

(2013) 11 KAR CK 0153

In the Karnataka High Court

Case No : Writ Petition No. 102612 of 2013 (GM-CPC)

Smt. Subhadrabai Since deceased by L.Rs. Anantrao APPELLANT

Vs

Ananthrao since deceased by his L.Rs. Smt. Sharadabai, A. RESPONDENT
Prahlad Rao, A. Raghavendra Rao and A. Vyasraj Rao

Date of Decision : 27-11-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 47 Rule 1

Citation : (2013) 11 KAR CK 0153

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Ameet Kumar Deshpande, for the Appellant;

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Learned counsel for the petitioner submits that the judgment debtor advanced the following objection to the execution of the compromise decree, before the executing Court in Ex. Case No. 534/2010;

That a fraud is played by one Ananthrao S/o Venkatrao who did not affix his signature to the compromise petition in RFA No. 1795/2005, while the person who signed the compromise petition as the respondent is one Raghavendrarao S/o Anantrao, not a party to the proceeding.

That objection when rejected by order dated 04.06.2012 Annexure "F", led to filing IA under Order 47 Rule 1 of the Code of Civil Procedure, 1908 (for short "CPC") for review, which too when rejected by order dated 29.07.2013 Annexure "F" has resulted in this petition.

2. Learned counsel advances the following submission:--

- a) that the Executing Court was not justified in rejecting the objection advanced.
- b) that Section 47 of CPC empowers the Executing Court to adjudicate upon all claims including that of fraud committed before this Court in the execution of the

compromise petition.

c) that a sum of Rs. 24,200/- made over to a common friend of the judgment debtor and the decree holder was received by the decree holder during the pendency of the execution proceeding as part adjustment of the decretal sum and if extended an opportunity would place material to establish the said fact.

3. Having heard the learned counsel for the petitioner, examined the orders impugned and secured the records in RFA No. 1795/2005 disposed of on 06.11.2008 recording the compromise and directing drawing a compromise decree, there can be no more doubt in my mind that if a fraud is played upon this Court in the execution of the compromise petition following which a compromise decree is drawn in RFA No. 1795/2005, regard being had to the decision of the Apex Court in *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, it is for the Court in which the compromise was entered into, to consider the plea of fraud. Needless to state that no judgment of a Court can be allowed to stand, if it has been obtained by fraud for fraud, unravels everything. The first submission was justifiably rejected.

4. Section 47 of CPC though provides for an adjudication over all matters concerning execution, discharge, or satisfaction of the decree, in my considered opinion, having regard to the decision of the Apex Court noticed supra, which does not include allegation of fraud in obtaining the decree, unless such a decree is of the Court executing the decree, the second submission is rejected.

5. Order 21 Rule 1 CPC provides for modes of satisfying or adjustment of decrees. The mere assertion of the petitioner, that a certain sum of money was handed over to a common acquaintance of both the judgment debtor and decree holder for payment to the decree holder as an adjustment of the decretal sum, by itself and nothing more, not being in compliance with Order 21 Rule 1 of CPC, does not partake the character of adjustment of the decretal sum. Hence, that submission too is rejected. In that view of the matter, the orders impugned of the Executing Court in rejecting the objection advanced by the petitioner do not call for interference.

If regard is had to the observation in the order dated 24.03.2010 in RFA No. 1795/2005 on Misc. Cvl. Nos. 150492/2009 and 150493/2009, reserving liberty to the petitioner to eke out his remedies if any in law, it is needless to state that the allegation of fraud may be advanced in an appropriate proceeding in RFA No. 1795/2005, if so advised.

Petition is accordingly, rejected.