

(1935) 02 MAD CK 0028
In the Madras High Court

Patibandla Raghupathirayadu	Vs	APPELLANT
Garapati Pichayya and Others		RESPONDENT

Date of Decision : 18-02-1935

Acts Referred:

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

Citation : AIR 1935 Mad 581 : 158 Ind. Cas. 961 : (1935) 42 LW 258 : (1935) 69 MLJ 77

Hon'ble Judges : Horace Owen Compton Beasley, J; Cornish, J

Bench : Full Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—This is an appeal from an order of the learned Subordinate Judge of Bezwada ordering full

satisfaction of a decree to be recorded. The decree-holder, the appellant here, raised the objection that the application under Order 21, Rule 2,

CPC which was, dated 17th March, 1932 was barred by limitation.

2. Shortly the facts of the case are as follows: A mortgage decree had been obtained against the respondents and on 15th April, 1931, an

arrangement was come to between the decree-holder and the judgment-debtors that, if the decree-holder got the mortgage property in Court

auction and if the sale was confirmed, the judgment-debtors within one month after the confirmation of sale would put the property in his

possession without any obstruction from anyone after removing some sheds which had recently been put up temporarily on the property and it was

agreed that the decree-holder should file a petition in Court for recording full satisfaction of the decree. If, however, the judgment-debtors failed to

deliver possession of the property or caused any obstruction or filed suits or petitions in Court, the decree-holder could take execution

proceedings to recover the entire decree debt. The decree-holder purchased the mortgage property in Court auction on the same day upon which the agreement was entered into, namely, 15th April, 1931, the sale was confirmed on 13th July, 1931 and the decree-holder took possession of the mortgage property through Court on 18th December, 1931, the temporary sheds having by then been removed. The judgment-debtors filed the application under appeal on 17th March, 1932. The decree-holder contended that he was not put in possession of the property by the judgment-debtors but that he himself got possession through Court more than one month after the confirmation of the sale. With regard to the latter allegation the learned Subordinate Judge has rightly accepted the evidence of the first petitioner in the lower Court (P.W. 1) the first respondent here - that he removed the sheds within a week after the decree-holder's purchase and informed the decree-holder of that fact and that he (the decree-holder) told him that it was better to take possession through Court and asked him to be present at the time of delivery and it is clear that he was present at the time of the delivery and attested the delivery receipt. The contention of the judgment-debtors the respondents here, therefore, was and is that limitation did not commence to run until the date when the decree-holder got possession, namely, 18th December, 1931, and that the application, under Order 21, Rule 2, Civil Procedure Code, having been filed within three months from that date was in time. Against this contention it has been argued that the present case is governed by *Mara Ramanarasu Vs. Matta Venkata Reddi (died) and Others* represented by their mother and guardian *Matta Ademma*, a decision of *Reilly and Anantakrishna Aiyar, JJ.*, where it was held that a promise to do something in future is legal consideration and there is no legal impediment in the way of a decree-holder accepting a mere promise that the judgment-debtor will do something at some future date as a legal and immediate adjustment in satisfaction of his decree and that, where the decree-holder accepts such a promise, there is a new contract amounting to a legal adjustment of the decree on the basis of which the judgment-debtor is entitled to apply to the Court to enter up satisfaction of the decree, in other words, the fact that the contract is of an executory nature does not prevent the defendant from applying to record an adjustment as soon as the contract is entered into. But *Anantakrishna Aiyar, J.*, himself gives an example of

an exception to this rule and on page 208 says:

No doubt if the contract between the parties was that it is only the actual carrying out of the terms of the contract that should be the consideration

for entering satisfaction of the decree, then, unless those terms be carried out, it may not be open to the judgment-debtor to apply to the Court

successfully to have the adjustment recorded.

3. I entirely agree with that view. Were it otherwise, it would enable a judgment-debtor to get the decree adjusted in pursuance of the agreement

and then decline to carry out at a future date one of its essential conditions, for example, in the present case to deliver possession of the property to

the decree-holder without obstruction. Once having got an adjustment of the decree he would be in a strong position. There is, however, another

point which is fatal to this appeal. The agreement itself provides that after the decree-holder has got delivery of possession he is to file a petition in

Court to enter up satisfaction. This postpones the application to record satisfaction to a future date and it is therefore impossible for the appellant

to contend that it was open to the respondents to have the decree adjusted on the date of the agreement. Time clearly commenced to run only

from the date when the appellant got possession of the property and the respondents' application was, therefore, in time. This appeal must

accordingly be dismissed with costs.

Cornish, J.

4. I agree.