

(1952) 08 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Civil Appeal No. 3 of 1951

Raja Sahib of Poonch

APPELLANT

Vs

Kirpa Ram

RESPONDENT

Date of Decision : 19-08-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148, 152

Citation : AIR 1954 J&K 23

Hon'ble Judges : S.K. Dar, J; Iqbal Ahmad, Member

Bench : Division Bench

Advocate : Suraj Rakash, for the Appellant; Madsudhan Kak, for the Respondent

Judgement

Dar, Member

1. This appeal is directed against two judgments of the High Court dated Maghar 28, 2002 & Baisakh 13, 2003, by the former of which an application for execution of the decree by the latter of which an application for amendment of the decree was rejected.
2. The appellant is the owner of a house at Panjtirthi in the City of Jammu which has been for a long time in occupation of the respondent. In an ejectment suit brought by the appellant against the respondent, the Munsiff of Jammu made a decree dated Jeth 28, 2000, under which the appellant was entitled to eject the respondent the said house subject to the payment of a of Rs. 300/- to the respondent within two months of the decree. This decree was subsequently amended by the Munsiff and the sum of Rs. 3000/- was raised to Rs.720/- to be paid within two months of the amendment dated Bhadoom 15, 2000.
3. Against the judgment and the decree of the Munsiff appeals were made both

by the appellant and by the respondent to the District Judge of Jammu who in the end dismissed the appellant's appeal and allowed the respondent's appeal in part. The operative part of the judgment of the District Judge dated Chet 8, 2000 is as follows.

For the foregoing reasons the decree awarded by the Court of first instance is amended to the limited extent that instead of Rs. 720/- as directed

by the Court of first instance, the Plaintiff will pay Rs. 928/6/- before ejecting the Defendant. Both the appeals will be considered to have been

disposed of in the light of the order made above. The parties will bear their own costs so far as this Court is concerned.

In pursuance of this judgment of the District Judge a formal decree was prepared expressing the operative part of the judgment in these words:

Gist of the order-Both the appeals are decided in this way that the amount of Rs. 720/- fixed by the trial Court be increased to Rs. 928/6/-. The

rest of the judgment is kept intact. The decree will now be like this that decree for ejectment of the house and land at Jammu Mohalla Panjirthi ...

is passed with full costs of the original Court in favour of the Plaintiff-appellant against the defendant appellant with the condition that the Plaintiff

will pay Rs. 923/6/ within two months to the Defendant and then he can get him ejected. The amount shall have to be paid before ejectment.

Parties will bear their own costs of appeal.

It is obvious that the condition of ejectment in the operative part of the judgment, and in the operative part of the decree is differently expressed.

Whereas the operative part of the judgment requires that ""appellant will pay Rs. 928/6/- before ejecting the respondent,"" the operative part of the

decree requires that ""the appellant will pay Rs. 928/6/- within two months to the respondent, and then he can get him ejected"" and this discrepancy

in the language of the judgment and of the decree has been a source of stumbling block in the way of the appellant in obtaining possession of the

house and has been a source of much unnecessary and fruitless litigation.

4. The appellant has deposited a sum of Rs. 720/- for payment to the respondent within two months of the decree of the Munsiff but the increased

amount which the appellant was required to deposit under the judgment and decree of the District Judge was not deposited within two months of

the decree but was deposited within three months of that date.

5. After making an unsuccessful application to the District Judge for extension of time to deposit the increased decretal amount u/s 148, Civil

Procedure Code, the appellant made an application for the execution of the decree to the Munsiff which application after being disallowed by him

and being allowed by the District Judge in appeal was finally rejected by the High Court in a second appeal by its judgment dated Maghar 28,

2002.

6. The appellant thereafter presented an application to the District Judge u/s 152, CPC for bringing its decree dated Chet 8, 2000, in accordance

with the judgment of the same date. This application was allowed by the District Judge but on an application for revision made by the respondent

the High Court has rejected this application by its judgment dated Baisakh 13, 2003, and the correctness of the two judgments of the High Court

are the main questions for the consideration of the Board in this appeal.

7. The High Court has expressed the view that there is no discrepancy between the judgment and the decree of the District Judge dated Chet 8,

2000 In the opinion of the High Court it is implied in the operative portion of the judgment of the District Judge that the increased sum of Rs.

928/6/- was to be paid within two months of its judgment and the decree of the District Judge only brings put expressly what was already implied

in the judgment and therefore no question arises of bringing the decree in accordance with the judgment and of amending the same. The High Court

has reached its conclusion mainly relying upon the fact that the District Judge had allowed the appeal only to a limited extent and for the rest it had

affirmed the decree of the Munsiff the necessary result of which was that the condition of payment within two months provided for in the decree of

the Munsiff was necessarily imported in the operative part of the judgment of the District Judge.

8. With all respect, it is difficult to agree with this construction placed by the High Court upon the operative part of the judgment of the District

Judge. The period of 2 months provided for by the decree of the Munsiff had expired long before the date on which the District Judge delivered his

judgment. If the District Judge wanted to give a period of two months for the payment of the increased amount he could only do so by providing it

in his judgment and making the time start from the date of his own judgment.

Now the District Judge has not only omitted to provide a period of two months for the payment of the increased amount but he has expressed the condition of payment in such a way so as to negative the implied period of two months provided for in the Munsiff's decree. The operative part of the judgment of the District Judge directs that ""the appellant will pay Rs. 928/6/- before ejecting the respondent. ""No time limit is fixed for this payment in the operative part of the judgment and in the absence of any time limit provided for by the District Judge himself, it is not permissible to import in it the time limit, taken from the decree of the Munsiff which may or may not have been present to the mind of the District Judge at the time when he framed his judgment but which he has not expressed in so many words.

9. The District Judge who wrote the judgment dated Chet 8, 2000, at a later stage when an application was made by the appellant to execute the decree interpreted his judgment as laying down no time limit for the payment of the increased amount. His successor-in-office at a further later stage when the appellant sought to bring the decree in accordance with the judgment, interpreted the judgment in the same way. The High Court considers these expressions of opinion by the two successive District Judges as irrelevant. On a question of the construction of the operative part of the judgment the real intention of the District Judge not expressed in the judgment may be irrelevant. It may also be irrelevant if the expressed intention is opposed to the real intention. But in this case the expressed intention corresponds to the real intention and in such a case, the interpretation put by the author on his own judgment cannot be wholly without value.

10. The appellant did not take the two proceedings for the execution of the decree and for its amendment simultaneously. The application for amendment of the decree was made after the application for execution of the decree was finally rejected by the High Court. It is also unfortunate that the District Judge in exercise of his appellate jurisdiction after he had interpreted the operative part of his judgment as laying down no time limit for the payment of the increased amount and that the decree was executable, did not exercise his inherent jurisdiction to amend the decree so as to bring it in conformity with the judgment. And his order directing the execution of

the decree simpliciter without amending the decree led the High

Court to set aside his order on the ground that the executing Court could not go behind the decree. Whether something could not be done by the

District Judge or by the High Court in the exercise of their inherent jurisdiction to prevent this unnecessary litigation, it is now unnecessary to

consider and in the events that have happened it is not necessary to disturb the decree of the High Court dated Maghar 28, 2002.

11. The Board will, therefore, humbly advise His Highness that this appeal be allowed and that the judgment and the decree of the High Court

dated Baisakh 13, 2003 be set aside and that the judgment and decree of the District Judge of Jammu dated Chet 9, 2002 be restored. But as this

litigation has been the result of a faulty decree prepared by the Court there will be no order of costs either here or in the Courts below.