
(1923) 02 MAD CK 0042
In the Madras High Court

Yellapragadda Sriramachandra Venkatanarayana APPELLANT
Vs
Ruvvada Narasimha Row RESPONDENT

Date of Decision : 07-02-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 19

Citation : 72 Ind. Cas. 865 : (1923) 17 LW 643

Hon'ble Judges : Venkatasubba Rao, J; Oldfield, J

Bench : Division Bench

Judgement

Oldfield, J.—I have had the advantage of reading my learned brother's judgment and I am not prepared to dissent from his interpretation of Order XXI, Rule 19, Civil Procedure Code. In accepting it, however, I observe that the difficulty arising from the division of the interest of a deceased party to a decree between two legal representatives does not seem to have been contemplated in that rule, since it does not include even a provision similar to Rule 18(3)(a) and that I am, with all respect, unable to apply language used by Batchelor, J., in *Madappa Ganapa Hegde v. Jaki Ghosal* 30 Ind. Cas. 893 : 40 Ba. 60 : 172 Bom. L.R. 689 to the present case, since that difficulty was not there under consideration. But the language of Rule 19 in my opinion is consistent only with the conclusion reached by my learned brother and I accept his conclusion that the agreement set up between first and fourth defendants was subject to a condition which is not shown to have been fulfilled and is, therefore, ineffective. I, therefore, concur in the order proposed.

Venkatasubba Rao, J.

2. This is an appeal from an order of the Subordinate Judge of Rajahmundry allowing execution against the fourth defendant at the instance of the husband of the plaintiff who claimed to be the plaintiff's legal representative. The fourth defendant was directed by the decree to pay to the plaintiff a sum of Rs. 385-4-0 as mesne profits in respect of some property. The plaintiff's husband applied for execution in respect of this sum of money. The fourth defendant objected to

execution on the ground that under the same decree, the plaintiff was directed to pay him Rs. 2,000 with interest at 12 per cent, from a certain date and that the amount due to him being much larger than the sum payable by him, the plaintiff's representative was not entitled to take out execution for the smaller sum. The Subordinate Judge overruled this contention and the fourth defendant is the appellant before us.

3. The respondent, the plaintiff's husband, has sought to support the judgment of the lower Court on the ground that the decree was obtained by the plaintiff in respect of certain properties which she claimed as the heir of her mother; that the amount payable to the fourth defendant under the decree was payable by the plaintiff as representing the estate of her mother; that the amount which the plaintiff was to get from the fourth defendant was her stridhanam property; that the respondent, as her husband, inherited that property, and that he was, therefore, entitled to recover by execution the sum which the plaintiff was to get under the decree without reference to the amount which the plaintiff was directed to pay to the fourth defendant. It was further argued that the first defendant in the suit, who was the brother of the plaintiff, became the plaintiff's representative in respect of her mother's estate and that the first defendant, was, therefore, liable to pay the amount which the plaintiff was decreed to pay to the fourth defendant. In short, the argument on behalf of the respondent was that the fourth defendant was bound to pay him Rs. 385-4-0 and the fourth defendant's remedy in respect of Rs. 2,060, and interest thereupon lay against the first defendant.

4. We have to determine which of these two contentions is correct. Order XXI, Rule 19, CPC runs, as follows:--"Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,--(a) if the two sums are equal, satisfaction for both shall be entered upon the decree and (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree."

5. The decree under consideration is "a decree under which two parties are entitled to recover sums of money from each other." The plaintiff was entitled, to recover Rs. 385-4-0 from the fourth defendant and the latter Rs. 2,000 and interest thereupon from the plaintiff. There can be no doubt that the plaintiff and the fourth defendant answer the description of "two parties", in the rule. That being so, the provision is clearly applicable, because an application has been made to the Court for the execution of a decree of the nature described by the rule. Clause (b) provides that where application is made to the Court for the execution of such a decree, satisfaction for the smaller sum shall be entered upon the decree. Now such an application has been made and, under the rule, the Court has no option but to enter up satisfaction for the smaller sum, that is, in this case the sum due to the plaintiff. When the satisfaction has been so

entered, there can be no sum payable to the plaintiff and the plaintiff, therefore, will not be able to execute the portion of the decree which awards him the smaller amount, if the plaintiff during her lifetime attempted to execute the decree, Order XXI, Rule 19 would be an effective bar against her. The respondent, has argued that the provision does not automatically, of its own force render the decree for the smaller sum inexecutable; in other words, that the effect of Rule 19 is not to convert a decree with two distinct provisions into a single decree enforceable only for the difference between the two sums; but, on the contrary, that the point of time when the operation is to be given to the provision under question is when application is made for the execution and that, as in the present case, on the date of the execution application the plaintiff's interest "became split up, the rule has no application. It is no doubt true that the provisions of the section come into operation only "where application is made to a Court for the execution of a decree," but that condition has been satisfied in the present case. The application has been made. The section does not exclude the case of a decree-holder on whose death his interest devolves on two different individuals." "Two parties" referred to in Rule 19 are the parties to the suit. The words do not refer to two different representatives of the same party. On a strict construction of Order XXI, Rule 19, I have no hesitation in coming to the conclusion that the appellant's contention is correct and that the plaintiff's husband is not entitled to take out execution for the smaller sum awarded to the plaintiff under the decree.

6. Moreover, I am at a loss to understand why the defendant should suffer because on the death of the plaintiff, her interest devolved on two different representatives. I fail to see why, if, as the result of the set-off, the fourth defendant was entitled to recover from the plaintiff, the difference between the two sums, he should immediately upon her death be obliged to pay into the hands of one representative the smaller sum and perhaps be unable to recover the larger sum from the other representative. This seems to me clearly opposed to justice and I find no justification for this view in the terms of the section to which reference has been made.

7. Four cases were cited by the appellant's learned Vakil as hearing on the question, *Bhagwan Singh v. Ratan* 16 A. 395 : A.W.N. (1894) 133 : 8 Ind. Dec. 257; *Sankara Menon v. Gopala Pattar* 23 M. 121 : 8 Ind. Dec. 479; *Annada Mohan Roy v. Atul Chandra Chakartarti* 56 Ind. Cas. 753 : 24 C.W.N. 465 and *Madappa GanapaHegde v. Jaki Ghosal Gabri Ghosal* 30 Ind. Cas. 893 : 40 B. 60 : 17 Bom. L.R. 689. I shall refer only to the last cited decision, because I think it alone has a material bearing upon the case on hand. There the applicant applied to execute a decree for recovering Rs. 445-8-0 which he was entitled to recover from the opponents as mesne profits. Under the same decree, the opponents were entitled to claim the sum of Rs. 855 as costs from the applicant; but they were prevented from recovering it as the right to it was barred by limitation. They, however, claimed to set off the amount against the amount sought to be recovered by the applicant. It was held that the applicant could not be allowed to

execute his decree for the smaller sum without reference to the larger sum which the decree awarded to the opponents. Batchelor, J., observed at page 63, Page of 40 B.?[Ed.] "For, as I read the rule, it contemplates that the decree should be regarded as a single indivisible order of the Court enforceable only for the balance, that is, the difference between the two sums awarded, and that balance becomes awardable by the Court without the intervention of the parties as soon as the amount of the balance is determined.

8. I, There remains one point to consider. It is said that the fourth defendant entered into an agreement with the first defendant in respect of the amount payable by the plaintiff to the fourth defendant. The respondent has argued that the fourth defendant has thus precluded himself from setting up that an amount is due to him under the decree. In answer to this argument it is sufficient to say that it is admitted that the agreement relied upon is a conditional agreement and that the condition has not been fulfilled. The amount due to the fourth defendant has not been paid and the respondent cannot, therefore, contend that the portion of the decree relating to payment to the fourth defendant has been satisfied. In this view, it becomes unnecessary to determine the other question, namely, whether the adjustment referred to not having been certified under Order XXI, Rule 2, may or may not be recognised by the Court executing the decree.

9. The appeal should, therefore, in my judgment, be allowed with costs.