
(1925) 01 MAD CK 0055
In the Madras High Court

Ramaswamy Nayudu

APPELLANT

Vs

K.N.S. Subbaraya Thevar and Others

RESPONDENT

Date of Decision : 08-01-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : AIR 1925 Mad 1101

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 1st defendant in the suit. The 1st respondent is the assigne decree-holder and the other respondents are the remaining three defendants in O.S. No. 80 of 1918 who are the sons of the 1st defendant and the plaintiff, the decree-holder. The compromise decree was assigned by the next friend of the plaintiff-decree-holder to the present 1st respondent and he presented E.P. No. 4 of 1923 praying for the recognition of the assignment and for the recovery of the amount of Rs. 58,285-15 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 1st 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. O.S. 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 Kamachia Pillai represented by his adoptive mother for specific performance of contract by the present appellant and his sons, defendants 1 to 4 in pursuance of the agreement dated 5-12-1915 or 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 Natesa Pillai who had obtained an assignment benami of a promissory note alleged to have been executed by the 1st 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. O.S. 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 other 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 other deeds and for the 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 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 6. Section 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 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 that decree unless some arrangement was made for assigning the razinama decree in O.S. No. 80 of 1918, discharging the debts due to Palaniappa Chetty on 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 1st 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 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 of 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 the suit and 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 decrees. (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 undermentioned lands for Rs. 20,113 plus interest as detailed below and subject to the previous usufructuary mortgages as undertaken in the agreement dated 5-12-1915, or, in the alternative, directing the defendants to pay the plaintiff the undermentioned amounts with subsequent interest." The utmost that can be said in favour of the appellant is that the suit is 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 34 of the CPC 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 23, 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 parts of the decree to find out how far it relates to the subject-matter of the suit, the entire decree is unexecutable; 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 23, 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 23, 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 vakils 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 Kumnreteppa v. Izari Sirusappa* [1907] 30 Mad. 478 it was held that "In a suit for money where the plaintiff prays for a simple money decree, an agreement by which the parties agree 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 the compromise to be embodied in the decree. In dealing with that argument, the learned Judges say with reference to Section 375 of the old CPC corresponding to Order 23, 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 plaintiff's prayer 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 plaintiff's prayer 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 parties had chosen to claim in the plaintiff's prayer." It has been decided in *Sabapathy v. Man Mahalinga* [1914] 38 Mad. 959 that the terms in a razinama decree which formed consideration 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 in *Puma Chandra Sirkar v. Nelmadhub Nandi* (1915) 2 L.W. 608 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 consideration for the compromise of the 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 consideration for the compromise and acted on it 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. 82 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 non-compliance 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 Subba Narayana Aiyar v. Maya Thevan (1917) M.W.N. 751 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 claim was based, then such terms may be considered as part of the decree executable with it. In Ariyaputhra Goundan v. Eliya Goundan (1917) M.W.N. 751 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 portions in the razinama which were not given effect to in the decree. The learned Judges following Pranal Anni v. Lakshmi Anni (1900) 22 Mad. 508 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 Hemantka Kumari Devi v. Midnapur Zamindari Co. AIR 1919 P.C. 79 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 bounds 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 in Manager of Sri Meenakshi Devasthanam Madura

v. Abdul Kdsim Sahib (1908) 30 Mad. 421 which says that the argument that the razinama decree contained reliefs which the plaintiff cannot have obtained 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. 83 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 (Exhibit 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 Exhibits F and G; (3) Rs. 825 were paid for the execution of the document. The consideration in all, thus amounted to Rs. 55,000 mentioned in the deed. It is proved by Exhibits B, C and D (see also BI, C1 and DI) 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 (Exhibit G) for Rs. 5 000 to Sundararaja and in renewal of it another promissory note (Exhibit F) was executed to the same individual by the minor plaintiff's next friend Thandathammal. Exhibit F contains an endorsement of discharge from Sundararaja Pillai. The genuineness and the bona fides of Exhibits 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 the 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 Exhibits B, C. and D, with further interest at 6 per cent, per annum. The balance of the decree amount he shall be entitled to draw after production of the vouchers, viz., receipt 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 except 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 Exhibits B, BI, C, CI, D and DI. 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 interest of the minor. As regards the amount over and above the decree, amount, namely, those covered by Exhibits F and G 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 Exhibits 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 recognising the assignment, the learned Judge kept prominently before him the interest 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. Ws. 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 safeguarded 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.