

**Basawant Dharmappa Kudachi Vs. Devendra Kallappa Pujari**

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**SooperKanoon Citation :** [sooperkanoon.com/375399](http://sooperkanoon.com/375399)

**Court :** Karnataka

**Decided On :** Jul-15-1986

**Reported in :** AIR1987Kant15; ILR1986KAR2643

**Judge :** P.A. Kulkarni, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 47 - Order 21, Rule 2

**Appeal No. :** C.R.P. No. 698 of 1985

**Appellant :** Basawant Dharmappa Kudachi

**Respondent :** Devendra Kallappa Pujari

**Advocate for Def. :** R.U. Godley and ;B.G. Jigjinni, Adv.

**Advocate for Pet/Ap. :** H. Thipperudrappa, Adv.

**Judgement :**

ORDER

1. This is a decree-holder's against the order dated 26-11-1984 passed by the 11 Additional Civil Judge, Belgaum, in Ex Case No. 55/1983 dismissing the same.
2. It is an unfortunate litigation between three brothers. There was a decree awarding 1/3 rd share to the decree-holder. There, was also a final decree. While the final decree was put in execution, there was a compromise between the parties. The decree-holder alleging breach of the terms of the compromise, filed

Ex. Case No. 55/1983 for partition. I.A. No. 2 was filed 'by the judgment-debtor No.1 alleging that the decree has already been satisfied in terms of the compromise and hence the execution petition should be dismissed.

3. The fact that there was a preliminary decree awarding 1/3rd share to the petitioner and that there was also a final decree and that when the final decree was put in execution, there was a compromise, between the parties, is not disputed by any of the parties. Copy of the compromise has been produced in this revision. Clause -11 of the compromise is the material clause.

'If on account of any wanton or deliberated act on the part of the J. Ds., D. He's posies ion and occupation of the first and second floor becomes impossible, D.H. shall give notice thereof calling upon J. Ds. or their representatives to at once stop the alleged acts so as to make D. Ifs. Occupation and enjoyment of the I and II Floor peaceful. If the J. Ds. fail 'to stop such acts within the period stipulated in such notice, 'the arrangement stipulated above shall terminate and the D.H. shall be at liberty to take possession of the portion of the suit property allotted to him as per Final Decree either by executing the final decree or by recourse to other appropriate proceedings.'

4. Whether the above compromise is an adjustment as provided under O. 21, R. 2. C.P.C. or not needs to be gone into. It has been laid down in Sehgal. Bros.v. Bharat Bank Ltd., .

'Subsequent to a decree, the parties may arrive at a settlement and such a settlement might have the effect of wholly satisfying the decree or it might not have such effect. The important question in each such case is whether the parties intended that the existing decree will stand satisfied because of the new set of promise made between them or whether the intention was merely to provide a mode in which the existing decree is to be executed and the compromise is not intended to wipe out the decree.

During the pendency of an execution application, the parties entered into a compromise, which was recorded and the execution application was dismissed. Under the compromise, the judgment-debtors were to pay the decrial amount in

installments. It was agreed that in case the installments were paid regularly, the judgment-debtors were to be allowed a concession in the form of a rebate on interest and the judgment-debtors in turn agreed to provide security for the payment of the amount by agreeing to a charge on some of their properties. In case of default in payment of any installment, the decree-holder is entitled to charge full interest and to recover the decial amount remaining due by executing the decree. On default committed by the judgment-debtors, the decree-holder sought, to execute the decree in terms of the compromise.

'Held: that the compromise was never intended to supersede or satisfy the existing decree but its terms merely provided a mode of executing the decree.

The compromise was intended to be enforced by the executing court and it was in law capable of being so enforced.'

It has been laid down in *Bhagwani v. Lakhim Ram*, that:

'In accordance with a compromise preemption decree, the decree-holder paid a certain amount to the vendee judgment debtor and retained the remaining decial amount for discharge of encumbrance on the property. Subsequently, the judgment-debtor filed an application under S. 47, Civil P.C. for recording a compromise under which the decree-holder was to relinquish his rights under the compromise, pre-emption decree in consideration of a cash payment already made to the decree-holder and a promise to transfer a piece of land free of encumbrance enter getting it redeemed from the mortgagee. The court passing the decree recorded the compromise on the statement of the parties accepting the compromise. Subsequently, however, the decree-holder changed his mind and sought execution of the pre-emption decree

Held: (1) That as no execution was pending when the judgment-debtor applied under S. 47, Civil P.C. the proceedings emanating from that application could be treated as proceedings taken under O.21,. R. 2, Civil P.C.

(2) That as the obligation of the judgment debtor to transfer a piece of land free of encumbrance to the decree-holder under the recorded compromise had yet to be

fulfilled, the compare moose could not be treated as an adjustment of the decree falling within the scope of O. 21, R. 2, Civil P.C. and, therefore, could not provide a bar to the execution of the original compromise pre-edition decree.'

5. Here, in this case, the compromise in question provided for the mode of the execution to be adopted. It did not amount to a satisfaction of the final decree already passed. It has been laid down in the said compromise that if the judgment-debtors by their acts make the possession and occupation of the first and second floor by the decree holder impossible, then the decree-holder shall give notice thereof calling upon the judgment-debtors or their representatives to at once stop the alleged acts so as to make the decree-holder's occupation and enjoyment of the, First and Second Floor peaceful. But it was only a mode of the execution and it did not amount to satisfaction of the decree or adjustment of the decree. Therefore, the trial court was not right in holding that it is an adjustment of the decree. Sri Godley, learned counsel for the 1st respondent submitted that the partition of the suit property was impossible. This is a matter, which can be gone into by the executing court. So far as the payment of Rs.10,000/- is concerned, that does not tilt the balance in favor of the adjustment of the decree. Whether there has been really violation of the condition of the compromise or not, the executing court could go into the same. In this view of the matter, the order passed by the court below is liable to be interfered with. Accordingly, the revision is allowed. The impugned order is set aside. The matter is sent back to the court below for fresh disposal in the light of the observations made above and in accordance with law. No costs.

6. Revision allowed.