

## **Dhondhey Prasad vs Sewak And Ors. on 12 January, 1954**

**Equivalent citations: AIR1954ALL739, AIR 1954 ALLAHABAD 739**

### **JUDGMENT**

Beg, J.

1. This appeal arises out of execution proceedings.

2. It would appear that a mortgage decree was passed in favour of three brothers, namely, Ram Sewak, Ram Sudhist and Ram Naresh against one Sewak, minor, who is respondent No. 1 in this appeal. After the said decree was passed, a two-third share belonging to two of the brothers, namely, Ram Sewak and Ram Naresh was paid off and only the remaining one-third share belonging to Ram Sudhist remained unsatisfied. Dhondhey Prasad son of Ram Sudhist put in an application for execution In respect of the entire amount of the decree. An objection was made on behalf of the judgment-debtor that the two-third share belonging to the two other decree-holders having been paid off and satisfaction in respect of the said payment having been recorded by the Court, execution should be allowed to proceed only in respect of the remaining one-third share belonging to the applicant decree-holder.

On behalf of the decree-holder, it was argued that payment should have been made to all the decree-holders and any partial payment of the decree in respect of the shares of the other decree-holders cannot be recorded or recognized by the Court and should therefore be ignored altogether. The execution Court gave effect to the objection of the Judgment-debtor and held that execution could be allowed to proceed only in respect of the remaining one-third share belonging to the appellant decree-holder. The decree-holder took the matter up in appeal. His appeal having been dismissed, he has filed this second appeal in the High Court.

3. Having heard learned Counsel for the appellant, I am of opinion that this appeal must be dismissed. It may be noted at the very outset that it is not claimed on behalf of the appellant decree-holder that he is entitled to the entire amount of the decree nor is it stated on his behalf that the two other decree-holders were not entitled to two-third share which has been paid off to them or to their heirs. On behalf of the decree-holder reliance has been placed on the provisions of Order 21, Rule 1, Civil P. C. which provides as follows:

"All money payable under a decree shall be paid as follows, namely-

(a) .....

(b) out of Court to the decree-holder; or

(c) ....."

4. It is argued by the learned Counsel that the word 'decree-holder' must include the plural, 'decree-holders', hence payment must be made to all the decree-holders jointly at one time. The statute itself neither contains the word 'all' nor the words "jointly at one time". All that it connotes is that payment must be made to the decree-holder or decree-holders, and if they are shown or proved to have separate interests, in my opinion, separate payment to each of the decree-holders of their respective shares in the decretal amount is not barred nor prohibited. The statute, as it stands, does not postulate the joint concurrence of all the decree-holders as a condition precedent of satisfaction of the decree. An interpretation of statute that cannot be supported except by the addition of words not found in the body of the statute itself is a strained one and must be rejected as unwarranted. The interpretation sought to be given to this provision of law by the learned Counsel for the appellant if accepted might result in hardship in certain cases where a joint decree is passed in favour of a number of decree-holders having separate and divisible shares in the decretal amount.

If, for example, one of the decree-holders has gone abroad or is untraceable for the time being, then according to the interpretation placed by the learned Counsel for the appellant, it would not be possible for the judgment-debtor to pay off the share or shares of the remaining decree-holders out of Court. Nor would it be possible for the remaining decree-holders to accept out of court payment of their shares in the decretal amount in partial satisfaction of the decree. It would also not be possible for the Court to record satisfaction of such payment in Court. Further where partial payment of the respective shares of other decree-holders has been made by the judgment-debtor, it would enable the remaining decree-holders to still insist on the payment of the entire amount and to ask the Court to disregard such payment in execution proceedings. This is exactly what has happened in this case. The situation created would certainly be inequitable.

On behalf of the minor respondent a serious grievance has also been made that in spite of the fact that the mortgage-decree is a long standing one its redemption by the minor is being protracted by the decree-holders by the adoption of such delaying tactics, I would be loath to place an interpretation that might lead to consequences so unfair, unless the words of the statute clearly warrant it.

5. The learned counsel also placed reliance on the provisions of Order 21, Rule 15, Civil P. C. Order 21, Rule 15 provides as follows:

"(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may. unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application."

6. I do not see how the above provision of law deprives a judgment-debtor from paying off the share of one of the decree-holders. All that it says is that one of the joint decree-holders can take out execution of the whole decree for the benefit of the entire body of decree-holders. In the present case the other decree-holders have been paid off, and yet the remaining decree-holder is seeking execution of the whole decree. He is therefore, seeking execution of the whole decree not for the benefit of the entire body of the decree-holders but obviously for his own benefit. This interpretation is, therefore, contrary to the spirit of Order 21, Rule 15(1),

7. This matter can be put in another form. Under the provisions of Order 21, Rule 15(1) where one of the decree-holders proceeds to execute a decree on behalf of all the decree-holders, he can do it only for the benefit of all of them. This, however, is not an unconditional or inherent right of the decree-holder. It is within the discretion of the Court to allow it. The Court in according its permission cannot shut its eyes to the equities of the case. Thus by adopting the procedure prescribed by Order 21, Rule 15(1) the decree-holder places himself at the mercy of the Court, who can refuse to allow him to proceed. Further in such a case under Sub-clause (2) of Order 21, Rule 15 it is open to the Court to allow such an application on such conditions as it seems necessary to impose for protecting the interests of the other persons who have not joined in the application.

It would, therefore, be open to the Court in such a case to impose a condition that the entire money be deposited in Court and that out of it the applicant decree-holder should be allowed to be paid only one-third of the amount of the decree and not the remaining two-thirds which has already been paid off. In this particular case there seems to be a conflict between the three decree-holders and a direction like that would be justifiable under the provisions of Order 21, Rule 15(2), Civil P. C. If the Court could impose a condition like that and stop in the end the eventual payment of two thirds of money realized as a result of execution there seems to be no reason why the Court should not allow the satisfaction of two-thirds of the decree to be recorded in Court and allow the execution proceedings to go on only with respect to the remaining one-third from the very beginning. This is certainly a more convenient and expeditious mode of achieving the same purpose which is both just and equitable.

8. The learned counsel for the appellant also argued that it is not open to the execution Court to go behind the decree in view of the fact that the shares of the various decree-holders have not been specified in the decree itself. I am unable to see how by allowing payments of the respective shares of each of the decree-holders separately, the provisions of the decree are in any way contravened. The decree no doubt does not specify the separate shares of the various decree-holders. On the other hand, it does not also state that the payment of the decree has to be made in one instalment and not separately. There is nothing in the decree itself expressly stating or indicating that integrity of the decretal amount cannot be broken in execution proceedings. The decree itself is quite silent on the point and does not say anything one way or the other as to the manner or mode in which the decree is to be satisfied. It may be mentioned in this connection that the learned counsel has not stated that the other two decree-holders did not have separate shares in the amount of the decree. On the other hand, the grounds of appeal filed by him indicate that this is not a case of a joint Hindu family in which case the interests of the various decree-holders could not be considered to be separate or divisible. Reference in this connection may also be made to Order 21, Rule 2 which does

contemplate partial satisfaction of the decree. If the rights of the several decree-holders were actually separate prior to the decree, I do not see how the interposition of a decree can vary them for the purposes of its "satisfaction."

9. Learned counsel for the appellant has relied on -- 'Mohomed Silar Sahib & Co. v. Nabi Khan Sahib', AIR 1917 Mad 988 (A), in which it was held that payment of the amount of a decree to two out of three joint decree-holders cannot be treated as satisfaction of the decree even in part unless it is admitted by the third decree-holder or unless it is proved that he and the other two decree-holders to whom the money was paid owned separate and definite shares in the joint decree debt. In this particular case, it has been established that the two other decree-holders owned separate and distinct shares in the decree. This ruling, therefore, is of no avail to the learned counsel.

10. The learned counsel for the appellant also relied on a Bench decision of the same High Court reported in -- 'V. N. Muthuswamy Iyer v. V. S. Narasimha Ayyar', AIR 1934 Mad 330 (B). In this case it was held that satisfaction of the whole decree entered upon the report of one of the joint decree-holders alone would amount to a violation of the provisions of Order 21, Rule 15, Civil P. C. It may be mentioned that this was the case of a firm consisting of the brothers of a joint Hindu family. The facts of the present case, therefore, are distinguishable from this case. Moreover, in the present case, satisfaction has not been recorded of the whole decree but only of a part of the decree, i.e., in respect of the share of the two of the decree-holders. The satisfaction recorded is not in excess of their share.

Further, it may be noted that the view of law taken in the above two cases cited on behalf of the appellants by their learned counsel was not approved of by a Pull Bench of the Madras High Court itself. This case is reported in -- 'Hanumanthappa v. Seethayya & Co.', AIR 1949 Mad 790 (FB) (C). The learned counsel also relied on two cases of the Allahabad High Court reported in -- 'Moti Ram v. Hannu Prasad', 26 All 334 (D) and -- 'Lachman Das v. Chaturbhuj Das', 28 All 252 (E) in which it was held that it was not open to one of two or more joint decree-holders to certify payment of the entire decree without being authorized by the other or others to do so. As already mentioned, in the present case the other decree-holders have not certified the payment of the entire decree. They have only certified payment of their own share of the decree. Thus, neither of the two Allahabad cases cited by the learned counsel for the appellant have any application to the present case.

11. In my opinion, the correct law on the point has been laid down by Fazl Ali J. (later on a Judge of the Supreme Court of India) in the case reported in -- 'Adikando Panigrahi v. Yetiraju Narayanaswami', AIR 1943 Pat 188 (F). In this case, it was held that it is not open to one of the two joint decree-holders of a decree to certify satisfaction of the whole decree so as to bind the other decree-holder although he can certify satisfaction in respect of his own interest in the decree. The learned counsel for the respondents has invited my attention to a case reported in -- 'Ram Dutt v. Deota Din', AIR 1918 Oudh 91 (G) in which it was held that where money is advanced by two co-mortgagors without any specification of shares, the presumption is that each of them advanced half the money; and if one of them accepts satisfaction of his interest as mortgagee from the mortgagor the result is that the only mortgagee interest outstanding is the interest of the other

co-mortgagee which extends to half of the mortgage money. This case supports the contention advanced on behalf of the respondents.

12. Having given my serious consideration to this case, I have come to the conclusion that this appeal has no substance. It is accordingly dismissed with costs. Leave to appeal to a Bench is asked for and is allowed.