

(1964) 03 KAR CK 0013
In the Karnataka High Court
Case No : Ex. First Appeal No. 29 of 1962

S.J. Dharmachand and Another

APPELLANT

Vs

Sha Sakalchand Babulal Jain and Others

RESPONDENT

Date of Decision : 13-03-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 53, 41

Citation : AIR 1967 Kar 24

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : C. Nagaraja Rao, for the Appellant; M.V. Srinivasa Iyengar, for the Respondent

Judgement

Somnath Iyer, J.—This is a judgment-debtor's appeal from an order made by the Civil Judge overruling as many as four objections to the execution of the decree preferred by the fourth judgment-debtor.

2. The decree was a money-decree and the amount claimed in the execution application which was presented on August 1, 1960, was Rs. 13,363.22 nP. The Court of the Civil Judge, Bangalore, passed that decree and the execution application with which we are concerned in this appeal was also presented to that Court. At one stage, the decree was at the instance of the decree-holder transferred to the Court of the Subordinate Judge, Tumkur, and that order was made in Execution Case No. 17 of 1956 by the Civil Judge, Bangalore, it is obvious that the execution proceedings before the Subordinate Judge, Tumkur, did not yield anything fruitful to the decree-holder as can be seen from the certificate forwarded by the Subordinate Judge, Tumkur, to which in the proceedings of the Civil Judge, Bangalore, there is a reference in the Judge's notes of July 21, 1962.

3. The four objections raised by the fourth judgment-debtor are these :

(a) that a previous execution application in execution Case No. 64 of 1958 was

not accompanied by a certified copy of the decree and that that execution application was not therefore one made according to law and that that therefore, the order made in that execution application which was dismissed for default on the part of the decree-holder did not operate as a step-in-aid:

(b) that the amount claimed by the decree-holder was excessive;

(c) that since the Subordinate Judge, Tumkur, had not, when the decree-holder presented his execution application to the Civil Judge of Bangalore, forwarded a certificate u/s 41 of the Code of Civil Procedure, certifying the result of the execution before his Court, the application for execution made to the Civil Judge, Bangalore, was incompetent; and (d) that there was an attachment by the decree-holder of a decree which the judgment-debtor had obtained against a certain Mir Izad Hussain in O. S. 25 of 1951-52 in the Court of the Subordinate Judge, Tumkur, and that since the decree-holder who is the respondent before us did not execute that decree but allowed it to get time barred, the decree-holder became accountable to the decree-holder to the extent of the amount recoverable under that decree.

4. These four submissions made by the judgment-debtor before the Court below are reiterated in this appeal, and, when they are scrutinised, it becomes apparent that each one of them is as unsustainable as the others.

5. Firstly, it is clear that the mere fact that the earlier execution application was not accompanied by a certified copy of the decree, does not make that execution application liable to the impeachment that it was not made in accordance with law. In regard to the correctness of the amount claimed by the decree-holder, it is enough to say that judgment-debtor himself did not state why and for what reason the decree-holder was not entitled to recover the amount claimed in the execution application to which he was obviously entitled under the provisions of the decree. Then, again, the objection that the certificate u/s 41 of the CPC should have been forwarded by the Subordinate Judge, Tumkur, by the time the decree holder presented the present execution application, cannot be sustained by reason of the fact that Section 41 does not prescribe that that certificate should precede the presentation of an execution application to the transferor Court. This contention must fail for the other reason that even otherwise, the transferor Court would have jurisdiction in certain circumstances to entertain the execution application and this case is one such.

6. The last submission which concerns the accusation against the decree-holder that he did not execute the decree obtained by the judgment-debtor against Mir Izad Hussain must fail by reason of the clear provisions of Rule 53 of Order XXI of the Code of Civil Procedure, Sub-rule (1) (b) (ii) of Rule 53 and Sub-rule (2) of that Rule unlike the provisions of Section 273 of the old Code of Civil Procedure, do not prohibit an application for execution by a judgment-debtor whose decree is attached by a person who obtains a decree against him. It is very clear from these two provisions of rule 53 that notwithstanding the

attachment of a decree obtained by a judgment-debtor against his own judgment-debtor, it is always open to the judgment-debtor whose decree is attached, to execute that decree although the proceeds of that decree have to be applied towards the satisfaction of the decree which has been obtained against himself

7. This appeal is dismissed with costs.

8. Appeal dismissed.