

Sri Ram Vs. Lekhraj

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Court : Allahabad

Decided On : Jan-15-1952

Reported in : AIR1952All814

Judge : Bind Basni Prasad and ;Gurtu, JJ.

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

Appeal No. : Ex. Second Appeal No. 1770 of 1948

Appellant : Sri Ram

Respondent : Lekhraj

Advocate for Def. : B. Mukerji and ;K.N. Agarwala, Advs.

Advocate for Pet/Ap. : A.P. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

Bind Basni Prasad, J.

1. This is a decree-holder's appeal arising out of an execution proceeding. The relevant facts are that one Inder-man was the owner of a house He died leaving a widow. On 18th September 1934, Lekhraj, the judgment-debtor-respondent, obtained a sale deed in 'respect of this house from the widow. Sri Ram, the

decree-holder-appellant, alleging himself to be a reversioner brought a suit for the possession of the house and for mesne profits. This suit was decreed and the decision was upheld, with a slight modification, in appeal. Sri Ram applied for the execution of the decree on 20th July, 1946. Lekhraj filed a second appeal in this Court and obtained an order for the stay of the execution proceedings. The second appeal was dismissed by this Court on 14th February 1947. The stay order was then discharged. On the 2nd April 1947, Lekhraj, respondent, made an application under Order 21, Rule 2, Civil P. C. alleging that the parties had come to a compromise by means of a written agreement on 15th February 1947, according to which Sri Ram, decree-holder, had agreed to transfer the house to him for a price which may be fixed by one Lakhpat Singh who was appointed as an arbitrator for this purpose. On 20th February 1947, Lakhpat Singh gave his award to the effect that the house shall be transferred by Sri Ham to Lekhraj for a sum of Rs. 5,000. Sri Ram was given the right to withdraw Rs. 350 which was in deposit in court and the judgment-debtor was required to pay the balance of Rs. 4,650. Lekhraj in his application under Order 21 Rule 2, Civil P. C. prayed that he might be permitted to deposit the sum of Rs. 4,650 in Court but the trial Court did not grant such permission.

2. Sri Ram denied the agreement and the award and contended that even on the facts stated by the judgment-debtor no adjustment could be certified under Order 21 Rule 2, Civil P. C.

3. Learned Munsiff held that the decree holder's contention was false, that there was really an agreement between the parties under which the decree-holder was to transfer the house in dispute to the judgment-debtor for such sum as might be fixed by Lakhpat Singh and that Lakhpat Singh had determined the same at Rs. 5,000. He however, held that Order 21 Rule 2, Civil P. C. had no application to the present case and that the agreement and the award were not an adjustment within the meaning of this rule. The judgment-debtor's application was accordingly dismissed.

4. The judgment-debtor went up in appeal. Learned Civil Judge concurred with the findings of the trial Court that the parties had agreed that the house was to be

transferred to Lekhraj on payment of such sum as might be determined by Lakhpat Singh and that for this purpose the deed of agreement, Ex. 1, was duly executed by them. Further he held that Order 21 Rule 2, Civil P. C. applied to all the decrees and not only to money decrees and that the adjustment alleged by the judgment-debtor could be certified. It was also held by him that even if Order 21 Rule 2, Civil P. C. did not apply to the present decree there was nothing in the Civil P. C. which prohibited such a compromise between the parties and that the execution Court could well take into consideration the agreement between the parties for the purpose of deciding whether or not the decree was executable. In the result he allowed the appeal.

5. The decree-holder now comes in appeal. The finding of the lower appellate Court that a deed of agreement was executed by the parties according to which the decree-holder was to abandon the right to execute the decree in lieu of the judgment-debtor paying him Rs. 5,000 is one of fact and learned counsel for the appellant has not challenged it rightly. He had argued, however, that the agreement entered into between the parties was an executory contract and not an executed one. We are unable to agree with this Lekhraj, judgment-debtor, was already in possession of the house. According to the contract this possession was to continue. Out of the sum of Rs. 5,000 the title to Rs. 350 which was in deposit in Court was transferred to the decree-holder, Sri Ram. The balance of Rs. 4,650 was offered by the judgment-debtor, but the decree-holder opposed his prayer in the trial Court and so the latter did not permit him to deposit it. The lower appellate Court, however, granted this permission to the judgment-debtor and we understand that the judgment debtor has already deposited Rs. 4,650 in Court. It was not only an executed contract, but a partly performed contract.

Learned counsel has relied upon *Arunachallam Chettyar, v. V.M.R.P. Firm*, A. I. R. 1938 Bang. 202 (FB) and *Banko Das v. Oddi Arjun Subudhi* A. I. R. 1944 Pat. 279. The facts of both these cases are distinguishable from those of the present one. In the first case it was held:

'A promise to do something in future is legal consideration, and if the decree-holder chooses to accept such, a promise by the judgment-debtor there is nothing

in law to prevent him from doing so, and such a promise by the judgment-debtor and acceptance thereof by the decree-holder is a legal adjustment of the decree. Thus if A holds a decree against B and B offers to transfer certain property to A, and A accepts that promise to transfer in whole or part satisfaction of his decree, that is a binding contract which constitutes an adjustment of the decree in whole or in part and can be pleaded by B in bar of execution. But if A, as is usually the case, agrees to accept the transfer of the property in whole or part satisfaction of his decree, at that stage there is no concluded agreement between the parties, but A has really made a counter-offer which can be accepted by B only by performance, i. e. by the actual transfer of the property. In this latter case there is no adjustment until the property has been actually transferred.'

The present case falls in the category of the first illustration referred to in the judgment of the Eangoon High Court. It is a stronger case inasmuch as a part of the agreement was performed. The case instead of supporting the appellant goes against him.

In the Patna case it was held:

'If there is a completed contract, which immediately extinguishes and takes the place of the decree that contract is an adjustment within the meaning of Order 21 Rule 2. If, on the other hand, there is only an agreement to adjust the decree on the fulfilment of a future condition and the decree is still left in existence pending the fulfilment of the condition, then there is no adjustment.'

It has already been observed that in the present case the contract is a completed one. Hence there is an adjustment which can be certified under Order 21 Rule 2 of the Civil P. C.

6. As regards the point that Order 21 Rule 2 of the Civil P. C. is applicable only to money decrees, there is the solitary case of the Madras High Court *Narayanaswami Naidu v. Rangaawami Naidu*, A. I. R. 1926 Mad. 749 as against *Ellis Enas Pavlo*, *Ghary v. Kitter Philip Gowrya*, 46 Bom. 226; *Niamat v. Jalil* : AIR1928 Cal715 ; *Shadi v. Ram Ditta* A. I. R. 1936 Lah. 842; *Harihar Prasad v. Gopal Saran* A.I.R. 1935 Pat. 385; and *Devidas Ganpati v. Shree Bala Saheb*

Sansthan Old Balaji, Basim A. I. R. 1948 Nag. 374. In all these cases it was held that the provisions of Order 21 Rule 2 of the Civil P. C. are not confined to money decrees but extend to any decree. The weight of the authorities is thus decidedly against the view taken by the Madras High Court in Narayanaswami Naidu v. Rangaswami Naidu A. I. R. 1926 Mad. 749. There is no reason to confine the provisions of Order 21 Rule 2 of the Civil P. C. to money decrees. There is no reason to distinguish between a money decree and any other kind of a decree for the purpose of recording an adjustment under Order 21 Rule 2, Civil P. C. Order 23 Rule 3 of the Civil P. C. provides:

'Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit,'

Order 21 Rule 2 of the Civil P. C is a counter part of Order 23 Rule 3 in the execution proceedings. The provisions of Order 23 Rule 3, Civil P. C. can be extended to the execution proceedings. It is manifestly unjust that after the parties have arrived at an agreement for the adjustment of a decree and one of them has even performed apart of the agreement the Court should not give recognition to such an agreement and allow any party to resile from it. Justice is manifestly on the side of the judgment-debtor who has done all what he could. He has deposited the entire sum that he was required to pay.

7. We see no force in the appeal and dismiss it with costs. The sum deposited by their respondent-judgment debtor together with the amount of Rs. 350 already in deposit in Court shall be paid to the decree-holder when he makes an application for its withdrawal according to law and the satisfaction of the decree shall be recorded.

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