(1992) 04 OHC CK 0019

In the Orissa High Court

Case No : Civil Revision No. 693 of 1991

Takerimun Nisa and Others APPELLANT

Vs

Sultana Khanam and Others RESPONDENT

Date of Decision : 17-04-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1993 Ori 34

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Sk. Rahanama and Sk. K. Rahaman, for the Appellant; Md. Yusuf Ahmed Rahim, R.C. Behera, B.P. Panda and A. Yusuf, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mohanty, J.—The three petitioners along with one Najmun Nisa brought Money Suit No. 100 of 1986 against the opposite parties who are the legal representatives of one Syed Ekhlague Ali for realisation of a sum of Rs. 4,571.35 paise representing their share of house-rent drawn by said Ekhlaque Ali. The suit was dismissed on contest. In appeal preferred by the plaintiffs the trial Court judgment and decree were set aside and the appeal was allowed with the observation that the plaintiffs are entitled to a decree for their share as claimed in the suit from the defendants. Against the appellate decree, Second Appeal was preferred to this Court which was dismissed on 26-7-90. Thereafter petitioners levied execution against the defendants-opposite parties claiming their share of house-rent. The defendants raised their objection u/s 47 of the CPC to the executability of the decree passed in the Money Suit on the ground that the decree under execution was a simple declaratory decree and there being no direction that the defendants are to make payment, the decree is inexecutable and, therefore, the execution case cannot proceed. The Executing Court came to find that since no specific direction had been given by the appellate Court in the decree to the plaintiffs to recover any amount from the defendants and they having not been directed to make any payment to the plaintiffs, the decree is not executable. Consequently it has been held in the impugned order, that the execution proceeding is hot maintainable. This order order of the executing Court is under challenge in this revision.

2. The learned counsel for the petitioners-(plaintiffs) attack the impugned order on the ground that the suit was for money and the same having been decreed in appeal, the petitioners were entitled in law to put the decree into execution for realisation of their share of money and therefore the impugned order should be vacated with a direction that the execution case shall proceed.

3. The learned counsel for the opposite parties, on the other hand, reiterated the argument which was advanced before the executing Court and accepted by it.

4. A reference to the decree in question reveals that the claim in the suit was for recovery of money due on arrear house-rent and the suit was valued at Rs. 5,471.35 paise. As already stated above, the appeal preferred by the plaintiffs, who lost in the trial Court, was allowed with the observation that the plaintiffs are entitled to a decree for their share as claimed in the suit and the plaintiffs have put the same to execution. True it is, that there is no specific direction in the decree that the plaintiffs shall be entitled to realise their share from the defendants or that the defendants shall make payment of the same to the plaintiffs. Whether absence of any such direction renders the money decree inexecutable is the moot question to be decided in this revision.

5. While elucidating his argument, the learned counsel for the opposite parties placing reliance on the decision in the case of Potti Venkata Kasi Viswanadham Vs. Vallabha Vyas, , submitted that the executing Court cannot go behind the decree and look into the pleading and judgment, since the decree is quite clear and unambiguous. The ratio in the said decision is uncontrovertible. Only when a decree is ambiguous, being not clear and unequivocal, an executing Court can examine the judgment and if necessary, the pleadings also in search of assistance to know the real nature and meaning of the decree.

In the case at hand the suit was one for money and in appeal the original decree dismissing the plaintiff''s claim was set aside and it was held that the plaintiffs are entitled to a decree for their share as claimed in the suit from the defendants. The appellate decree as I find is quite clear and unequivocal and therefore neither the appellate judgment nor the pleadings need not be looked into for finding out the true nature and meaning of the appellate decree.

6. On the second point on which strong reliance was placed by the learned counsel for opposite parties, the decision of this Court in the case of Lingaraj Paikaray and Others Vs. Raghunath Chhotray and Others, was pressed into service. There the matter arose out of a suit by partners of a partnership business for declaration that the defendant had ceased to be a partner of the partnership business from a specified date; that the defendant had no other right against the plaintiffs or the partnership firm or its assets except to receive the

amount standing in his name in the books of the firm and the value of the share in the goodwill assessed at Rs. 5,000/-; and some other allied declarations. In the decree that followed it was found that a sum of Rs. 1,04,542.78 paise was standing to the credit of the defendant in the books of the firm and he had no other right against the plaintiffs or the partnership firm or its assets except to receive the said amount and the value of his share in the goodwill assessed at Rs. 5,000/-. Thereafter the defendant levied execution for realisation of Rs. 1,04,547.78 paise plus Rs. 5,000/-, in all Rs. 1,09,547.78 p. by attachment and sale of the immovable properties of the plaintiffs. The plaintiffs filed objection u/s 47, C.P.C. challenging the executability of the decree. The executing Court held that though the decree is declaratory, it will be executed as it is passed in a suit for dissolution of partnership in which each partner has the same right. The objection was therefore dismissed, against the order dismissing the objection, plaintiffs came up in revision and this Court held that the decree in its nature is declaratory and not executable; that there has no order of the Court for payment of the amount which can be enforced by execution, and that there is nothing in the decree which empowered the defendant to recover the amount through Court by execution.

6A. The facts of the above case are quite distinguishable from the facts before us. In that case relating to a partnership business, the plaintiffs prayed for several declarations and while disposing of the suit the trial Court made an observation in favour of the defendant that he was entitled to certain money from the partnership business/plaintiffs. But in the case at hand the decree clearly reveals that the suit was one for recovery of money due as house-rent and the same was decreed in appeal with a clear finding that the plaintiffs are entitled to their share in the house-rent as claimed in the suit from the defendants. This finding is enough and further declaration that the plaintiffs are entitled to realise the amount from the defendants or that the defendants shall make payment of the same to the plaintiffs would only have been superfluous. In this view of the matter, the impugned order that the execution proceeding was not maintainable and the decree was inexecutable is manifestly illegal and cannot be sustained.

7. In the result the Civil Revision is allowed and the impugned order is set aside. The execution case shall proceed for realisation of the share of the decree-holders in the house-rent from the judgment-debtors. There shall be no order as to costs.

