

(1925) 01 MAD CK 0001
In the Madras High Court

Ramaswami Nayadu

APPELLANT

Vs

K.N.S. Subbaraya Thevar and Others

RESPONDENT

Date of Decision : 08-01-1925

Acts Referred:

Citation : 88 Ind. Cas. 648

Hon'ble Judges : Wallace, J;Madhavan Nair, J

Bench : Division Bench

Judgement

1. This civil miscellaneous appeal arises in connection with the execution of a razinama decree passed in O.S. No. 80 of 1918 on the file of the Court of the Subordinate Judge of Tanjore. The appellant is the first defendant in the suit. The first respondent is the assignee decree-holder and the other respondents are the remaining three defendants in O.S. No. 80 of 1918 who are the sons of the first defendant and the plaintiff the decree-holder. The compromise decree was assigned by the next friend of the plaintiff-decree-holder to the present first respondent and he presented B.P. No. 4 of 1923 praying for the recognition of the assignment and for the recovery of the amount of Rs. 58,235-12-0 by the sale of the properties as per terms of the decree. The defendants in the suit opposed the application. The Subordinate Judge passed an order recognising the assignment subject to certain conditions and also allowing the execution of the decree. It is this order that is now appealed against by the first defendant-appellant.

2. In order to understand the contentions put forward on his behalf, it is necessary to state the facts relating to the compromise decree in detail.

Original Suit No. 80 of 1918 on the file of the Court of the Subordinate Judge of

Tanjore on which the razinama decree was passed was instituted by the minor plaintiff Kamachai Pillai represented by his adoptive mother for specific performance of contract by the present appellant and his sons, defendants Nos. 1 and 4 in pursuance of the agreement dated 5th December 1915 for recovery of the amount of advance together with interest thereto, i.e., for Rs. 25,586-1-10. At that time there were two suits pending on the file of the Court of the Subordinate Judge of Tanjore in which the present parties were interested and also there was a decree in existence against the late adoptive father of the minor plaintiff passed by the Trichinopoly Sub-Court. One of these suits, viz., O.S. No. 82 of 1918 was instituted by one Natesa Pillai who had obtained an assignment benami of a promissory-note alleged to have been executed by the first defendant (the present appellant) in the name of one Chockalingam, the father of the adoptive mother and next friend of the minor plaintiff in O.S. No. 80 of 1918. Original Suit No. 83 of 1918 the other suit--was instituted by the minor plaintiff in O.S. No. 80 of 1918 for recovery of the amount due under the three othi deeds executed for Rs. 35,000 by the defendants in O.S. No. 80 of 1918 and the deceased Varadarajulu Naidu in favour of the adoptive father of the minor plaintiff and for delivery of possession in accordance with the aforesaid othi deeds and for recovery of swamibogam. The decree against the late adoptive father of the minor plaintiff was passed by the Trichinopoly Sub-Court in O.S. No. 98 of 1918 on its file. It was passed on promissory-notes which had been executed by him. Besides compromising the present suit, namely, O.S. No. 80 of 1918 it was arranged by the razinama that the minor plaintiff should cause the heirs of Natesa Pillai not to prosecute the suit O.S. No. 82 of 1918 and that he should withdraw the suit O.S. No. 83 of 1918. The defendants in consideration of the compromise of these suits agreed to pay to the plaintiff (a) Rs. 53,000 in quit of all claims and that out of the sum of Rs. 53,000 they agreed to execute in favour of the minor plaintiff a promissory-note for Rs. 3,000 with interest and out of the balance pay Palaniappa Chetty the decree-holder in O.S. No. 98 of 1918 mentioned above and thus discharge his claim against the adoptive father of the plaintiff within a specified period. It was stated in the compromise that ""if the defendants in this suit (O.S. No. 80 of 1918) make any default in

paying the said amount within, the stipulated period aforesaid the plaintiff is to proceed against the suit properties and to execute the razinama

decree that may be passed in the suit, and to sell the properties and recover the amount with costs of execution. The last paragraph of the

compromise contains the provision that the parties in this suit and in Suit No. 83 of 1918 are to bear themselves their respective costs. On these

terms O.S. No. 80 of 1918 was adjusted by the razinama, and a decree was passed in accordance therewith so far as it related to the suit.

3. The defendants in O.S. No. 80 of 1918 (the appellant and his sons respondents Nps. 2, 3 and 4) not having complied with their obligation in

accordance with the razinama decree to pay up the amount due under the decree in O.S. No. 98 of 1918, it was apprehended by the adoptive

mother of the plaintiff that the properties of the minor would be brought to sale in execution of the decree unless some arrangement was made for

assigning the razinama decree in O.S. No. 80 of 1918, and discharging the debts due to Palaniappa Chetty in O.S. No. 98 of 1918. For the

purpose of safeguarding the interest of the minor, an assignment of the razinama decree was, therefore, made in favour of the present first

respondent for a consideration of Rs. 55,000. It is not here necessary to go into details of the consideration and the obligations which the assignee-

decree-holder undertook under the assignment. As already mentioned, E.P. No. 4 of 1918 was filed by the assignee: decree-holder for

recognising the assignment and for executing the razinama decree.

4. The learned Vakil for the appellant in the course of a lengthy argument has emphasised three points for our consideration; (1) That the razinama

decree taken in its entirety is only in the nature of a preliminary decree and is incapable of execution in the absence of a final decree. (2) The

razinama was made into a decree of the Court only so far as it relates to O.S. No. 80 1918. The terms of the razinama relate to matters not

covered by O.S. No. 80 of 1918 and inasmuch as these do not fall strictly within the scope of suit as it is not possible to determine how far it

relates to the subject-matter of the suit the whole decree is incapable of execution. As regards the terms comprised in the razinama but not covered

strictly by the scope of O.S. No. 80 of 1918 no relief can be given unless the decree-holder institutes separate suits upon the agreements

contained therein and obtains decree; (3) The assignment is not bona fide and has not been made in the interest of the minor plaintiff.

5. We will now deal with these points separately; (point No. 1). It is argued that the decree passed in O.S. No. 80 of 1918 is only in the nature of

a preliminary decree and the parties should obtain a final decree before taking out execution. We cannot uphold this argument. The decree in the

present case was not passed upon a mortgage. A perusal of the plaint makes it clear that the suit is for specific performance or for damages.

Paragraph 21 (a) of the plaint containing the prayer portion runs as follows: ""The plaintiff prays for a decree directing the execution of a

usufructuary mortgage, mortgaging the under mentioned lands for Rs. 20,113 plus interest as detailed below and subject to the previous

usufructuary mortgages as undertaken in the agreement dated 5th December 1915, or, in the alternative, directing the defendants to pay the plaintiff

the under mentioned amounts with subsequent interest"". The utmost that can be said in favour of the appellant is that the suit was one for money in

which a charge has been created by the decree. This does not convert the suit into a mortgage suit and make the provisions of Order XXXIV of

the C.P.C. applicable. There was clearly no mortgage suit pending before the Court and, therefore, there can be no question of a preliminary

decree and a final decree. This argument must be overruled (Point No. 2). The argument on this point has been pressed upon us with great force,

by the learned Vakil for the appellant. It is based upon the wording of Order XXIII, Rule 3 and in essence is this; the decree is executable, if at all,

only so far as it ""relates to the suit"" and as it is not possible to discriminate between the component part of the decree and to find out how far it

relates to the subject-matter of the suit the entire decree is inexecutable; and as regards the matters comprised in the decree which do not strictly

come within the scope of the suit relief cannot be given to the plaintiff unless separate suits are instituted in enforcement of agreements. This

argument is pressed with special force with reference to O.S. No. 83 of 1918 the withdrawal of which by the plaintiff is referred to as one of the

terms of the compromise. The answer to this contention is two-fold; (a). The provisions of Order XXIII, Rule 3 do not lend any support to the

argument; and (b) the parties treated the various terms of the compromise, as essential parts of the decree and as considerations for the

compromise and acted upon the decree in that light. Order XXIII, Rule 3, runs as follows: ""Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit"". Reliance is placed on the words ""so far as it relates to the suit"" for emphasising the argument that the razinama decree which the Court has to pass can have reference only to the subject-matter of the suit and can have nothing to do with other matters which do not strictly come within the purview of it. The decisions of this Court which have been brought to our notice by the learned Vakil for the respondents show that the language of the section is wide and general and that these terms of the section are not to be understood in the way contended for by the appellant. In Joti Kuruwetappa v. Izari Siruseppa 30 M. 478, it was held that ""In a suit for money where the plaint prays for a simple money-decree, an agreement by which the parties agrees that the amount decreed according to the compromise should be a charge, upon certain properties, relates to the suit so as to be embodied in the decree."" It was argued in that case that the claim of the plaintiff was only for money due under bonds which gave no charge on the defendant's property, and that it was, therefore, not competent to the Court to give a decree creating a charge even though the defendants agreed to such a charge as one of the terms of compromise to be embodied in the decree. In"" dealing with that argument, the learned Judges say with reference to Section 375 of the old C.P.C. corresponding to Order XXIII, Rule 3: ""We see nothing in this language to preclude the Court from embodying in the decree the charge which the parties agreed to as security for the debt. The agreement was "lawful", and it "relates to the suit" that is, to the matter of the claim in the case. In the claim as made in the plaint there was, it is true, no prayer to have the amount charged on the property, but there is nothing in principle or in the language of the section which we have quoted to restrict the relief to be granted in accordance with a compromise to what is prayed for in the plaint or less. If that were the intention of the Legislature it would have found no difficulty in expressing the intention in suitable language. On the contrary, the language used is

wide and general, and it is obvious that it would be highly inconvenient if the parties should not be allowed to settle their disputes on such lawful

terms as they might agree to without being restricted to such relief as one of the properties has chosen to claim in the plaint." It has been decided in

Sabapathi Pillay v. Vanmahalinga Pillai 23 Ind. Cas. 581 : 38 M. 959 : 15 M.L.T. 203 : (1914) M.W.N. 256 that the terms in a razinama decree

which formed considerations for the compromise of the suit must be deemed to be part of the decree and can be enforced in execution

proceedings. In that case their Lordships referred to the decision of the Calcutta High Court reported as Purna Chandra Sirkar v. Nil Madhub

Nandi 5 C.W.N. 485 which held that a decree passed on a compromise cannot be regarded as ultra vires simply because it goes beyond the

subject-matter of the suit and contains other conditions, and that, if those other conditions are the consideration for the compromise of the subject-

matter of the suit, they must be incorporated in the decree. The question for consideration, therefore, is whether these terms, which are stated to go

beyond the strict purview of the suit were considered by the parties as considerations for the compromise of Suit No. 80 of 1918 in which the

razinama was passed. This leads us on to the second answer to this argument. There can be no doubt that the parties to O.S. No. 80 of 1918

considered these terms as considerations for the compromise and acted themselves subsequent to the passing of the decree in that view. It is not

the appellant's case that the terms of the compromise decree so far as the plaintiff was concerned were. not carried out. As a matter of fact O.S.

No. 82 of 1918 was dismissed and O.S. No. 83 withdrawn by the plaintiff; only, the appellant has not acted up to the terms of the compromise so

far as he was concerned and the apprehended trouble arising from such noncompliance was the reason as already indicated for the assignment of

the decree. The cases relied on by the learned Vakil for the appellant do not lend any substantial support to his argument. The decision in

Subbanarayana Aiyar v. Maya Thevan 30 Ind. Cas. 233 : 2 L.W. 608, referred to by him, really supports the argument advanced on behalf of the

respondents. That decision suggests that if the terms of the compromise decree which do not relate to the suit appear either directly or indirectly as

considerations on which the settlement of the plaint was based, then such terms may be considered as part of the decree executable with it. In

Ariyaputhra Goundan v. Ettiya Goundan 33 M.L.J. 615 the present question did not arise for consideration. The question for determination in that

case was whether the razinama filed in the suit required registration in respect of the portion in the razinama which were not given effect to in the

decree. The learned Judges, following Pranal Anni v. Lakshmi Anni 9 M.L.J. 147 : 7 Sar. P.C.J. 516 held that the Court by its decree accepted

the whole razinama and in consequence of such acceptance passed a decree, in accordance therewith so far as the suit property was concerned

and that the whole of the razinama was embodied in the decree of the Court and consequently required no registration, even with respect to

Immovable properties not comprised in the decree. The same observation has to be made about the decision in Hemanta Kumari Debi v.

Midnapore Zemindari Co. 27 M.L.T. 42 : 11 L.W. 301 : 46 I.A. 240 , relied upon by the appellant's learned Vakil, in that case also the question

for consideration was the necessity for registration for being admissible in evidence of a razinama decree which contains terms which do not come

strictly within the purview of the suit which was compromised. In dealing with the question whether the decree can be given in evidence to affect

matters not coming within the scope of the suit for want of registration the learned Judges no doubt make the remark that it may be that as a decree

it is incapable of being executed outside the lands of the suit, but that does not prevent it being received in evidence of its contents. The present

question was not raised in that case and the opinion was expressed in a very hesitating manner. In this connection we may also draw attention to

the decision of this Court reported as Manager of Sri Meenakshi Devasthanam v. Abdul Kasim Sahib 2 M.L.T. 349 : 17 M.L.J. 255, which says

that the argument that the razinama decree contained in the suit after it had been tried affords no ground for questioning the decree in execution

According to this decision this argument must be taken by way of appeal and not in execution of the decree. We, therefore, hold that the

compromise decree in its entirety in this case is executable and that it is not necessary for the plaintiff to institute separate suits as argued by the

appellant's Vakil. This also meets the argument specially advanced with regard to O.S. No. 93 of 1918.

6. (Point No. 3). The last argument addressed to us relates to the bona fides of the assignment and to the question whether it was made in the

interest of the minor plaintiff. The consideration mentioned in the assignment deed (Ex. A) is made up as follows: (1) the assignee-decree-holder is directed to pay Rs. 43,700 to the decree-holder in O.S. No. 98 of 1918 on the file of the Trichinopoly Sub-Court. (2) He is also directed to pay Rs. 10,475 to one Sundararaja Pillai in payment of debts covered by Exs. F and G (3) Rs. 825 were padi for the execution of the document. The consideration in all, thus amounted to Rs. 55,000 mentioned in the deed. It is proved by Exs. B, C, and D (see also B1, C1 and D1) that the assignee-decree-holder has. paid Rs. 17,000 in partial discharge of the decree in O.S. No. 98 of 1918 after the assignment. As regards the amount due to Sundararaja Pillai it arose in this way. Plaintiff's adoptive father Adinarayana Pillai executed a promissory-note. (Ex. G) for Rs. 5,000 to Sundararaja Pillai and in renewal of it another promissory-note (Ex. F) was executed to the same individual by the minor plaintiff's next friend Thangathammal. Exhibit F contains an endorsement of discharge from Sundararaja Pillai. The genuineness and the bona fides of Exs. F and G have been questioned by the appellant, The decree-holder does not dispute the payment. The learned Subordinate Judge did not consider it necessary to go into the question of the bona fides and genuineness of these documents as he safeguarded the interests of the minor against all possible loss by the order which he eventually passed. The order shows that the learned Judge was not wrong in the procedure which he adopted.

The order runs as follows: ""The assignee-decree-holder shall not recover any amount from the judgment-debtor except through Court. Out of the amount that may be deposited by the judgment-debtor into Court he (assignee-decree-holder) shall draw whatever amount he pays in discharge of the decree in the said O.S. No. 98 of 1918 after satisfying the Court that he has made such payments, in this connection he is at present entitled to draw the amounts covered by Exs. B, C, and D with further interest 6 per cent. per annum. The Balance of the decree amount he shall be entitled to draw after production of the vouchers; viz., receipts obtained from the decree-holder in the said suit and certified copy or copies of applications filed into Court certifying satisfaction. As regards the amount over and above the said decree amount the assignee-decree-holder shall be entitled to draw the same upon furnishing security to the satisfaction of the Court."" The provision that the assignee-decree-holder shall not recover from the

judgment-debtor any amount through Court affords a general protection to the interests of the minor. His payment of Rs. 17,000 in partial discharge is proved conclusively by Exs. B, B1, C, C1, D; D1. No exception can be taken to the permission granted to the assignee-decree-holder to draw this amount with further interest. Then, he is given permission to draw from Court from the amounts deposited by the judgment-debtor whatever further amounts he pays in discharge of the decree in O.S. No. 98 of 1918 after satisfying the Court that such payments have been made. This also cannot be objected to as it keeps in view the interests of the minor. As regards the amount over and above the decree amount namely, those covered Exs. F, and Q the assignee-decree-holder is not entitled to draw the same from the amount deposited by the judgment-debtor except upon furnishing security to the satisfaction of the Court. As he is bound to give security no harm is done to the interest of the minor, if Exs. F and G are at any time not found to be genuine, as contended for by the appellant. An analysis of the order thus shows that in recognizing the assignment the learned Judge, kept prominently, before him the interests of, the minor-decree-holder. It is evident that the assignment was made by the minor's next friend to safeguard his interests as otherwise owing to the non-payment of the decree-debt in O.S. No. 98 of 1918 by the appellant according to the razinama decree the minor's properties were in danger of being sold. That calamity was averted by this assignment. We have been taken through the evidence of P.W. Nos. 1 and 2. There is really no evidence on the side of the appellant challenging the payment of consideration by the assignee-decree-holder. On a consideration of the evidence, in the case we think that the assignment has been made bona fide by the next friend of the minor decree-holder and the interests of the minor are safe-guarded by the conditions imposed upon the assignee-decree-holder by the Subordinate Judge. His order recognising the assignment subject to the specified conditions and allowing the assignee-decree-holder to execute the decree must be upheld, and this civil miscellaneous appeal must be dismissed with costs.