

(1962) 08 KAR CK 0003
In the Karnataka High Court
Case No : Second Appeal No. 672 of 1958

Patel Muddegowda and Others

APPELLANT

Vs

Gangamma and Others

RESPONDENT

Date of Decision : 20-08-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, 47
Limitation Act, 1908 — Section 174, 181

Citation : AIR 1963 Kar 79

Hon'ble Judges : Mir Iqbal Husain, J

Bench : Single Bench

Advocate : B. Venkata Rao, for the Appellant; Beligore Ramachandra Rao, for Respondents 1 and 2, for the Respondent

Judgement

Mir Iqbal Husain, J.—Gangamma and her minor daughter Chikkamma, who are respondents before this Court, filed a suit for maintenance against Patel Mudde Gowda and five others who are the appellants before this Court, and obtained a decree. The appellants filed an appeal before the Subordinate Judge, Tumkur but that appeal was not contested on its merits but a compromise was entered into between the parties. By that compromise some lands were given to respondents 1 and 2 for their maintenance. The further term of the compromise was that the appellants should construct a house, ten "ankanams" in extent on vacant site, item No. 13 of the schedule and deliver over the same to the respondents before April, 1955. Failing to so construct the house within the stipulated time, the appellants will be liable to pay a sum of Rs. 500/- to the respondents towards the cost thereof. This latter is an important term of the compromise, for the dispute between the parties centres round the fulfilment of that term. It may be noted, however, that there is no dispute regarding the former term of the compromise. The suit was decreed in terms of the said compromise.

2. The appellants filed an application u/s 47 and Order 21, Rule 2 of the CPC before the trial Court to the effect that in pursuance of the terms of the

compromise, they had constructed a house within the stipulated time and given delivery of possession thereof to the respondents. But with an ulterior motive, the respondents have not taken possession of the house and left it vacant. On the other hand, they are attempting to execute the decree. Under the circumstances, they prayed that full satisfaction of the decree be entered. The respondents in their objections stated that the house was not constructed within the stipulated time, nor was it delivered to them by the appellants. In any case, they pleaded that the structure was unfit for occupation as there were cracks in the roof and walls of the said structure and there was no ventilation.

3. The Munsiff, viz., the trial court upheld the contentions of the appellants and entered full satisfaction of the decree. Aggrieved by that order, the respondents filed an appeal in the Court of the Civil Judge, Tumkur. The learned Judge agreed with the Munsiff to this extent, that the appellants had completed the structure within the stipulated time and the same was put up in accordance with the terms of the compromise. He, however, allowed the appeal and reversed the order of the trial Court on the ground that the application of the appellants under Order 21, Rule 2, C. P. C. was barred by time. Aggrieved by that judgment the appellants have preferred this second appeal to this Court.

4. The main point for consideration is whether the non-filing of the application for recording satisfaction by the appellants within time, disentitles them to the relief sought for. It is urged by Shri Venkata Rao, the learned Advocate for the appellants, that the application of the appellants should be regarded as one falling u/s 47, C. P. C. and not under the provisions of Order 21, Rule 2 thereof. If so, it is urged that the period of limitation would not be 90 days as per Article 174 but three years as per Article 181 of the Limitation Act. The relevant portion of provisions of Order 21, Rule 2. C. P. C. runs as follows:

"Where any money payable under a decree of any kind is paid out of Court, or the decree is other wise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree and the Court shall record the same accordingly.

3. A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree"

Sri Venkata Rao urges that as no money was payable under the terms of the decree, the first part of the provisions of this Order does not apply. Neither does the application come under the second part for, it stipulates that the decree should be otherwise adjusted to the satisfaction of the decree-holder. The decree-holders, viz. the respondents in this case have not accepted the satisfaction of the decree. Only if they do so, the case of the appellants comes within the provisions of Order 21, Rule 2, C. P. C. It is further submitted that the use of the term "otherwise" is very significant. It indicates that the accord or satisfaction contemplated under this Order is not one in consonance with the terms of the

decree but one de hors its terms. Both the courts have held in this case that the appellants have conformed to the terms of the compromise decree. Hence the appellants' case falls not under the provisions of Order 21, Rule 2 but u/s 47, C. P. C. which is a comprehensive provision dealing with execution, discharge or satisfaction of the decree

5. On the other hand, it is urged by Sri Ramachandra Rao for the respondents that the very application of the appellants is made under the provisions of Order 21, Rule 2, C. P. C. and hence having so relied on its provisions, they cannot abjure the same.

6. As per the terms of the compromise decree, the structure had to be constructed and put in possession of the respondents in the month of April, 1955. Even computing the period from the end of April 1955, the application for entering satisfaction filed by the appellants on 24-10-1956 is clearly out of time as per Article 174 of the Limitation Act. The question arises whether the application of the appellants comes within the purview of Order 21, Rule 2, C. P. C. This is the only order in the CPC which specifically deals with recording of accord and satisfaction in execution proceedings. It deals with all adjustments made between the decree-holders and the judgment-debtors. The adjustment contemplated in this order must be read as ejusdem generis with the payment mentioned in the first clause. It connotes any method or mode whereby the decree is satisfied or adjusted to the satisfaction of the decree-holder. Is the said order confined, as urged by the learned counsel for the appellants to only money decrees? In my view, the first part of the order has a larger connotation and is not confined only to money decrees.

7. Reliance is placed by Shri Venkata Rao on a decision of the Madras High Court in the case of Narayanaswami Naidu and Others Vs. Rangaswami Naidu add Ors., which holds as follows:

"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." There seems to be conflict of decisions on the point. In fact, the High Courts of Bombay, Calcutta, Patna, Nagpur and Allahabad do not accept the restricted view as adumbrated in the Madras decision referred to above. In fact the Allahabad High Court in a decision in the case of Sri Ram Vs. Lekhraj, has specifically dissented from this view and held:

"There is no reason to confine the provisions of Order 21, Rule 2 to money decrees. There is no reason to distinguish between a money decree and any other kind of a decree for the purpose of recording an adjustment under Order 21, Rule 2." On the analogy of the provisions of Order 23, Rule 3, C. P. C. their Lordships held that:

"Order 21, Rule 2 of the Civil P. C. is a counter part of Order 23, Rule 3 in the execution proceedings".

8. The Calcutta view as opposed to that of the Madras High Court is well expressed in a Bench decision of Shaikh Niamat Vs. Shaikh Jalil, . (His Lordship Ghose, J. dealing with Order 21, Rule 2 has stated:

".....the provisions of Order 21, Rule 2, Civil P. C. are not confined to money decrees but refer to any decree. It seems to me that it stands to reason that the provisions of that rule should apply to every kind of decree, as Macleod, C. J. has observed in the Bombay case, that the provisions of Order 21, Rule 2 would be entirely defeated if it was permitted that an uncertified adjustment of decree should be discussed in execution proceedings. The object of this rule is that any adjustment out of Court should be brought to the notice of the Court By the judgment-debtor and decided in the presence of the decree-holder within a short period of time. To hold that this rule has no application to decrees other than decrees for payment of money would be to leave disputes with regard to adjustment of other decrees open for discussion, say, for three years after the passing of the decree and it may be for a longer period after any application for execution is made by the decree-holder. Under these circumstances I am of opinion that the rule in question is applicable to every kind of decree ..." I respectfully agree with the above observations. No reported decision of our own High Court on this point has been brought to my notice by the Advocates of either side.

9. If so, there can be no doubt that the application of the appellant comes within the purview of Order 21, Rule 2, C. P. C. to the exclusion of Section 47. Thus, it is clearly barred by time. On this ground alone the appeal is liable to be dismissed.

10. Under these circumstances I do not consider there is much force in the contention of Sri Venkata Rao, the learned Advocate for the appellant, that Section 47 is the relevant provision which applies. That section is, no doubt, very wide in its terms and in one sense all questions relating to execution, discharge or satisfaction of the decree that arises between the decree-holder and the judgment-debtor, come within its purview. Yet, that Section ought to be so interpreted as not to render redundant, the other provisions of the Code. When there is a specific provision like Order 21, Rule 2 applicable to the facts of this case, the provision u/s 47 is excluded.

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