Saltanat Begam vs Syed Mohd. Saadat Ali Khan on 26 July, 1950

Equivalent citations: AIR1951ALL817, AIR 1951 ALLAHABAD 817

JUDGMENT

Chandiramani, J.

1. This is a decree-holder's appeal against the decree of Shri R. P. Verma, Civil Judge, Mohanlalganj, Lucknow, dated 24-9-1947, holding that the decree in execution is declaratory only and therefore cannot be executed.

2. It appears that while the estate of Nanpara was under the Court of Wards, the proprietor, Raja Mohammad Siddique, executed a will on 8-1-1906. He had at the time four wives, Rani Saltanat Begam, the present appellant, Rani Dilaphja, Rani Champa and Rani Nasim Sahri, All these Ranis were under the will given the right to adopt a son to the Raja. The right was to be exercised by Rani Nasim Sahri first within a certain specified time, and if she failed to do so, the power was to be exercised next by Rani Saltanat Begam, appellant, and in case of default, the other two Ranis in their turn were given the power to adopt. The right of adoption was to be forfeited on the remarriage of a wife. The Raja of Nanpara had two sisters, Rani Kafiiz Begam of Utraula and Rani Sarfaraz Bagam of Mohamdi.

After his death on 30-12-1907, disputes arose in respect of the estate, and among the rival claimants were the four widows and the two sisters and some others. The Court of Wards, in charge of the Nanpara Estate, thereupon filed an interpleader suit on 28-1-1908. In May, 1908, Rani Nasim Sahri married again and so she lost her right of adoption. On 9-3-1909, Rani Saltanat Begam, appellant, adopted Raja Syed Mohammad Saadat Ali Khan, the present respondent. He was impleaded as one of the defendants in the suit. On 7-9-1910, there was a compromise with Rani Qamar Zamani Begam who had apparently been divorced by Raja Mohammad Siddique during his lifetime. On 4-11-1911, judgment was delivered in the interpleader suit. In the suit itself Rani Saltanat Begam, appellant, had put in a claim to the estate and had also claimei certain maintenance allowance, certain dower debt and some jewellery. It was held in the suit that these items of property, including maintenance were beyond the scope of the interpleader suit, and Rani Saltanat Begam's claim was accordingly dismissed. She appealed to the Court of the Judicial Commissioner, specifically claiming her dower, jewellery and maintenance allowance. On 22-8-1912, there was a compromise and it was agreed that certain sums of money shall be payable to the widows, including Rs. 1,87,500/- as the dower debt to Rani Saltanat Begam, and that a monthly allowance of Rs. 6450/- shall be paid to various persons, including Rs. 4,000/- per month to Rani Saltanat Begam. This compromise was incorporated in a decree of the Court on 28-5-1914, in the following words:

> "It is ordered and decreed that the appeal be and is hereby allowed to the extent mentioned in the terms attached herewith."

The relevant terms of the compromise were then attached to the decree.

3. On 15/16-4-1947, Rani Saltanat Begam applied for execution of the decree alleging that her monthly maintenance allowance of Rs. 4000/-had not been paid to her for the period 1-2-1947, to 31-3-1947. She claimed interest at the rate of -/8/- per cent. per month for these two months by way of damages. She also claimed the costs of execution and interest during execution. She alleged that nothing had been paid for the period in question. She prayed that the transfer certificate under Section 39, Civil P. C. be sent to the Civil Judge, Lucknow, because the judgment-debtor, Raja Syed Mohammad Saadat Ali Khan, respondent, lives in Lucknow within the jurisdiction of the Civil Judge, Lucknow. The judgment-debtor objected to the execution on several grounds. He contended that the decree had been satisfied for the fall amount of Rs. 8000/- which he had sent by cheque before the service of notice on the general agent of the judgment-debtor on 8-5-1947. He further said that no damages by way of interest and no costs of execution could be granted. He also contended that the decree itself was purely declaratory and therefore was not capable of execution. He also contended that the decree being more than twelve years old, it could no longer he executed. He further contended that even if interest were payable, six per cent. per annum was excessive, and in any case it should not exceed three per cent. per annum, He further contended that the decree could not be executed without the decree-holder furnishing a life certificate in terms of the compromise. The learned Judge thereupon framed the following issues :

> 1. Is the decree-holder not entitled to realise the money through execution and must she come by way of regular suit ?
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> 2. Is the decree not executable being more than twelve years old?
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> 3. Can the decree-holder claim and be allowed damages by way of interest and pleader's fee which she has asked for in these pleadings?
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> 4. Must decree-holder file a life certificate in terras of the compromise decree before she can be allowed to execute the decree?

The learned Judge held that the plea of limitation was without substance and further it had not been pressed in arguments. Accordingly he held that the decree was executable. On the issue relating to the life certificate the learned Judge held that the question did not arise for decision because the life certificate had been filed. On the question of damages & costs of the proceedings, he held that the compromise did not provide for any interest being payable, that in respect of damages the amount had not been proved & that in respect of the costs of execution proceedings, the decree-holder was clearly entitled to them. On the issue as to whether the decree was declaratory or not he held that because the compromise decree did not contain any specific order for the J. D. to pay the maintenance allowance regularly, the decree was not executable. The decree merely stated the amount which the D. H. was entitled to receive & it was purely declaratory. In view of these findings the application for execution was dismissed.

4. It has been urged in appeal before this Court that the learned Civil Judge was wrong in holding the decree in question to be merely declaratory & not an executable decree. It has also been urged that the learned Civil Judge was wrong in holding that the appellant was not entitled to interest by way of damages. We have heard the learned counsel at considerable length and are satisfied that this appeal must be allowed.

5. It was urged by the learned counsel for the appellant that the question of maintenance allowance was directly in issue before the trial Court in the interpleader suit and it was the subject, matter of the appeal also & it is included in the compromise & forms a part of the decree. On the other hand, the learned counsel for the objector says that the question of the maintenance allowance was beyond the scope of the interpleader suit as held by the trial Court in that suit & that if any terms in relation to the maintenance allowance were included in the compromise, they were really extraneous, to the subject-matter of the suit and could not validly form a part of the decree passed in appeal, & therefore that portion of the decree which relates to the maintenance allowance is not capable of being enforced in execution proceedings. It may first be pointed out that this objection was not raised by the J. D. in the Court below It may further be pointed out that the question of the maintenance allowance was directly raised in the interpleader suit, & issue 31 in that suit related to it. The question was again specifically raised in the Court of appeal & it was only after this that the compromise dealt with the maintenance & fixed the amount payable to the various persons. The maintenance allowance was, therefore, the subject-matter of the suit and clearly any compromise relating to it could be given effect to in the compromise decree. The terms relating to the maintenance allowance do form a part of the decree. Therefore, if the compromise decree is capable of execution, the terms relating to the maintenance allowance can also be given effect to only in execution proceedings. The question whether the maintenance allowance was within the scope of the interpleader suit was raised in the suit and was raised again in the appeal & was decided by compromise. It is not for us to decide whether it was or it was not within the scope of the interpleader suit. The appellate Court was the only Court that could give a decision on the matter, & the matter wa3 decided on compromise in the appeal. The Pull Bench decision of this Court in Shyam Lal v. Shyam Lal, 55 ALL. 775, supports the view that where the operative part of the decree gives effect to the terms of the compromise which do not relate to the suit, the executing Court cannot refuse to execute the decree. The reason is that the objection should be taken by way of appeal & not in execution proceedings. Same is the view of the late Chief Court of Oudh in Shankar Bakhsh v. Mt. Taluqdei, A.I.R. (14) 1927 Oudh 33 and Sat Narain v. Chandra Mohan, A. I. R. (27) 1940 Oudh 27. The same is also the view of the High Courts of Madras, Lahore and Patna; Ratnaswami Chetty v. Ratnammal, A. I. R. (2) 1915 Mad. 683, Govinda Nattar v. Marugesa Mudaliar, A. I. R. (19) 1932 Mad. 557, Lal Singh v. Mohan Singh, A. I. R. (21) 1934 Lab. 623 and Mohammad Ismail v. Bibi Sharma, A. I. R. (21) 1934 Pat. 203. The objection of the respondent, therefore, that the decree is inexecutable on the ground of its containing provisions relating to maintenance allowance which were extraneous to the suit in which the decree was passed is entirely without foundation in fact or in law.

6. Now comes the main question whether the decree passed as a result of the compromise is executable or not. The relevant portion of the compromise is as. follows.:

> Para 3. "That the respondents moreover in respect of our maintenance and allowance: in suit have proposed to make payable to us, the three appellants and our relations from the treasury of Nanpara Court of Wards, the sum of Rs. 6450/- per month as per list attached hereto & we the applicants & our relations shall be entitled to receive regularly the said sum of maintenance allowance of Rs. 6450/- every month on the liability of the whole Nanpara Estate including both taluqdari and non-taluqdari property and these allowances shall create a charge .... upon the whole Nanpara Estate."
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> It further provides that the guzara holders shall realise .... the amount of guzara allowances monthly on the presentation of a life certificate. Para. 7 of the compromise further provides :
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> "That if any para of this application is not enforced in favour of the appellants or undue delay is made, the appellants are entitled to adopt legal proceedings in respect of the non-enforcement of it or for the enforcement of their rights during the period thus delayed, and we the respondents are responsible for the coats & damages incurred in connection with such proceedings and we shall have no objection."

The decree in appeal, as already stated, was in the following words) :

> "It is ordered & decreed that the appeal be and is hereby allowed to the extent mentioned in the terms attached herewith."

The learned Judge in the Court below has held the decree to be purely declaratory on the ground that there is no specific order or direction of the appellate Court saying that the respondent shall pay a certain sum of money. The learned Judge in the Court below has. in our opinion not interpreted the decree and the terms of the compromise correctly. In Bijai Raj v. Jai Indra Bahadur, 9 O. L. J. 5, it was pointed out in the words of Lord Westbury in Barlow v. Orde, 18 W. R. 175 :

> "It is the duty of an appellate Court frequently & all that it can do, to make a declaration, and then the form in which that declaration is conceived, & the words in which the order is framed amount to a direction to the Court below to clothe that declaration in the proper form of a mandatory order, & to give effect to the mandatory order so expressed."

The order of the appellate Court in the present case therefore in the interpleader suit on the basis of the compromise must be interpreted in this light. In the case referred above the plff. claimed not only arrears of maintenance but also asked for a declaration that she is entitled to maintenance at the rate of Rs. 1000/- per month out of which half will be recoverable from the taluqdari and the other half from the non-taluqdari property if any. Her suit was decreed by the trial Court at the rate of Rs. 500/- per month. On appeal the Judicial Commissioner's Court decreed her claim for a declaration that she is entitled to maintenance at the rate of Rs. 1000/- per month. The decree was confirmed in appeal by their Lordships of the Privy Council. It was held in execution of decree

proceedings that the decree was not merely declaratory of the plaintiff's right to maintenance but that it empowered the plaintiff to recover that maintenance from the taluqdari and non-taluqdari properties to the extent to which they were respectively liable. It was also observed in that case that it is the duty of a Court to avoid such construction of the decree as may in future result in multiplicity of suits between the parties in respect of a matter which has been finally settled. Applying the two principles mentioned above we have to interpret the present decree read with the terms of the compromise.

7. The compromise specifically states that the respondents "propose to make payable" to the appellants Rs. 6450/- per month as per list attached, and that the applicants shall be entitled to receive regularly the said sum of maintenance allowance every month on the liability of the whole Nanpara estate, and it further provides that all guzara holders shall realise the amount of guzara allowance monthly on the presentation of a life certificate. By the decree of the appellate Court the appeal was allowed to the extent mentioned in the compromise attached thereto. This clearly means that the terms of the compromise assumed the form of an order of the appellate Court. The combined effect of the order of the Court, and the terms of the compromise was that there was an order to the present judgment-debtor to pay regularly every month the. amount of the monthly maintenance allowance which was made a charge on all the property of the whole Nanpara estate, and authority was given to the guzara holders to realise their guzara allowance monthly on presentation of a life certificate. It was clearly not contemplated that for the recovery of the maintenance allowance a separate suit should be filed every time. As observed in Kallu Mal v. Mt. Barfo, A. I. R. (25) 1933 ALL. 362, the plaintiff in a maintenance suit usually prays for a decree that may be capable of execution so that the plaintiff may not have to incur the trouble of the institution of fresh suits. Their Lordships further observed in that case that although they are not prepared to go to the length of holding, like the Patna High Court, that even a declaratory decree for maintenance is capable of execution, they are clearly of the opinion that ordinarily a decree for future maintenance should be construed, unless there are some grave objections to the contrary as a decree capable of execution. In Para, 7 of the compromise, it is laid down that if default is made in the payment of the maintenance money or the judgment-debtor does not honour his obligation, the decree-holder may have recourse to legal proceedings. Considering the nature of the litigation and the settlement arrived at, and the terms incorporated in Para. 2 of the compromise, it is reasonable to conclude that the legal proceedings contemplated in Para. 7 were those relating to execution and not to filing of suits. It, is not necessary that the decree passed should specifically state that the judgment, debtor shall pay such and such amount regularly. It is thought enough if the terms of the decree make it clear that it is intended that the judgment-debtor should pay. The attention of the learned trial Judge was drawn to the case of Asutosh Bannerjee v. Lukhimoni Debya, 19 Cal. 139 (F.B.), a decision of a Full Bench of the Calcutta High Court, where it was held that future maintenance awarded by a decree when falling due can be recovered in execution of the decree without further suit, and also to the case of Ainul Haq Khan v. Mt. Nawaban, A. I. R. (26) 1939 Oudh 281. The learned Judge in the Court below has pointed out that in each of these cases that there was an express order to the defendant to pay to the plaintiff at a certain rate, and in the present case there was no such order and, therefore, he did not follow the authorities mentioned above. We have already shown that on a proper interpretation of the decree and the terms of the compromise in the present case there is an order to the judgment-debtor to pay maintenance allowance to the

decree-holder, and in these circumstances the two authorities, quoted above, which also relate in the execution of compromise decrees in suits for future maintenance, do actually apply to the present case and the decree in the present case amounts to a money decree and was clearly executable.

8. Another point urged in appeal is that the learned Judge in the Court below was not right in not allowing interest on the arrears of maintenance. The learned Judge in the Court below thought that interest could not be claimed because it was not provided for in the compromise and that the decree-holder had failed to prove the amount of damages suffered and so, if the decree had been executable, he would not have granted either damages or interest. He said that the decree-holder was certainly entitled to the costs of execution in case the application for execution was maintainable. We do not think that the learned Judge was right in disallowing the interest claimed. There was clearly the duty of the judgment-debtor to pay the maintenance allowance as it became due, and his failure to pay on the due date has caused loss to the decree-holder. It is only proper that the judgment-debtor should, on account of his default, pay interest to the decree holder from the date of default up to the date of payment. The rate of interest claimed, six per cent., is certainly not unreasonable.

9. The result, therefore, is that we allow the appeal with costs, set aside the order of "the Court below and direct that the execution application shall be disposed of according to law. The decree-holder shall be entitled to costs of the execution in the execution Court and also to six per cent. interest on the money due for maintenance allowance from the date of default up to the date of payment. (The following Order was passed in civil Miscellaneous Application No, 78 of 1949, made by the respondents in the above appeal.) Order

10. This is an application for admission of fresh evidence under Order 41, Rule 27, Civil P. C. in execution of Decree Appeal No. 54 of 1947. It is stated in the application that the documents, of which a list has been given in the application itself, are of a very material nature and that they are necessary for the disposal of the appeal. The explanation offered for not producing them before the trial Court is that the general agent who was in charge of the case was a newly appointed person not conversant with the history of previous litigations between the parties. It is alleged that the old agent died in 1944. The date of the death of the old agent is not mentioned in the affidavit filed in support of the application. No satisfactory explanation has been given as to why these documents were not filed at the proper time before the Court below. In point of fact, we find that the appeal was filed on 28-10-1947. It is more than two years after the filing of the appeal that the present application for the admission of fresh documentary evidence had been presented to this Court. It has been further pointed out to us that this application was actually filed after a date for hearing in this case had been fixed. The list shows that the documents relate to litigation of the importance of which the applicant must or should have been aware, and we do not think it a sufficient reason that they were not filed because of the death of the old agent. For the reasons given above, we see no sufficient reason why we should exercise our discretion under Order 41, Rule 27, Civil P. C. and admit this fresh evidence at this late stage. This application cannot be allowed by us. It is accordingly dismissed.