
(1958) 01 AP CK 0020
In the Andhra Pradesh High Court
Case No : A.O. No. 212 of 1952

Sangavarapu Anjaneyulu	Vs	APPELLANT
Parankusain Rangacharyulu and covers		RESPONDENT

Date of Decision : 13-01-1958

Acts Referred:

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

Citation : AIR 1958 AP 705

Hon'ble Judges : Srinivasachari, J;Chandra Reddy, J

Bench : Division Bench

Advocate : N. Subrahmanyam, for the Appellant; A. Raghavaidh, for the Respondent

Judgement

Chandra Reddy, J.—This appSal raises a point about the construction of Q. 21, R. 2 of the Code of: Civil Procedure The material facts may be set but briefly: A petition O. P, 17 of 1940 was filed by the (sic)trustee of the temple of Sri Chennakesava Swamy situated at Perna Nitta for recovery of possession of land belonging to the institution and a decree was obtained. While the decree was being executed the trustee and the hereditary archakas of the temole entered into a compromise by and under which the properties were divided into, seven shares out of which four shares were allotted to the archakas for their remuneration and performance of Nitya Naiyedyam and Paditharam services, while the other three were kept for the institution. This is evidenced by Ex. B-1. This could not be reported to the Court and full satisfaction of the decree entered as meanwhile he was removed by the Hindu Religious Endowments Board as it was felt that in entering this compromise he acted to the detriment; of the institution. The present appellant was appointed as interim trustee and he took out execution of the decree. In bar of execution the respondents, the hereditary archakas of the temple, pleaded the above said compromise. Accepting this objection, the District Judge of Guntur dismissed the execution petition. Aggrieved by that order, the interim trustee has brought this appeal.

2. In support of this appeal it is urged by Sri Subrahmanyam that as the adjustment was uncertified the trial Court should have ignored it and proceeded with the execution petition. The question for consideration, therefore, is whether the adjustment in this case would come within the mischief of O. 21, R. 2, C. P. C.

3. In order to appreciate the contentions arising in this appeal, it is convenient to set out the terms of R. 2 of O. 21. It recites :

2 (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly." The stress of the argument on behalf of the appellant is that every decree irrespective of its nature is governed by this rule and any adjustment outside the Court will not be recognised if it is not certified to the Court.

4. This provision of law has been the subject of judicial scrutiny. The leading case on the subject is *Narayanaswami Naidu and Others Vs. Rangaswami Naidu and Ors.*, . It was laid down there that O. 21, R. 2, C. P. C, would apply only to decrees where money was payable irrespective of whether it included other reliefs or not. There, a compromise decree was passed which provided that in case one of the defendants paid to the decree holders a stated sum of money at a particular time the property should be reconveyed to one of the defendants, but if there was a default in such payment the decree-holders themselves would be entitled to enjoy the properties with absolute rights.

Contrary to this, the plaintiffs decree-holders entered into an agreement with another defendant for relinquishing their interest in the property for a lesser sum. The second plaintiff applied to the lower Court for execution of the decree. The trial Court held *inter alia* that the decree was adjusted by the subsequent arrangement and therefore they were not entitled to execute the decree. Thus the question arose whether the rule would apply to all kinds of decrees or confined only to decrees where money was payable whether there were other reliefs granted or not. The answer of the Bench consisting of Devadoss and Waller, JJ. was that in order to bring it within the purview of R. 2 it was essential that the decree should contain a direction for payment of money even there were other reliefs.

5. Sri Subrahmanyam, the learned counsel for appellants invites us to hold that the law as laid down in this decision is not correct and that it requires (sic) consideration as this was dissented from by some of the High Courts. It may be stated here that this (sic) (sic)ing is preceded by other decisions of that Court (sic) *Abdul Latiff v. Bahula Bibi Ammal*, 1914 Mad V 346: (AIR 1914 Mad 360) (B), embodies the same (sic) principle as in ILR 49 Mad 716: 24 Mad LW 2 *Narayanaswami Naidu and Others Vs. Rangaswami Naidu and Ors.*, . It was held there that (sic) provision of law is attracted to a decree of any kind (sic) under which

money was payable including comp(sic) decrees. This was followed by another Bench of the sc Court in Sethurama Sahib v. Chotta Raja Sahib, 1(sic) Mad WN 327: (AIR 1918 Mad 75.1.) (C). There, of the learned Judges who was a party to it, lus(sic) Sadasiva Iyer, went back upon his view in Kelu(sic) v. Meenakshi, 25 Mad LJ 586"(D) where he and S(sic) (sic)cer J. held that O. 21, R. 2, C. P. C, did apply to the relief of possession of immovable (sic)perty given by a decree, relying upon Sankaran N(sic) biar v. Kanara Karup, ILR 22 Mad 182 (E), W(sic). was a decision rendered under S. 258 of the Cod Civil Procedure of 1882. In the last mentioned c(sic) the decree was of a complex nature including (sic)ment of money and(sic)et it was laid down that sc as the relief of possession of immovable property concerned it would fall outside O. 21, R. 2, C. P.

It was 1914 Mad WN 346: (AIR 1914 Mad (B), that was responsible for this change. An(sic) instance of the same principle is to be found in R(sic) krishna Rao v. Balakrishna Rao, ILR 43 Mad (AIR 1920 Mad 469) (F), where it was ruled by field and Seshagiri Ayyar, JJ. that O. 21, R. 2, C. (sic) would govern also partition decrees which pr(sic) for payment of money as well as other reliefs as partition of immovable property and to adjustr(sic) with regard to such property. It is interesting to that Justice Seshagiri Ayyar felt that "if the n(sic) were res integra he would have had some hesil(sic) in holding that the words in O. 21, R, 2, CI. (1 the decree is otherwise adjusted in whole or in j related to portions of a decree in respect of (sic) money is not payable". However, for the sake o(sic) formity in procedure, he followed two later dec(sic) 1914 Mad WN 346: (AIR 1914 Mad 360) (B) and Mad WN 327: (AIR 1918 Mad 751) (C).

6. It was submitted by Sri Subrahmanyam these decisions were not followed in Madras (sic) (sic)quent to 1926 and therefore the view express this case should be regarded as obsolete. We think we can give effect to this contention. It is to suggest that merely because there was no oc(sic) for a Court to follow the precedent of the same for some time those decisions should be treatec(sic) no respect and should be disregarded. That apa(sic) was followed recently in Chava Seetharama(sic) Kadiyala Pattayya, 1951 1 Mad LJ 577: (AIR (sic) Mad 853) (G). The question that posed itself before the (sic) Judge was whether an adjustment of a decree (sic) mantling of a wall and the delivery of a plot on(sic) the wall stood could be effectively pleaded in (sic) (sic)cution petition though such adjustment was n(sic)fied by the Court and this was answered in t(sic)mative. The learned Judge also opined that, (sic)award of a sum of money by way of costs in decree would not prevent that arrangement beir (sic)into: in other words, a decree for payment(sic) would not make any difference and would n(sic) it within the ambit of O. 21, R. 2, C. P. C.(sic)

7. It is true that an opposite view was t(sic) some of the High Courts. The" contraiy op(sic) (sic)ustrated by Gharry v.- Gowrya, ILR 48 Bom 226: (sic)IR 1922 Bom 380 (2)) (H). The learned Judges Sri (sic)arman Macleod, C. J. and Shah, J., took the (sic) that the provisions of O. 21, R. 2, C. P. C, were (sic)t restricted to money decrees but extended to any; (sic)cree. It may be noticed

that there is no discussion the case-about the decisions bearing on the ques(sic) a, nor is there any pointed reference to the langu(sic) (sic) of the section. A single Judge of the Lahore High (sic)urt in AIR 1936 842 (Lahore) ressed his preference to ILR 46 Bom 226: (AIR 22 Bom 380 (2)) (H). The learned Judge after referring to both Narayanaswami Naidu and Others Vs. Rangaswami Naidu add Ors., and ILR 46 (sic)n 226 Baban Hemraj Vs. The City Municipality, said that the (sic)sction of the appellant was therefore untenable (sic)could not be entertained. He has not chosen to (sic) any reason for his preference. AIR 1948 374 (Nagpur) , is of (sic)same nature. The learned Judge after noticing (sic)difference of opinion between Madras and other (sic)rts observed that it appeared to him that the de-(sic)referred, to a decree of any kind. So, it is mani-(sic)that these two cases are not very illuminating.

8. We may now turn to a judgment of the Cal-(sic) High Court in Shaikh Niamat v. Shaikh Jali(sic). 1928 Cal 715 (K). There, the learned Judges were (sic)inion that OT 21, R. 2 was not confined to money (sic)jes only but applied to every kind of decree. The (sic)ation for this ruling was Baba Mohamed v(sic) (sic)b, ILR 6 Cal 786 (L), which was a judgment given (sic)r S. 258 of the CPC of 1877. (sic)nay here point out a slight error on the part of (sic)udge who thought that ILR 6 Cal 786 (L) was (sic)ed under the Code of 1882. The learned Judges, that ILR 6 Cal 786 (L) still held the field not-(sic)anding the change in the language of the rele-(sic)provision of law, namely, "of any kind" and that Amendment was brought about.with a view to it into conformity with the view of the Cal-High Court.

9. On a careful consideration - of the various, (sic)rities and the plain language of O. 21, R. 2, we (sic)ome to the conclusion that the doctrine of ILR (sic)id 716: Narayanaswami Naidu and Others Vs. Rangaswami Naidu add Ors., , which is iorti-(sic)y the earlier decisions, of the same Court, is (sic)and does not require reconsideration. In our (sic)ent, the words "or is otherwise adjusted" have (sic)we only to the decree where in they is payable, (sic)an essential condition to be satisfied before could be invoked is a direction for payment of (sic)although there might be other reliefs granted (sic)the decree. We may here state that the words (sic) kind" did not occur in the earlier Codes. The (sic) of law in this behalf as embodied in S. 206 (sic)Code of Civil Procedure 1859," applied to alt (sic) as seen from the wording of it.

(sic) monies payable under a decree shall be paid (sic)urt whose duty it is to execute the decree un-(sic)h Court or the Court which passed the decree (sic)herwise direct.

(sic)istment of a decree was to be recognised by (sic)art unless such adjustment be made through (sic) was certified to the Court by the person in (sic)avour the decree was made or to whom it (sic)sferred- In the subsequent Code of 1877 this (sic)was split into two and they took the shane (sic)7 and S. 258. The latter part of S. 206 of the (sic)e corresponds to S. 258 and S. 258 ran as (sic)any money payable under a decree is paid Court, or the decree is otherwise adjusted

in (sic)r in part" to the satisfaction of the decree (sic) if Shy payment is made in pursuance of (sic)ment of the.nature mentioned in S. 257A the decree-holder shall" certify such payment or adjustment to the Court whose duty it is to execute the decree.

In the succeeding Code of 1882 this section was retained. In construing the words of S. 258 of Act IV of 1882 the Madras High Court in ILR 22 Mad 182 (E) held that it was restricted to money decrees and it could not be extended to other types of decrees. It is to resolve this conflict that the Legislature inserted the words "of any kind". The question for consideration is whether the addition of these words altered die scope of the provisions so as to apply to every kind of decree irrespective of its nature. In our opinion, these words cannot bear the construction put by the Calcutta High Court. If the view expressed in this case were correct, the clause where any money payable under a decree of any kind is paid out. of Court" is redundant and the Legislature would have used simple language in order to convey such a meaning as "where any decree is adjusted in whole or in part out of Court".

We think the intention as could be gathered from the words as used in the rule is to confine it to decrees where one of the reliefs granted is payment of money. Therefore, by the addition of these words, the scope of this rule was extended to any kind of decree even complex decrees, even if other reliefs were granted, so long as there was a provision for payment. of money. The disjunctive or (before the words the decree is otherwise adjusted""') denotes an adjustment other than payment out of Court. The use of the definite article in "the decree" relates to the decree that precedes it. Both the clauses only talk of mode of adjustment where money is payable under the decree so that the only difference between the old provision and the new one is while in the latter the decree is not required to be exclusively for payment of money and it applies to complex decrees partly for payment of money and partly for other reliefs, in the earlier on" it was confined to money decrees only.

We feel that the interpretation placed by the Calcutta and other High Courts is opposed to the plain language of the section and is not in conformity with the principle underlying that provision. We do not feel that there are any grounds for departing from the rulings of Madras High Court and we think that Narayanaswami Naidu and Others Vs. Rangaswami Naidu add Ors., is good law. As a corollary it follows that the adjustment could be pleaded as a defence to the excitability of the decree. It follows that the conclusion of the trial Court cannot be impugned in that behalf. The learned Judge, however, had not considered the other aspects of the matter namely, whether it was a compromise beneficial to the institution and whether the trustee acted bona fide in entering into the compromise and how far it binds the temple. We, therefore, set aside the order of the trial Court and remit it for consideration of other outstanding questions. The parties will bear their own costs here and in the Court below.