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Court : Karnataka

Decided On : Nov-08-1963

Reported in : AIR1964Kant277; AIR1964Mys277; ILR1964KAR125; (1964)1MysLJ243

Judge : Ahmad Ali Khan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 2(2), 2(3) and 2(14) - Order 23, Rule 3

Appeal No. : Civil Revn. Petn. No. 824 of 1962

Appellant : Govindagouda Narayanagouda

Respondent : Madhava Rao Narasinga Rao

Advocate for Def. : G.B. Raikar, Adv.

Advocate for Pet/Ap. : G.B. Kulkarni, Adv.

Judgement :

ORDER

1. This Revision Petition has been filed by the petitioner against the Order of the learned Civil Judge, Senior Division Dharwar dated 6-3-1962 in Special Dharkhast No. 23 of 1959 (Execution Petition) on his file. The facts which are necessary for the disposal of this case may be briefly stated as follows: --

A Civil Suit for partition (Civil Suit No. 21 of 1954 on the file of the Civil Judge, S. D. Dharwar) was filed by the guardian of the plaintiff Waman Aswatharao Patil who was minor at the time of the institution of the said suit. That suit related to partition of moveable and immoveable properties with relief for recovery of possession. It appears that suit ended on a compromise and on the basis of the compromise, a consent decree was passed on 25-6-1956. In that suit (C. S. No. 21 of 1954) the respondent Madhavarao Narasingarao Patil was the power of attorney holder on behalf of the guardian of the minor Plaintiff. In the compromise decree, one of the terms of the decree was to the effect that the Defendant should pay an amount of Rs. 1000/- to the Respondent Plaintiff. This term along with the other terms of compromise have been incorporated in the operative portion of the decree. Sometime after the compromise decree, the respondent filed (execution petition) Dharkhast petition No. 23 of 1959 in the same Court for the recovery of the said amount. The Petitioner (the judgment-debtor) raised objection to the execution of the decree on the ground that the Respondent being not the decree-holder within the provisions of the Civil Procedure Code, he was not entitled to execute the decree. The executing Court has repelled this contention of the judgment-debtor (petitioner) and directed the execution of the decree to proceed. It is this Order of the executing Court that is now challenged in this Civil Revision Petition by the Judgment-debtor.

2. Sri Kulkarni, the learned Advocate for the petitioner urged that the respondent not being the decree-holder is not entitled to execute the decree. In support of his proposition no decision has been brought to my notice by the learned Counsel for the petitioner. He however contended that the authorities relied on by the

executing court are inapplicable to the case. The lower Court has relied on the decision of the Madras High Court in *Vythilinga v. Board of Control Thiagarajaswami Devasthanam*, reported in AIR 1932 Mad 193 and also on a decision of the Allahabad High Court in *Ajudhia Prasad v. U. P. Government*, reported in AIR 1947 All 390.

In the first case it has been laid down by the Madras High Court that a decree-holder need not be a party to the decree. It is enough if the decree confers some right enforceable under the decree upon some persons mentioned in it. This ruling was followed by the Allahabad High Court in the second case mentioned above wherein Their Lordships held that a decree-holder need not be a party to the suit and that a person in whose favour an Order capable of execution is made would be a decree-holder. That was a case for damages filed by the Plaintiff against the Defendant who was a Government servant. The trial Court while dismissing the case of the Plaintiff had made an order with regard to costs in the following terms:

'.....The entire costs with the exception of Rs. 20/- out of the costs of adjournment (which shall be paid to the Government pleader) shall go to the Government'.

A similar contention was raised before the executing Court. In that case, it was urged that the Government was not a party to the suit and hence it cannot be construed to be a decree-holder and consequently was not entitled to execute the decree. The executing Court rejected that contention which was upheld by the High Court in second appeal. Their Lordships held that the Government was entitled to execute the direction contained in the decree. They were of the view that inasmuch as an enforceable Order had been passed in favour of the Government, would be construed to be a decree-holder. At page 391, Their Lordships observed:

'When the Government in pursuance of this law incurs costs in defending a public Officer it has in a sense, an interest in the suit and by implication it is entitled to be reimbursed of the costs incurred in the defence, if the defence prevails. It was obviously for the considerations that the trial Court in passing the decree ordered that the costs incurred in the defence of the suit shall be payable to the Government. It cannot be denied that under the decree the Government has been given a right to realise the decreed costs. Now when there is a right there must be a remedy. The argument on behalf of the appellant that the right conferred by the decree is without remedy is untenable.'

Their Lordships continued:

'Learned Counsel for the appellant refers to the definition of the term 'decree' and 'decree-holder' as contained in Sub-sections (2) and (3) of Section 2, C. P. C. He contends that as the United Provinces Government is no party on the record, it is not entitled to execute the decree and in this connection he relies upon the fact that a decree can be only between the parties to a suit. It is unnecessary to discuss the definition of the term 'decree' because whether or not the Order relating to the payment of the costs to the U. P. Government passed by the trial Court was a decree, the U. P. Government is certainly a decree-holder. The term decree-holder has been defined to mean: 'any person in whose favour a decree has been passed or an Order capable of execution has been made.'

Now it is clear from it that a person in whose favour an Order capable of execution has been made is also a decree-holder. It is also evident from this definition that a decree-holder need not be a party to the suit. He may be any person. The term has not been defined with reference to the parties to the proceeding. Its definition as contained in Sub-section (14) of Section 2 of the C. P. C. is as follows:

'Order means the formal expression of any decision of a Civil Court which is not a decree'. 'Assuming therefore that portion of the operative Order of the trial Court which provided for the payment of the costs to the U. P. Government was not a decree, it was certainly an Order and was no doubt capable of execution. The U. P. Government is, therefore, a decree-holder as defined in Sub-section (3) of Section 2, Civil Procedure Code.'

3. I respectfully agree with the above observations that a decree-holder need not be a party to the suit. If the

decree confers upon some one some enforceable right, he is entitled to execute the same. Therefore, it is not possible for me to accept the contention advanced by the learned advocate for the Petitioner.

4. The second point urged by Sri Kulkarni the learned Advocate for the petitioner is that the term of the consent decree by which the Defendant was directed to pay Rs. 1000/- to the respondent, cannot be said to be a subject-matter of the suit and therefore it was inexecutable. He argued that the Court was wrong in coming to a conclusion that the execution petition filed by the respondent with regard to the same was maintainable. The relevant portion of the consent decree is embodied in paragraph 7 of the Order, an agreed translation of which has been, filed by the Counsel of the parties in this Court. It reads as follows:

'As Shri Madhavarao Narasingrao Patil the power of attorney holder for the guardian of the minor plaintiff has incurred personally the entire expenses in this suit and also for the labour put in by him, in this suit, the defendant in this suit is to pay Rs. 1000/- on or before 1-5-1957, to Shri Madhavarao Narsingrao Patil.'

It would thus appear that the parties have agreed that a sum of Rs. 1000/- was to be paid to the respondent. The above quoted portion of the compromise finds its place, as mentioned above, in the operative portion of the decree. What is contended by the learned Counsel for the petitioner is that this item (Rs. 1000/-) is not the subject-matter of the suit nor can it be said that it is a matter which relates to the suit. He urged that the decree embodying the said term of the compromise would only have the effect of an agreement enforceable by a regular suit (and not?) under Order 23, Rule 3, C. P. C. by way of execution.

It is true having regard to the provisions of Order 23, Rule 3, a decree has to be passed only so far as the compromise related to the suit. But the question, whether any particular term of a compromise relates to a suit or is covered by the subject-matter of the suit must be decided on particular facts and circumstances of each case. Further the mere fact that a particular term of the compromise is not the subject-matter of the suit is not a decisive factor of the question that the compromise does not relate to the suit. In my view, all terms which form consideration for the adjustment of the matters in dispute, whether they form the subject-matter or not become related to the suit. I find support in my view, in the decision of the Calcutta High Court reported in *Byomkesh v. Bhupendra Narayan* : AIR1948Cal179 . A similar view has been taken by the Bombay High Court in *Umiashankar v. Shivashankar*, (AIR 1944 Bom 239 (2)).

5. It is clear by the terms contained in para 7 of the compromise that the parties agreed to pay the amount of Rs. 1000/- for the reasons mentioned therein to the respondent. Such an agreement by the parties would, in my opinion, relate to the suit even though as agreed on behalf of the petitioner it may not be covered by the subject-matter of the suit. The words 'so far as it relates to the suit' in Order 23, Rule 3 are of wider import than the subject-matter and they should be construed widely. When it is said that the term is, covered by a subject-matter of the suit, it means that it falls within the pleadings of the parties and the relief claimed therein. But the matter relating to the suit may not be confined to these limitations, because these words as mentioned above are of wider import.

6. In *Ramaswamy Nayudu v. Subbaraya Thevar* : AIR1925Mad1101 it has been observed.

'The words 'so far as it relates to the suit' cannot be said to have reference only to the subject-matter of the suit. The language used is wide and general and it is obvious that it would be highly inconvenient if the parties should not be allowed to settle their disputes on such lawful terms as they might agree to, without being restricted to such relief as one of the parties had chosen to claim in the Plaint. The terms in a *razinama* decree which form consideration for the compromise of the suit must be deemed to be part of the decree and can be enforced in execution proceedings. A decree passed on a compromise cannot be regarded as *ultra vires* simply because it goes beyond the subject matter of the suit and contains other conditions. If those other conditions are the consideration for the compromise of the subject-matter of the suit, they must be incorporated in the decree.'

A similar view has been taken by the Bombay High Court in the case of *Vishnu v. Sadasiv*, reported in AIR 1925

Bom 509 which was a mortgage suit and it was held therein:

'A compromise decree in a mortgage suit by which the parties agree that the amount decreed according to the compromise should be a charge on certain properties, in addition to the mortgaged property, is 'lawful' and 'relates to the suit' within Rule 3 so as to be embodied in the decree.'

In para 7 of the compromise, it is stated that as power of attorney holder he has incurred the entire expenses in the suit and has also prosecuted the same. Amount of Rs. 1000/- was agreed to be paid to him by the parties. Evidently it cannot be said that this term does not relate to the suit.

7. Sri Kulkarni the learned advocate for the petitioner, relied on a decision of the Madhya Pradesh High Court reported in Ram Juwan v. Devendra Nath : AIR1960MP280 . But the decision of that case had proceeded on quite a different consideration and therefore cannot be of any assistance to the petitioner. In that case it was found that the terms of the compromise did not relate to the suit and the question for determination was that though a matter not relating to the suit whether it can be executable or not if it is embodied in the operative portion of the decree. This is quite clear from paragraph 18 of the judgment wherein it has been observed:

'Where a consent decree contains terms that do not relate to the suit, there is a conflict of opinion whether such terms can be enforced in execution.'

Hence that decision is distinguishable from the present case.

8. In view of the above discussion, I am unable to agree with the argument of the learned advocate for the petitioner that the term contained in para 7 of the compromise does not relate to the suit.

9. Sri Raikar, the learned Counsel for the respondent contended that the term relating to the payment of Rs. 1000/- to the respondent contained in para 7 of the compromise is embodied in the operative portion of the decree. He urged that when the operative portion of the decree gives effect to the terms of the compromise even though they do not relate to the suit, such terms are none the less executable and the executing Court cannot refuse to execute the decree.

10. In view of my above conclusion that the term of the compromise in question does relate to the suit, the determination of this point is not necessary in this case. Therefore I have not considered that point.

11. On the aforesaid grounds this revision petition is not sustainable and it is therefore dismissed.

12. Having regard to the circumstances of the case, I think it would be just to direct the parties to bear their own costs of this petition. It is ordered accordingly.

13. Revision dismissed.

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