

(1959) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 58 of 1957

Sardar Madhavrao and Others

APPELLANT

Vs

Narayan Damodar and Others

RESPONDENT

Date of Decision : 11-07-1959

Acts Referred:

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

Citation : AIR 1960 MP 66 : (1960) JLJ 395 : (1960) 5 MPLJ 278

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : G.M. Chafekar, for the Appellant; Shridharpant, G.S. Gandhe and V.V. Korde, for the Respondent

Final Decision : Allowed

Judgement

H.R. Krishnan, J.

This is an appeal by judgment-debtors from an order of the civil judge allowing execution for the entire decretal amount by two out of nine decree holders in whose favour a joint decree had been passed. The Executing court had overruled the decree holders' objection that since part of the costs was separately allotted to the individual decree-holders, these two of them should not be allowed to levy execution in respect of the sums allotted to others.

The case hinges upon two questions. One of purely theoretical nature, whether the decree which is, otherwise joint becomes a collection of a number of separate decrees merely because of the apportionment of part of the subject matter between the different decree-holders. Secondly the more practical one whether the apportionment of part or whole of the subject-matter of a decree is a condition debarring any of the joint decree holders from levying execution on his own in respect of the part allotted to the other decree-holders.

The position in the present case is somewhat peculiar and there is no case law barring directly on these questions.

The two decree-holders who have levied execution were along with 7 others, defendants in a title suit brought by the judgment-debtors. The suit being dismissed by the district judge costs were awarded on a scale which was quite high. But instead of awarding a lump sum, the district judge awarded big sum, about 700 rupees in round figures, in favour of each of the nine defendants. The plaintiffs' appeal being dismissed, the High Court also awarded costs in favour of the defendants, at the first instance apportioning it as so much per head.

However, on an application by the defendants, the High Court amended the decree and noted that the cost awarded by it, was jointly payable to all the defendants. Certainly, there was only one decree at that stage, but the High Court refused to interfere with the apportionment made by the trial court. The result was that in the decree that finally emerged on 11-3-48, the nine defendants were entitled to costs, part of which was realisable by them jointly, and part of which was realisable by them severally at so much per head.

After two or three petitions in execution the present execution case was started by two out of the nine viz. Shankarrao Wamanrao (No. 4 in the list given by the appellant) and Shridharpant Narayanrao (No. 6 in the list). They claimed entirety of the amount under the provisions of Order 21 Rule 15. The judgment-debtors for their part objected. As the decree had been split up, each of the decree-holders could execute only in respect of the part allotted to him. Actually part of the subject matter is till joint. The learned counsel for the judgment-debtors-appellants states that he has no objection to the two decree holders realising the entirety of the amount awarded jointly, subject to such conditions as may be imposed by the Executing court under Order 21 Rule 15 in this regard. His objection is to the realisation by these two decree-holders, of the amount apportioned separately in favour of the 7 others.

Simply because there has been an apportionment of part of the subject matter of the decree I am not prepared to hold that it has ceased to be joint. It is obvious. There is case law such as the old Privy Council case in 10 I.A. 4 (Hurrish Chunder Chowdry v. Kali Sundari Debi). The more recent Madras case in ILR 57 Madras 696 CV. N. Muthusamy Ayyar v. V. S. Narasimha Ayyar and three others) deals with it incidentally. Nor am I prepared to accept the contentions that the decree of the High Court is joint, while the decree of the District Court is separate. The Memorandum of the costs may have shown an apportionment of that part which has been awarded by the District Court, and non-apportionment of that part which has been awarded by the High Court. But the costs are payable on one decree only, viz. that of the High Court, the costs awarded by the district court having been upheld by the High Court.

But the decision of this case does not depend upon the investigation of the question whether the apportionment of the subject matter kills the jointness of the decree. The practical question is whether the apportionment of the subject matter is a condition debarring one or more out of the several decree holders from levying execution in respect of the entirety including the part allotted to the

others.

This has to be answered bearing in mind the provisions of Order 21 Rule 15. The judgment-debtors cannot be heard to argue that the decree is not a joint decree, but they are entitled to show that the jointness of the decree notwithstanding, two out of nine decree-holders are debarred, "by a condition to the contrary," from levying this execution in respect of the entire subject matter. After all, when the court chooses to apportion, where it is open to it to award the costs jointly, it should be deemed to have intended that each of the decree-holders should restrict himself to the share shown for him.

The case law on this subject is not ample. There are some rulings to the effect that, if there is an apportionment, the apportionee decree holder, is competent to levy execution separately for his share; otherwise, he would be obliged to levy execution for the whole, guaranteeing the interest of the others in an appropriate manner (Valchand Gulabchand Shah Vs. Manekbai Hirachand Shah and Another, as also Hurrish Chunder Chowdry v. Kali Sundari Debi 10 Ind App. 4 . The ruling quoted in 13 Suth WR 244, Chooa Sahoo v. Tripoora Dutt, is also to the point, viz. that even on a joint decree the apportionee of a specified share of the subject matter can levy execution in respect of it alone. The wording of this ruling is somewhat loose and when it says that the effect of this apportionment would be the same as if 2 separate and distinct decrees had been pronounced, we cannot understand that the decree itself ceased to be a joint decree.

We are concerned not with an enabling but with a debarring provision. No direct ruling on this point has been placed before me. But it is only reasonable to conclude that, where by virtue of the apportionment the apportionee is competent to levy execution for his share, he is incompetent to take advantage of the jointness of the decree, and levy execution for the entirety.

In the result, I would allow the appeal on the ground that the fact of apportionment of part or whole of the subject matter of the decree is an implied condition that the individual decree holder, cannot under Order 21 Rule 15 execute in respect of the shares allotted to others. In effect, the two decree holders can execute the decree in respect of the part of the subject matter expressly allotted to them. They can also, if they comply with the conditions imposed by the executing court under Order 21 Rule 15(2), execute in respect of part of the subject matter which is still joint. They cannot, however, execute in respect of the shares expressly allotted to the 7 other decree holders. In the special circumstances of this case parties shall bear their own costs.