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Basalingappa Vs. Babban Basappa

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Court : Karnataka

Decided On : Mar-20-1961

Reported in : AIR1962Kant100; AIR1962Mys100; ILR1961KAR634

Judge : Mir Iqbal Hussain, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 21, Rule 2; Limitation Act 1908 - Schedule - Article 174

Appeal No. : Second Appeal (H) No. 387 of 1956

Appellant : Basalingappa

Respondent : Babban Basappa

Advocate for Def. : S.R. Kagalkar, Adv.

Advocate for Pet/Ap. : K. Jaganath Setty, Adv.

Judgement :

(1) The decree-holder to whom the payment of the decree amount has been made and who has in under unequivocal terms accepted the discharge of the decree, has been responsible for this litigation. The grievance of the appellant before this Court is that he is asked to pay twice over, which it is urged on his behalf, is neither in accordance with law, facts of the case or equities.

(2) The facts leading up to this appeal are briefly as follows: One Shivasettappa whom I form as the decree-holder in this appeal obtained a decree against the appellant Baslingappa whom, for the purpose of easy reference, I will term as decree-holder in the Court of the Munsiff at Gangavathi in Suit No 94/1 of 1953-54. The decree is dated 14,7,1954. The judgment-debtor appellant filed an appeal before the district-Judge, Raichur challenging the decree. This appeal filed by the judgment-debtor was not disposed of on merits. Certain circumstances intervened which , according to the judgment-debtor, were in his favour and therefore, he was satisfied with the order passed by the learned District Judge, Raichur, an application was filed on 15.10.1954 by the said decree-holder wherein in unequivocal terms he states as follows:

'The parties have compromised and accordingly the respondent (decree-holder) has executed a receipt on 29.8.1954 regarding the payment in favour of the defendant appellant (judgment-debtor) and there is nothing due by the defendant to the respondent -plaintiff (decree-holder), He also withdraws from the decree passed by the lower Court. Hence it is prayed that the appeal be allowed due to the withdrawal and the decree of the lower Court he set aside. The parties will bear their own costs.'

This application is filed by the decree-holder .He has affixed his signature to it and it is also agreed by his advocate Sri Bhimacharya. When this application was prevented the learned District Judge endorsed that 'the decree-holder testified on oath to the contents of this application and stated that it bears his signature. Hence certified be filed'. The learned District Judge affixes his signature thereto and dates it as 15.10.54.

(3) What has transpired in between these two dates is that the decree-holder has assigned his decree against the judgment-debtor (appellant) in favour of one Kabban Basappa On 8.9.1954. Kabban Basappa is this contesting respondent before this Court. This matter, perhaps, did not come to the notice of the District Judge immediately. Otherwise, the learned District Judge would not have certified the compromise as he has done by his endorsement dated 15.10.1954 to which I have referred

On 16.10.1954 as per the order sheet of the District Court I find, that not only the advocates of the parties viz, the decree-holder as well as the judgment-debtor but also the transferee of the decree were present. As per the terms of the compromise application it was prayed that the applied petition should be disposed of. At this stage, the advocate for the transferee of the decree whom for purposes of easy reference of in the first instance and be, therefore, prayed for time for argument. The case was, however, the learned District judge, dismissed the appeal that by the judgment-debtor (appellant). No doubt he makes a record as follows:

'The advocate for the appellant (judgment-debtor) states that the appellant has paid the decorate amount to the decree-holder Shivasettappa in full and does not want to press be struck off

the record.' Hence the appeal was struck off the record.

'(4) Now starts the next chapter in this unfortunate litigation. On 14.7.19555 Kabba Basappa, the strength of the assignment of the decree in his favour. Notices were issued both to the decree-holder who was absent as well as to Basalingappa, the judgment-debtor (present appellant) Basalingappa filed his objection on 9th August 1955. He took up the plea that the decree was already adjusted and therefore he should not be called upon to pay the decretal amount twice over.

The learned Munsiff negatived his contentions on several grounds, the important ones are (a) that the certificate of adjustment not having been made to the executing Court as per the provision of Order 21 Rule 2 C.P.C. no such adjustment could be recorded and accepted. (B) that the prayer for adjustment of the decree was hopelessly barred by time. It appeal by the judgment-debtor appellant Basalingappa to the Court of the District Judge, Raichur, the learned Judge upheld the findings of the Munsiff and dismissed the appeal. Hence this record appeal.

(5) It is contended by Sri Jagannatha Shetty, the learned counsel for the appellant that the Courts below have erred in law in holding that there could be no judgment-debtor (present appellant) . He also urges that the Courts have erred in holding

that the plea of adjustment is barred by limitation.

(6) An interesting and important question of law arises in this case. The question before the Court is whether a certificate of payment or adjustment should be filed before the executing Court, the Court, whose duty it is to execute the decree or whether such a certificate of payment or adjustment by the appellant Court satisfies the provisions of law. In this case as stated above, when the appeal was pending in District Court, Raichur, a compromise was arrived at and an application was filed by the decree-holder himself praying for the adjustment of the decree and setting aside the decree of the trial Court. By that application he also agreed that the parties should hear their own costs. Initiative was , therefore, taken by the decree-holder to inform the Court of the adjustment of the decree . The learned Judge confirmed the same by swearing the decree-holder regarding the contents of the application and verified it.

Unfortunately however, final orders passed by the learned District Judge dated 4.2.1955 are not in terms of the compromise. No doubt as is evident from the records and the judge's notes of 16.10.1954, the learned District Judge states 'It is prayed that the appeal petition should be disposed of in terms of the compromise'. In other words, he takes note of the fact of the compromise on filled before him. But on that day, no final orders were passed and the case was adjourned. It is contended by Sri Ragalkar, the learned advocate for the respondent that the final order is not in terms of the compromise petition. Therefore, the adjustment has not been recognised by the District Judge. In fact by his order the appeal is withdrawn leaving the decree of the trial Court intact.

(7) It would have given a quietly to this litigation if the learned District Judge had given an opportunity to all the parties - even to the assignee - the present respondent to put forward his case, to decide whether there was an adjustment as pleaded by the decree-holder . THAT in fact was the case of the judgment-debtor as well. Not having done so, it gave an opportunity to the assignee decree-holder to execute the decree ignoring the settlement of the claims between the judgment-debtor and the original decree-holder and the adjustment if the decree reported to Court . This is rather unfortunate.

(8) The point to be considered then is whether as adjustment of the decree reported to the appellate Court satisfies the provisions of Order XXI Rule 2 C.P.C. Order 21 Rule 2 (1) runs as follows:

'Where any money payable under a decree of any lend is paid out of Court, or the decree is otherwise adjusted in whole or in port to the satisfaction of the decree-holder , the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree and the Court shall record the same accordingly'.

The two essentials of this sub-section are (i) certifying of the payment or adjustment to the Court by the decree-holder. That the decree-holder has so certified, there can be no doubt. (ii) But the more important point that arises for consideration is whether such a certifying of the payment or adjustment could be to the appellate Court at in the present case or should be only to the Court whose duty it is to execute the decree i.e. Musiff's Court at Gangavathi?

(9) There seems to be a conflict in the opinion of several Courts on this important aspect. Some Courts take a rather restricted view and according to it the Court whose duty it is to execute the decree viz., the trial Court is the only competent Court before which payment or adjustment could be certified. That in main is the view of the Madras High Court. A more liberal construction is put on this part of the section by the Calcutta High Court. In an early case of that Court is the case of Biroo Gorain v. Jainurat Koer, in 13 Ind Cas 66 (Cal) his Lordship Mookerjee speaking for the Bench stated thus:

'While an appeal from a decree was pending the decree-holder applied for execution. The judgment-debtor appellate obtained an appeal from a decree was pending the decree-holder applied for execution. The judgment- debtor appellate obtained an ad interim stay execution. After that the judgment-debtor made an application to the Court of Appeal stating that the even had been adjusted and that he wanted to withdraw the appeal. Accordingly, the appeal was dismissed and the decree-holder respondent waived big right to costs. An application for execution which was pending in the Court below was also dismissed. Subsequently, the decree-holder against applied for execution of the decree .

It was hold that :

'Under the circumstances the judgment-debtor by his application, to the Court of Appeal had in substance complied with the requirements of clause 2 Rule 2, Order XXI of the Code'. At page 67 this is how His Lordship puts it: 'When the judgment-debtors noticed to this Court that the decree had been adjusted, it could not be said that they had not noted in accordance with law. No doubt that application did not call upon the decree-holder to certify the alleged the allegation of adjustment was made, it was not repudiated by the learned Vakil for decree-holder respondent. On the other hand, the Vakil for the respondent gave up his costs not only in the rule but also in the appeal . The fact undoubtedly points to the conclusion that there must have been some arrangement between the parties. It is also inconceivable that if no arrangement had been entered into between the parties, the judgment-debtor after having paid Rs. 365/- as Court fee on the memorandum of learned presented on the 8th of January 1909. It was only after the decree-holder applied to the Court ..... to execute the decree ignoring the alleged adjustment that it became necessary for the judgment-debtor to certify the adjustment in question. We therefore, hold, under the circumstances of the case that , treating the application of the 5th February 1909 presented to this Court and the petition of objection presented to the Court below on the 25 the July 1910 as parts of the same transaction, there was sufficient compliance with the provisions of the law. The Court is never astute to impose a technical has so as to give effects to a scheme of fraud, and it would be lamentable if we were constrained to hold that the application of the 5th February 1909 in which the allegation of adjustment was made, was of no avail to he judgment-debtor for the purposes of proceeding under clause (2). Rule 2, Order XXI. In our opinion, the subordinate judge ought to have entertained the objection taken in the application of the 25th July 1910 and investigated it on the merits'.

(10) I have quoted from the above division at some length as its facts bear a lot of resemblance to the facts of the present case though in certain aspects the facts of the case cited above. In both the cases there was an adjustment of the decree. While in the above case that adjustment was brought to the notice of the Court by the judgment-debtor, in the present case it is the decree-holder himself who bring

it to the notice of the Court and in unequivocal terms accepts the adjustments. The learned District Judge certifies to the above facts in the meanwhile, assigned the decree in favour of Kabban Basappa, the present respondent. On other words, he is out of the picture altogether and shoves the responsibility in his assignee. When the assignee files above application for execution in the Court of the Munsiff, Gangavathi, the judgment-debtor takes an objection thereto relying upon the adjustment of the decree between him and the decree-holder . Hence as per the interpretation put by His Lordship Mukherjee the application made by the decree-holder before the learned District Judge along with the objections by the judgment-debtor in the trial Court could be taken together for the purpose of adjustment or satisfaction of the decree as 'parts of the same transaction'. More over, in the present case, when the decree-holder reported the adjustment the Court that had season of the case was the appellate Court viz, the Court of the District Judge, Raichur. It is, therefore, in the fitness of things that the decree-holder should have applied to that Court and that Court only for adjustment. This view finds support in a later decision of the Calcutta High Court which follows the earlier decision in the case of Biroo Gorain and that is the case of Azizur Rahman v. Aliraja Choudhry : AIR1928 Cal527 :

'Where an adjustment was notified to the appellate Court at a time when that Court was in resists of the whole case and the statement that these had been such an adjustment was not objected to on behalf of the decree-holder.'

It was held in that case,

'that the adjustment could not be said to be one which had not been duly certified within the meaning of O. 21 RS.2'.

In the present case the decree-holder not only did not object to the adjustment but he actively took part in filing the application through his advocate that an adjustment of decree had taken place and that the appeal, should be dismissed each party hearing his own costs.

(11) A brief reference is, therefore, to be made to the restricted view taken by the Madras High Court. In the case of Kelu Nair v. V. Meenakshi, 21 Ind Cas 639

(Madras) it was held:

'The Court whose duty it is to execute a decree is the Court that has passed the decree, and not the Court to which an appeal from the decree is preference'.

No doubt the case of Biroo Gorain reported in 13 Ind Cas 63 (Cal) is referred to in the said case but their Lordships do not like to follow the same. But to specific reason is given why the principles laid down in Biroo Gorain's case should not be followed or why that principle is erroneous in law. Perusing the judgments of the Madras High Court I find that it is distinguishable on another point. The adjustment that was reported was not to the appellate Court which was in session of the case but to some other Court unlike in the present case. Even on this ground that case is inapplicable to the facts of the instant case.

(12) A later decision in the case of Arunachalam Chettiar v. Panchali Padayachi, AIR 1922 Madras 66 is also not applicable to the facts of the present case. In that case, there was no application either by the judgment-debtor or by the decree-holder by the Court which passed the decree to certify or record the payment or adjustment of the decree. Hence it was held that it should not be recognised by any Court executing the decree unlike the facts of the present case. Taking into consideration the decisions cited at the Bar in my view this is a fit case where the adjustment should have been upheld in case it was proved as a matter of fact that there was such an adjustment.

(13) The question of limitation is of minor importance. According to the section if the application is made by the judgment-debtor as per the provisions of order 22 Rule 2 (2) C.P.C. that should be done in proper form and notice thereof should be issued it the decree-holder and if the decree-holder fails to show cause as to who adjustment should not be regarded to certified the Court should record the same. The time for such an application is 90 days. No such definite time is given for the application to be made by the decree-holder reporting adjustment. Article 174 of the limitation Act also does not apply to this case that has been made clear by a Full Bench decision of the Allahabad High Court (Lucknow Bench) in the case of Vidhyadhar v. Ramzan, : AIR1952 All715 where it is held as follows:

'There is no provision in the Limitation Act for certification by a decree-holder and the decree-holder can certify such payment even after the period of Limitation i.e. even if the execution of the decree is barred but for such payment. The reason is obvious. Order (2) Rule 2 Civil P.C. does not provide for an application by the decree-holder not does it provide for issue of notice when the decree-holder certifies payment. As no application for issue of notice is required when a decree-holder certifies payment, Art 174 obviously does not apply to a certification by the decree-holder'.

(14) Taking into consideration all the facts and circumstances of the case as well as the principles of law cited at the Bar, I find that this appeal is to be allowed and it is so ordered. The judgments and decree of both the Courts below are set aside. As to whether there has been a payment or adjustment of the decree is a point that has for to be determined by the trial Court. Perusing the judgment of the trial Court I find that it has not properly determined the same. Therefore, the case is remanded to the trial Court to give a finding as to whether there has been an adjustment of the decree as pleaded by the judgment-debtor (appellant) giving opportunity to all the parties in the case to adduce evidence if they so desire and pass necessary orders as per law keeping in view the observations made in this judgment. As regards costs, I order that the costs should await the final result of the case.

(15) Appeal allowed.

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