

APPELLATE CIVIL

Before P. C. Jain, J.

SARDARNI JASWANT KAUR, ETC.,—Appellants

versus

SURJIT INDER SINGH SIBIA, ETC.,—Respondents.

Execution First Appeal No. 402 of 1966.

May 11, 1970.

Code of Civil Procedure (Act V of 1908)—Section 47—Pre-decree agreement between the Parties setting out the mode of execution—Such agreement not incorporated in the decree—Whether can be pleaded at the time of execution.

Held, that the duty of an executing Court is to give effect to the terms of the decree and execute it as it is. It has no jurisdiction to go behind it. A decree is a formal document drawn up in accordance with the judgment of the Court and the same has to be executed by the executing Court as it stands. Hence a pre-decree agreement between the parties setting out the mode of execution, not incorporated in the decree cannot be pleaded at the time of execution. If the decree as passed is an unconditional one, the agreement, setting out mode of execution, thus making it conditional, will result in varying the terms of the decree. Such a course is not permissible at the time of execution as the executing Court cannot go behind a decree.

(Paras 7 and 12)

Execution first appeal from the order of the Court of Shri Joginder Singh Sekhon, Senior Sub-Judge, Patiala, dated 14th April, 1966, dismissing the objection petition filed by Hargurdial Singh, Kaka Devinder Pal Singh minor, Jaswant Kaur and Amarjit Kaur Judgement debtor.

KESHO RAM MAHAJAN, AND R. K. AGGARWAL, ADVOCATES, for the appellants.

S. C. SIBAL, ADVOCATE, for respondents Nos. 1 & 2.

JUDGMENT

P.C. JAIN, J.—Briefly the facts of this case are as follows :—

Surjit Inder Singh, decree-holder, who died during the pendency of this appeal and whose legal representatives have been brought on the record, obtained a decree for an amount of

Rs. 23,950/- with costs on 1st July, 1961, against the assets of late Kuldip Singh to which the judgment-debtors succeeded after his (Kuldip Singh's) death. The decree-holder filed an execution application but the same was resisted by Smt. Kirpal Kaur, one of the judgment debtors on the ground that the property sought to be executed had been gifted to her by Kuldip Singh and as such was not liable to attachment. The objection of Smt. Kirpal Kaur was upheld and the application for execution of the decree was dismissed. The decree-holder again presented an execution application but the same was dismissed in default on 13th May, 1963. Thereafter he filed a fresh execution application and sought to attach certain properties and agricultural lands mentioned therein. Again Smt. Kirpal Kaur, one of the judgment-debtors, filed objections on the ground that the agricultural lands sought to be attached had already been exempted from execution and for that reason it could not be attached again. This objection of Smt. Kirpal Kaur was accepted on 16th May, 1964. Another objection petition was filed on behalf of Smt. Jaswant Kaur and others, judgment-debtors, on 22nd June, 1964, *inter alia* on the ground that during the pendency of the original suit the counsel for the decree-holder had entered into an agreement, dated 13th November, 1959, Exhibit 0/1, the terms of which read as under :—

- (i) In the event of the suit being decreed, the decree-holder plaintiff shall execute the decree in the first instance against the assets of S. Kuldip Singh deceased debtor in the hands of Sardarni Kirpal Kaur;
- (ii) That if the decree is not satisfied out of the assets in the possession of Sardarni Kirpal Kaur, the decree-holder shall have a right to proceed against the assets of S. Kuldip Singh in the hands of S. Hargurdial Singh, Sardarni Jaswant Kaur, Kaka Devinderpal Singh, Bibi Amarjit Kaur minor in proportion to the liability devolving on them according to law out of the assets of S. Kuldip Singh.

(2) It was further alleged in the objection petition that the decree-holder had taken out execution against the property in the hands of the said-judgment-debtors contrary to the terms of the agreement referred to above and as such the execution application was not maintainable against them.

Sardarni Jaswant Kaur, etc. v. Surjit Inder Singh Sibia, etc.,
(P. C. Jain, J.)

(3) The objections were contested by the decree-holder on the pleas that these could not be entertained by an executing Court at this stage and that originally the decree-holder had sought execution of the property in the hands of Smt. Kirpal Kaur alone but could not succeed and as such the execution application was maintainable and the objection of the judgment debtors-appellants merited dismissal.

(4) On the pleadings of the parties, the following issue was framed:—

Whether the decree is not executable against the estate of late S. Kuldip Singh in the hands of the objectors per agreement entered into between the decree-holder and the objectors ?

The executing Court, after going through the entire matter and in view of the decision of this Court in *Co-operative Bank, Harsana Kalan v. Ram Sarup Ravi Dutt* (1) that of the Lahore High Court in *Robert Hercules Skinner v. R. M. Skinner and others* (2), and that of the Allahabad High Court in *Krishna Raj Trading Corporation v. Ram Saran Dass and Brothers* (3), decided the issue against the judgment-debtors-objectors and dismissed their objection petition. Feeling aggrieved from the judgment and order of the learned Senior Subordinate Judge, Patiala, dated 14th April, 1966, the present execution first appeal has been filed by the judgment-debtors.

(5) It was vehemently contended by Mr. K. R. Mahajan, learned counsel for the appellants, that the agreement Exhibit o/1 did not result in varying the terms of the decree, that the agreement related to the manner of the executability of the decree and that the same could be taken into consideration by the executing Court at the time of the execution. It was also contended by the learned counsel for the appellants, that the agreement Exhibit 0/1 by the executing Court did not lay down the correct law.

(6) After giving my thoughtful consideration to the entire matter, I find myself unable to agree with the learned counsel for the appellants.

(1) A.I.R. 1953 Pb. 267.

(2) A.I.R. 1937 Lah. 537.

(3) A.I.R. 1962 All. 374.

(7) In the instant case the decree, as it stands, was against the assets of late Kuldip Singh in which the judgment-debtors-appellants also received a share. The decree, therefore, was capable of being executed against the assets of late Kuldip Singh in the hands of all the judgment-debtors simultaneously. The settled proposition of law is that the duty of an executing Court is to give effect to the terms of the decree and execute it as it is. It has no jurisdiction to go behind it. If it was so desired, as is evident from clause (i) of the agreement reproduced above that in the first instance the decree-holder would execute the decree against the assets of Kuldip Singh deceased, in the hands of Smt. Kirpal Kaur alone, then such a term should have been got incorporated in the decree. I do not agree with the learned counsel Mr. Mahajan that the pre-decree agreement which is being pleaded in this case does not change or vary the terms of the decree but describes only the manner in which the decree is required to be executed. The decree was an unconditional decree passed against the assets of late Kuldip Singh to which all the judgment-debtors succeeded. The decree could be executed against all of them at one and the same time. The agreement set up by the judgment-debtors-appellants provides that the decree would be executable first against the assets of Kuldip Singh deceased in the hands of Smt. Kirpal Kaur. The agreement thus made the decree a conditional decree although the decree as it was passed admittedly was an unconditional one. It is, therefore, clear that by setting up the agreement, the appellants really wanted the executing Court to alter the decree and go behind it. A decree is a formal document drawn up in accordance with the judgment of the Court and the same has to be executed by the executing Court as it stands. A similar question arose before a Division Bench of the Allahabad High Court in *Krishna Raj Trading Corporation's case* (3), wherein after considering catena of authorities, it was observed thus :—

“(12) The terms of Sec. 47, C.P.C. appear to us to be clear and unambiguous. Only questions relating to the execution, satisfaction and discharge of a decree can be raised under that section. It is well settled that except in certain exceptional circumstances, e.g., when the decree is nullity or patently without jurisdiction, it is not open to the Court to go behind the decree and to question its validity. Nor can the executing Court say that the decree should

Sardarni Jaswant Kaur, etc. v. Surjit Inder Singh Sibia, etc.
(P. C. Jain, J.)

have been passed in a way different from the way in which it has actually been passed and then proceed to execute it as if it had been passed in that other manner. If, therefore, a decree is clear and unconditional the executing Court cannot on any basis make the decree conditional or hold that it was not intended to be executed in certain circumstances because of an agreement arrived at before the decree was passed. If there was such an agreement the only thing which the parties could do was to bring forward that agreement at the time when the decree was being passed and to have it incorporated in the decree. That not having been done the agreement, if any, must be deemed to have been superseded by the decree and the decree must be given effect in preference to the alleged agreement. Having failed to put forward the agreement at the time when the decree was being passed (for the omission the judgment-debtor could only blame itself) it was no longer open to it to put forward the agreement at the time of execution and to say that the agreement should be honoured and the decree should not be executed on that basis. Setting up of such a pre-decree agreement in the execution department is, it appears to us, not permissible under section 47, C.P.C..”

In the Division Bench decision of the Lahore High Court in *Robert Hercules Skinner's case* (2), the following observations may be read with advantages :—

“Section 47, Civil P.C., is, no doubt, very widely worded and lays down that all questions relating to the execution, discharge and satisfaction of a decree shall be determined by the Court executing the decree. But there is, I think, an essential distinction between the functions of a Court which adjudicates on the rights of the parties and embodies the decision in a decree and the functions of a Court whose duty is merely to execute such a decree. As pointed out by the learned Judges of the Calcutta High Court in *Hasan Ali v. Gauzi Ali Mir* (4), S. 244, Civil P.C.,

(4) I.L.R. (1904) 31 Cal. 179.

1882 (which corresponds to S. 47, Civil P.C., 1908) presupposes the existence of a decree which is validly susceptible of execution. The executing Court can, therefore, only go into matter relating to the execution, discharge or satisfaction of the decree which arise after the decree came into existence and result in its discharge or satisfaction and not into a pre-decree compromise like the one pleaded in this case which practically nullifies the decree. I respectfully concur in this view and hold that the compromise in question could not be pleaded as a bar in execution proceedings, and that a separate suit for declaration of the plaintiff's rights (such as they might be) on the basis of the compromise is maintainable."

To the same effect is the decision of this Court in *Co-operative Bank, Hasana Kalan's case* (1).

(8) Mr. Kesho Ram Mahajan, learned counsel for the appellants, contended that the decisions in *Robert Hercules Skinner's case* (2) and *Co-operative Bank, Harsana Kalan's case* (1), were distinguishable and did not apply to the facts of this case. According to the learned counsel, in *Robert Hercules Skinner's case* (2) the compromise which was being pleaded as a bar to the execution of the decree had actually resulted in reducing the amount of the decree which had been decreed. Similar criticism was also levelled by the learned counsel against the decision of this Court in *Co-operative Bank, Harsana Kalan's case* (1). I am unable to agree with this contention of the learned counsel. The law enunciated in these decisions is fully applicable in the instant case, that an executing Court has no jurisdiction to go behind a decree. It may be observed that the learned counsel conceded that the decision of the Allahabad High Court in *Krishna Raj Trading Corporation's case* (3), was fully applicable to the facts of the case in hand but contended that it did not lay down the correct law.

(9) On the other hand the learned counsel placed great reliance on the decision of the Madras High Court in *K.A.N. Chidambaram Chettiar v. Krishna Vathiyar and another* (5). In that case by a majority of two to one, it was held that it was open to a judgment-debtor to set up an oral agreement subsequent to the filing

(5) I.L.R. 40 Mad. 233—A.I.R. 1918 Mad. 1174.

Sardarni Jaswant Kaur, etc. v. Surjit Inder Singh Sibia, etc.
(P. C. Jain, J.)

of the suit and prior to the passing of the decree in order to prevent the decree-holder from proceeding to execute the decree. The majority view of the Full Bench was, however, based on the practice which had prevailed in the Madras Presidency for a long time, as is evident from the following observations of Abdul Rahim, Officiating Chief Justice:—

“By a long course of decisions in this Presidency it has been held that an agreement made before the passing of the decree, by which the decree was not to be executed for a certain time, is a matter to be enquired into and decided by the executing Court.”

(10) Seshagiri Aiyar, J. also based his opinion on the practice prevailing in that Presidency and observed that he would have hesitated a great deal before allowing such course to be adopted in execution if the matter were *res integra*. The decision in *K. A. N. Chidambaram Chettiar's case* (5), was thus based on the principle of *stare decisis*. Phillips, J. who gave a dissenting judgment was not in favour of deciding the case on that principle. My attention was also drawn by the learned counsel for the appellants to the subsequent decisions of the Madras High Court in *Atmakuru Butchiah Chetti v. S. Tayar Rao Naidu and others* (6) and *Adappa Papamma and another v. Darbha Vepkayya and others* (7), and also to the decision of the Andhra Pradesh High Court in *Sait Hemraju Ratanchand firm v. Subrahmanyam*, (8).

(11) In *Atmakury Butchiah Chetti's case* (6), the Division Bench after reviewing the entire case law on the subject, observed thus :—

“On a review of the authorities it appears to us that the Full Bench case, *Chidambaram Chettiar v. Krishna Vathiyar* (5) only covers agreements which relate to execution and not to agreements which attack the decree itself. There may be, as noted above, certain pre-decree arrangements

(6) A.I.R. 1931 Mad. 399.

(7) A.I.R. 1935 Mad. 860.

(8) A.I.R. 1960 A.P. 324.

which though in form they relate to execution, do in substance modify or totally nullify the decree; and in regard to these cases we find different decisions owing probably to the angle from which the matter is regarded. But the only case quoted to us in which the agreement directly alters the decree by something which does not relate to execution at all, but means that the decree shall be executed for a sum different from what has been stated in the decree, is *Pedda Veeranna v. Gondimalla Veerana* and the effect of this decision is discounted by the subsequent remarks of Seshagiri Ayyar, J., in *Arumugam Pillai v. Krishnaswami Naidu*. In all other cases of both this and other Courts it seems to be quite clear that an agreement which does not relate to execution, but directly attacks the decree itself cannot be pleaded in execution."

(12) The above-mentioned view of the Division Bench was approved by the Full Bench in *Adappa Panamma's case* (7), but on the question involved in that case the learned Judges observed thus :—

"This view which reconciles almost all, if not all, the Madras decisions on the subject is one in which I venture to express my entire concurrence. The agreement pleaded in the present case is one which relates to execution alone, and does not attack the decree itself, for it is merely an agreement not to execute the decree as against the 1st judgment-debtor and nothing more. It follows therefore that the agreement can be pleaded in execution, and the executing Court can determine whether the agreement is true."

The Andhra Pradesh High Court in *Sait Hemraju Ratanchand firm's case* (8) has also taken the same view for the reasons that the Full Bench decision of the Madras High Court was binding on it. There is no doubt that the decisions of the Madras High Court and that of the Andhra Pradesh High Court, referred to above, support the contention of Mr. Mahajan, but with respect, I must say that I have not been able to persuade myself to agree with that view. As earlier observed, the pre-decree agreement which is being pleaded in this case, does change and vary the terms of the decree. The decree, as

Sardarni Jaswant Kaur, etc. v. Surjit Inder Singh Sibia, etc.
(P. C. Jain, J.)

it was passed, was an unconditional one and could be executed against all the judgment-debtors who succeeded to the assets of late Kuldip Singh simultaneously. The agreement in dispute makes the decree conditional and if acted upon, would result in varying the terms of the decree. Such a course is not permissible at the time of execution as the executing Court cannot go behind a decree. I am in respectful agreement with the view taken by the learned Judges of the Allahabad High Court in *Krishna Raj Trading Corporation's case* (3). The decisions in *Robert Hercules Skinner's case* (2) and *Co-operative Bank, Harsana Kalan's case* (1) also support the view I am taking. In this connection the decision of the Calcutta High Court in *Benode Lal Pakrashi v. Brajendrakumar Saha* (9), and *Hassan Ali v. Gauzi Ali Mir* (4) and that of the Nagpur High Court in *Bhaskar Dattatraya v. Nilkanth Dattatraya* (10), may also be read with advantage. In this view of the matter, I hold that a pre-decree agreement which has not been incorporated in the decree, cannot be pleaded at the time of execution.

(13) Moreover, the objections of the appellants on the basis of the alleged agreement are bound to fail even on this ground that the decree-holder had, in the first instances, tried to execute the decree against Smt. Kirpal Kaur, but did not succeed and ultimately had to file the execution application, out of which the present appeal has arisen, against the judgment-debtors-appellants. Even if it is accepted for the sake of argument that the agreement Exhibit o/1 could be set up as a defence, then also its terms have been satisfied and the execution application has been rightly and justifiably filed against the judgment-debtors-appellants.

(14) No other point was urged.

(15) For the reasons recorded above, this appeal fails and is dismissed, but in the circumstances of the case, I make no order as to costs.

(9) I.L.R. 29 Cal. 810.

(10) A.I.R. 1938 Nag. 265.
