Narayanasami Vs. Natesa

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Court : Chennai

Decided On : Apr-12-1892

Reported in : (1893)ILR16Mad424

Judge : Muttusami Ayyar and ;Best, JJ.

Appellant : Narayanasami

Respondent : Natesa

Judgement :

Beat, J.

5. This is an appeal against an order of Mr. Justice Parker, which sets aside an order passed by the District Munsif of Tiruvalur, amending a decree under Section 206 of the Code of Civil Procedure.

6. It is urged on behalf of the appellant that the learned Judge acted without jurisdiction (1) because an order passed under Section 206 of the Code is appealable, and, therefore, not open to revision under Section 622, and (2) because even if such an order is not appealable, the Munsif had jurisdiction to amend the decree under Section 206 and the mere fact of his having acted illegally (assuming such to be the case) would not give this Court jurisdiction to interfere under Section 622, and it is contended finally that the Munsif's order was correct, as he merely brought the decree into conformity with the judgment.

7. As to the first of these objections it is contended that, though an order passed under Section 206 is not appealable as an order under Section 588, the decree, as amended, is appealable. This was the opinion of Oldfield, J., in Surta v. Ganga I.L.R. 7 All. 411 but Mahmood, J., was of different opinion in the same case, and on appeal the Full Bench concurred with the latter, Surta v. Gunga I.L.R. 7 All. 875 and this view appears to have been adopted by this Court also. This first objection must, therefore, be disallowed.

8. The next objection, viz., that, as the District Munsif had jurisdiction, the mere fact of his having acted wrongly in the exercise of that jurisdiction (assuming such to have been the case) was no ground for interference under Section 622, must, I think, be allowed to be valid. It was held by their Lordships of the Privy Council in Rajah Amir Hassan Khan v Sheo Baksh Singh L.R. 11 IndAp 237 that, if a Court has jurisdiction to decide a question and decides it, the mere fact of the decision being wrong is not sufficient to bring the case within the scope of Section 622 as amended by Act XII of 1879, and there can be no question as to the District Munsif's jurisdiction to entertain the application under Section 206 and give a decision thereon.

9. But even on the merits of the case, I am of opinion that the District Munsif's order was correct. The judgment expressly directs that the 'hypothecated property' be brought to sale if the money decreed be not paid within the time fixed for the payment. The error that was corrected by the order in question is thus described by the Munsif: ' In the document (the hypothecation bond) the properties are described as follows: There is a heading given with the words east, west, south, north, name of field and extent, and the particulars are entered in the appropriate columns. In describing the lands in the plaint, this arrangement was not followed, but the boundaries of each have been separately given, the words east, west, etc., being added after each boundary;' and in so doing 'what ought to be the eastern boundary is placed as the western boundary and vice versa, but the names and extents of the fields are correct.' It is thus seen that the alteration ordered was necessary to rectify a palpable error, without which correction the decree was unexecutable. The error is in fact in the plaint, but it is so palpable that to disallow its correction would be simply to put an obstacle in the way of plaintiff's executing

his decree.

10. The learned Judge is mistaken in supposing that 'it was the judgment that was wrong, the schedule attached thereto being at variance with the description of the property in the hypothecation deed.' There is no schedule attached to the judgment. The judgment merely directs that 'the hypothecated property' be held liable for the debt and sold if necessary. Consequently, the suggestion that the plaintiff's proper course was to apply for a review of judgment is open to the objection that there is in the judgment nothing that requires correction. Whereas the application to correct the decree so as to make it accord with the judgment is literally within the wording of Section 206, as it is 'the hypothecated property' which is by the judgment expressly made liable for the debt, and in the peculiar circumstances of this case the District Munsif was, I am of opinion, justified in correcting the palpable errors in the schedule attached to the decree by a reference to the hypothecation bond.

11. I would, therefore, set aside the order of the learned Judge, and restore that of the District Munsif and direct respondent to pay appellant's costs both of the petition under Section 622 and of this appeal.

Muttusami Ayyar, J.

12. In this case I agree with Mr. Justice Parker that, on the true construction of the District Munsif's judgment, there was no variance between it and the decree to justify the amendment of the latter under Section 206 of the Code of Civil Procedure.

13. In construing a judgment as to the relief intended to be awarded, regard should, I think, be always had to the relief claimed in the plaint, as it is not competent to a Court to award any relief not so claimed, and the proper construction of the words in the judgment 'the property hypothecated' is the property described in the plaint as hypothecated. But the facts of this case are that owing to a misdescription of boundaries in the plaint, the property described therein as hypothecated is not the property described in the hypothecation deed or really hypothecated. The appropriate remedy available to the plaintiff seems to me

to consist in an application for review for the correction of an obvious error in the judgment and the decree in consequence of an error in the plaint and not for amendment of a decree under Section 206 when there is no real variance between it and the judgment.

14. I concur, however, after some hesitation, in the order proposed by my learned colleague for two reasons. The District Munsif had inherent jurisdiction to amend the plaint and the decree, but he erred in the exercise of that jurisdiction by proceeding under one Section of the Code of Civil Procedure instead of another. He did not, therefore, assume a jurisdiction which he did not possess, but irregularly proceeded under one Section, whilst he ought to have acted under another, and it is not, therefore, a proper case for interference under Section 622. According to the Full Bench decision, the error of procedure must be such as to have led to the assumption of a jurisdiction which did not exist in law, and not merely to an erroneous action in law in respect of a matter over which he had jurisdiction to interfere under the Code of Civil Procedure.

15. Another reason is the observation of the Privy Council in Bissessur Lall Sahoo v. Maharajah Luchmessur Singh L.R. 6 IndAp 233 to the effect that in execution proceedings the Court will look at the substance of the transaction and will not be disposed to set aside an execution upon mere technical grounds when they find that it is substantially right. It seems to me that this principle may be kept in view in the exercise of the discretionary power conferred upon the High Court by Section 622, especially when the order revised corrected the plaint only so far as it confounded the boundaries of the hypothecated property and placed the western boundary at the east and the eastern boundary at the west and vice versa and thereby rendered the decree which would otherwise be incapable of execution capable of execution.

16. On these grounds, I concur in the order proposed by my learned colleague.