

(1962) 07 MP CK 0001
In the Madhya Pradesh High Court
Case No : L.P.A. No. 10 of 1959

Sakharam and Others

APPELLANT

Vs

Sardar Madhav Rao and Others

RESPONDENT

Date of Decision : 20-07-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 15

Citation : (1968) JLJ 272 : (1967) MPLJ 740

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : G.S. Gandhe, for the Appellant; C.N. Chaphekar, for the Respondent

Final Decision : Dismissed

Judgement

Shri Pandey, J.

The only question for consideration in this appeal under Clause 10 of the Letters Patent is whether two of the Defendants can execute the entire decree for costs in a case in which the Court of first instance directed the Plaintiffs to pay to each of the nine Defendants the costs incurred by him. In the appeal filed by the Plaintiff the High Court also awarded costs jointly payable to all the Defendants without interfering with the direction about the costs of the first Court. The question arises only in relation to execution of the decree for costs of the first Court.

The executing Court held that two of the Defendants could execute the entire decree for costs of the first Court. In appeal, Krishnan J. took the view that, although there was a joint decree, the share of each Defendant had been apportioned and since, by virtue of the apportionment, each Defendant was competent to levy execution for his share, he was incompetent to take advantage of the jointness of the decree for levying execution for the entirety.

Having heard the counsel, we have formed the opinion that the conclusion reached by the learned single Judge is correct, though our reasons for taking

that view are different.

Order 21, Rule 15 of the CPC on which reliance is placed, reads:

(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased. (2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Before Rule 15 can apply, the following two conditions must be fulfilled by decree sought to be executed:

(i) It should be passed in favour of more persons than one. (ii) It should also be passed jointly in their favour.

It is not enough that there is a decree in favour of more persons than one and that fact alone will not necessarily attract Rule 15. In this connection we may refer to the enabling provision contained in Order 1, Rule 1 of the Code which, in certain circumstances therein indicated, enables several Plaintiffs claiming severally different reliefs arising out of the same act or transaction to join in one suit as Plaintiffs. It is implicit in Rule 1 that a decree may be passed severally in favour of more persons than one, entitling each to claim the relief awarded to him. Rule 15 applies only when a decree "has been passed jointly in favour of more persons than one".

As Mulla points out, there is a joint decree, as contemplated by Rule 15, when A and B obtain a decree against C for Rs. 5,000. The reason is that she is under an obligation to pay to A and B jointly a sum of Rs. 5,000. They cannot divide the decretal amount among themselves and then severally execute the decree for portions of the amount. Also, apart from Rule 15, neither of them acting alone, can either execute the decree or give a valid discharge. Our attention was, however, drawn to the following observations of Mulla:

It is not the less a joint decree, because shares of A and B in the decretal amount have been determined by the decree. Thus, if it is determined by the decree that the share of A is Rs. 2,000 and the share of B is Rs. 3,000, the decree is still a joint decree. But though the decree in such a case is a joint decree, the interest of A and B being determined by the decree, either of them may apply for execution to the extent of his interest.

For this view, Mulla referred to *Hurrish Chunder Chowdhary v. Kali Sunduri Debia* 10 IA 4. In that case, the Judicial Committee grounded its opinion on the consideration that the effect of the judgment which had to be enforced was that the second Plaintiff Kali Sundari was entitled to possession of a half of the estate in question. Reliance was also placed upon the following observations in *Sri*

Ghundra Chur Deo v. Musammat Shyam Kumari ILR 11 Pat. 445;

But it is to be remembered in the first place that the term "joint decree" is wide enough to apply to a case where the rights of several parties have been determined by one and the same decree and in the second place that in this particular case the last decree passed by the Privy Council was admittedly a joint decree in the sense that the liability of the Appellants to the various contesting Respondents was not separately assessed or specified. If, therefore, the last decree into which the decree of the Courts below has merged in a joint decree and it is this final decree which is to be executed, such a case would, in my opinion, come within Order XXI, Rule 15.

(Pages 455-6)

As we have indicated earlier, for applying Rule 15 what is required is a decree passed jointly in favour of more persons than one and it is not enough that the rights of several parties have been determined by one and the same decree. Secondly, the Patna High Court proceeded on the view that the decrees of the two Courts below had merged in the final decree, which was admittedly a joint decree.

In Chhoa Sahoo v. Tripoora Dutta 13WR 244, a sum of Rs. 9,111 was adjudged to five several persons as an entire sum to which all of them were jointly entitled but one moiety of it was payable to three of them and the other moiety was payable to the remaining two. Norman C.J. held that the separate sums adjudged to the several parties were wholly separate and distinct and the effect of the adjudication was precisely the same as if two separate and distinct decrees had been pronounced. In Kaikhushroo Pirojasha Gkiara v. The C.P. Syndicate Nagpur Ltd 1949 50 FCR 501, the Federal Court observed:

Here again the whole argument is based on an obvious misconception. It is true that the other three Plaintiff's were also parties to the consent decree, but by Clause 1 (f) of the decree the Appellant is required to pay Rs. 12,50,000 to the Respondent company only and to no other Plaintiff. The consent decree is a composite decree under which, generally speaking, several Plaintiffs have acquired rights in respect of different subject matters. So far as the sum of Rs. 12,50,000 is concerned, the Respondent alone is entitled to receive payment and therefore this Respondent only is entitled to execute the decree in regard to that sum.

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In our opinion, the decree of the High Court, which is being executed in the instant case and in which the decree of the first Court had merged, is a composite decree which, as regards the costs awarded by the first Court, is not a joint decree attracting Rule 15, more particularly because the cost incurred there by the Defendants were not payable to them jointly as an entire sum.

The learned single Judge has taken the view that, although the decree is a joint

decree, there is a "condition to the contrary" within the meaning of Rule 15, because the Plaintiffs were directed to pay to each of the nine Defendants the costs incurred by him. In our opinion, that view is not correct. It is obvious that, "unless the decree imposes any condition to the contrary", any one or more of decree-holders may execute the decree passed jointly in their favour if the conditions required by Rule 15 are fulfilled. This means that the provisions of this Rule would not apply where, by the terms of the joint decree, execution has been made dependent on all the decree- holders joining in the application: Farzand v. Abdullah¹. In our opinion this is not a decree which imposes any condition requiring all the decree-holders joining in the execution application. As we have indicated earlier, so far as the costs of the first Court are concerned, this is not a joint decree at all.

In the view we have taken, this appeal fails and is dismissed. The Appellants shall bear their own costs of this appeal and pay those of the Respondents. Hearing fee Rs. 50.

Dixit C.J.

I agree.

Appeal dismissed.