under a decree of

any kind is paid out of Court, or the decree is otherwise adjusted" as justifying their view, that the words did not confine the provisions of the rule

to money decrees and that and decree was provided for. The rule says "where any money payable under a decree of any kind is paid out of

Court" i. e. where any money payable under a decree, whatever may be its nature, is paid out of Court, it has to be certified, or if the decree is

otherwise adjusted, either in whole or in part that also has to be certified. The words "the decree" can only mean the decree under which any

money is payable. The use of the definite article clearly indicates that the decree can only mean a decree where any money is payable, and the rule

means any decree under which money is payable. whether there be other reliefs or not if adjusted out of Court should be certified to the Court

within the time allowed by law. But where no money is payable under a decree as, for instance, in the case of recovery of Immovable property or

grant of injunction or any other relief in which the plaintiff is not entitled to enforce by execution payment of money, that decree does not come

within the purview of Rule 2.

4. In *Ramakrishna Rao v. Bala Krishna Rao* ILR (1919) Mad 476 it was held by Oldfield and Seshagiri Aiyar, JJ., that Order 21, Rule 2, applied

to partition decrees which provided for payment of money as well as other reliefs such as partition of Immovable property and adjustments with

regard to such property and that such adjustment could not be recognised unless certified or recorded as required by the rule. The learned Judges

considered the previous cases on the point and came to the conclusion that if money was payable under a decree, and if there were other reliefs,

any adjustment of that decree out of Court should be certified within the time prescribed and if not certified to the Court, then such an adjustment

could not be recognised.

5. We may briefly refer to the history of the rule in order to understand what it really means. u/s 206 of the Act VIII of 1859 all adjustments

whatever may be the nature of the decree, had to be certified to the Court and any adjustment not certified could not be recognised. The latter

portion of the Section 206 was in these terms: "No adjustment of decree in part or in whole shall be recognised by the Court unless, etc." In the

Act of 1877, the chapter on execution of decrees was greatly expanded and in some respects altered and Section 258 of the Code of 1882 was

practically the same as that contained in the Code of 1877. Under the Code of 1877 it was not necessary that all the adjustments of decrees,

whatever may be the nature should be certified to the Court. In *Baba Mohamad v. Webb* ILR (1881) Cal 786 , a Bench of the Calcutta High

Court held that the rule contained in Section 258 was applicable to all decrees. The learned Judges observe at page 788 referring to section 258 of

the Code of 1877 "that S. corresponds in all material respects, and carries with it the same meaning as Section 206 of the former Procedure Code

(Act VIII of 1859) which manifestly deals with the adjustment of any decree." u/s 258 of the Code of 1882 which is a verbatim copy of the

corresponding S. of the Code of 1877 it was held that it applied only to money decrees. That was the view of the Madras High Court in *Sankaran*

Nambiar v. Kanara Kurup 8 M L J 175. The learned Chief Justice and Mr. Justice Benson held that Section 258, Civil Procedure Code, referred

only to the execution of decrees under which money was payable and was not

applicable to decrees for possession of Immovable properties. The

S. was further amended in the present Code by the addition of the words of any kind" in order to reconcile the conflicting views of the different

High Courts. In Abdul Latif Sahib v. Bathula Bibi Ammal (1913) 15 M L T 338 it was held by Wallis and Ayling, JJ., that where there was a

decree for the delivery of certain Immovable property and for the payment of money it was not open to the Court to recognise any uncertified

adjustment under Order 21, Rule 2, Clause 3, Civil Procedure Code. This was followed in Sethurama Sahib v. Chotta Raja Sahib (1917) MWN

327 where Mr. Justice Sadasiva Aiyar who held in Kelu Nair v. Meenakshi (1912) 25 M T J 586 that Order 21, Rule 2, of the CPC did not

apply to the relief of possession of Immovable properties given by a decree, altered his view, and following the decision in Abdul Latif Sahib v.

Bathula Bibi Ammal (1913) 15 M L T 338 held that where the decree provided for payment of money as well as other reliefs the adjustment of

such a decree could not be recognised unless certified to the Court within the time allowed by law and observed that "the words "the decree" in

the second sentence of that rule meant a decree of any kind under which money is payable including a complex decree under which possession is

also marked, and that as regards execution of that portion also of the decree which relates to possession of immovables an uncertain adjustment

cannot be recognised.

6. From the position of Rule 2 in the present Code and from the heading and the marginal note, the intention of the legislature can be clearly

gathered. Though the headings and marginal notes should not be held to govern the clear text of a section, yet they can be taken as an indication of

what the legislature meant. Under the Code of 1859, Section 206 Was in the chapter relating to execution generally. In the Code of 1877 and in

the Code of 1882, Section 258 was in the chapter relating to execution under the heading "Mode of Execution" and in the present Code, Order

21, Rule 2 relates to execution of decrees and orders and the heading over Rule 1 is "Payment under Decree". If the contention of Mr.

Srinivasagopala chari is correct, the legislature should have said in plain terms that the adjustment of any decree out of Court should not be

recognised unless certified to the Court within the time allowed by law. That was

the clear expression in the Code of 1859 and if the legislature intended to re-enact that provision it would have done so in very simple language. The addition of the words of any kind" after the word "decree" in the second line of Order 21, Rule 2 was intended to set at rest the difference of view between the Madras High Court and the Calcutta High Court and the conflicting views as regards the meaning of Section 258 of the Code of 1882. By the addition of the words "of any kind," it cannot be said that the legislature intended that the adjustment of any decree, whatever may be the relief claimed, should be certified to the Court. We are clearly of opinion that Order 21, Rule 2 refers to a decree under which money is payable whether there are other reliefs or not and if no money is payable under a decree then Rule 2 cannot be held to apply to such a decree. The words "payable under a decree" do not mean any money which the party may, if he chooses, pay, but money which is recoverable by a party in execution against the party liable to pay it. In this case, as already observed the plaintiffs could not execute the decree against 1st and 4th defendants.

7. First plaintiff died before the date of the razi decree and plaintiffs 2 to 4 entered into the agreement evidenced by Ex. A. The recital in the document is:

As we have on this date got from you a note of bond executed in our favour for this sum of Rs. 7,000, stipulating interest at Rs. 0-6-0 per cent, per mensem, you yourself shall take the karar and all other properties and also you yourself shall take from the said properties the income including the old arrears and the new income.

8. A pro-note was executed on the same day by the 2nd defendant in favour of the plaintiffs which is Ex. B. A suit was filed in the Pudukkotta

Court for the amount due under the pro-note and was realised by the plaintiffs. The arrangement evidenced by Exs. A and B is therefore an

adjustment of the decree passed in plaintiff's favour, and such an adjustment could be pleaded as the decree does not come within the purview of

Rule 2 of Order 21. The learned Judge has correctly held that the decree was adjusted by the arrangement evidenced by Exs. A and B and the

plaintiffs therefore could not ask for execution of the decree which had already been adjusted. It is not necessary to consider in this view whether

Ex. E amounts to a release of the plaintiffs' right in the property in favour of the sons of the 2nd defendant.

9. In the result, the appeal fails and is dismissed with costs.