

**Venkatrao Vs. Mallappa**

**Venkatrao Vs. Mallappa**

**SooperKanoon Citation :** [sooperkanoon.com/374160](http://sooperkanoon.com/374160)

**Court :** Karnataka

**Decided On :** Aug-14-1958

**Reported in :** AIR1959Kant164; AIR1959Mys164; ILR1958KAR559;  
(1958)36MysLJ916

**Judge :** M. Ahmed Ali Khan, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 20, Rule 10 - Order 21, Rule 31

**Appeal No. :** Second Appeal No. (H) 411 of 1956

**Appellant :** Venkatrao

**Respondent :** Mallappa

**Advocate for Def. :** Manohar Rao Jagirdar, Adv.

**Advocate for Pet/Ap. :** Jagannath Setty, Adv.

**Judgement :**

1. This is a Second Appeal filed by the judgment-debtor. The facts giving rise to this appeal may be briefly stated as follows: The Respondent decree holder had filed a suit No. 583/1 of 1952-53 on the file of the Additional Munsiff, Gul-barga, on 29-1-1953 which was decreed on 31-1-1954. The decree is in the following terms:

'The plaintiff is entitled to get two Ras bullocks or their price HS Rs. 800/-.'

The decree-holder filed an execution petition on 18-7-1955 for the realisation of the decretal amount by attachment and sale of the moveable and in-moveable property of the Judgment-debtor. It appears that the judgment-debtor objected that the relief sought in the execution petition was contrary to the terms of the decree and that he is willing to deliver possession of the bullocks to the decree-holder.

It also appears from the application dated 19-12-1955 of the judgment-debtor that two bullocks were, actually brought in the Court, but the decree-holder refused to take their delivery. The executing Court, by its order of the same date, i.e. 19-12-1955, directed that the decree-holder must accept the bullock, and dismissed the execution petition in full satisfaction.

The lower appellate Court, however, allowed the appeal and held that the decree gave the decree-holder an option either to get back the bullocks or their price and that the decree-holder was not bound to take back the bullocks; and set aside the order of the executing Court. Against this order the judgment-debtor has preferred this second appeal before us.

2. I find sufficient force in the arguments of the learned Counsel for the Appellant that, giving of an alternate remedy, does not, however, give the decree-holder any option of refusing to take the delivery of the property and of insisting upon the money portion of the decree. Order 20, Rule 10 of the Civil Procedure Code provides that a decree in a suit for moveable property should state certain amount of money as an alternative, if delivery of the cattle in dispute cannot be had

This rule provides that, if the goods are capable of delivery, they must be delivered and, if they are not, the assessed damages should be paid. The decree-holder cannot execute his decree without having recourse to the procedure prescribed by Order 21, Rule 31 of the Civil Procedure Code. He cannot execute the money portion of the decree alone without applying for the moveable property. Vide *Shiva Prasad Singh v. Pravag Kumari Debee.* : AIR1935 Cal39 , *Ralmukunda Bisseswarlal v. B. N. Rly. Co. Ltd.* : AIR1927 Cal652 and *Manavikraman v. Moyankutty*, 13 Mad LJ 444. I, therefore, cannot be coerced to the soundness in law of the order in appeal.

3. It has been argued on behalf of the Respondent that one of the bullocks is dead during the pendency of the appeal. Consequently, the decree-holder will not take the delivery specifically. It is apparent from the application of the judgment-debtor referred to above, i.e. dated 19-12-1955 and the order of the executing Court of the same date that the decree-holder intentionally avoided taking delivery of the bullocks.

Thus he cannot take advantage of his own act. After taking delivery of the bullocks, which is in existence., he can, however, resort to proper remedy in law if he has any. In view of the provisions contained under Order 20, Rule 10 and Order 21, Rule 31 of the Civil Procedure Code, I find myself unable to agree with the view of the lower appellate Court.

4. I, therefore, allow the appeal and set aside the order of the lower appellate Court. Consequently, the execution petition will stand dismissed. No order as to costs.

5. Appeal allowed.