

Topanmal Chhotamal vs Kundomal Gangaram And Ors. on 8 September, 1959

Equivalent citations: AIR1960SC388, AIR 1960 SUPREME COURT 388

Author: K. Subba Rao

Bench: B.P. Sinha, P.B. Gajendragadkar, K. Subba Rao

JUDGMENT

K. Subba Rao, J.

1. This appeal by special leave is against the judgment of the High Court of Judicature at Allahabad dated February 10, 1952. The facts lie in a small compass, and briefly stated they are as follows:

(2). Sometime in 1947 the appellant filed a suit. Suit No. 533 of 1947, on the Original Side of the Chief Court, Sind, at Karachi, against the firm of Kundomal Gangaram, the respondent No. 1 herein, for the recovery of a sum of money alleged to be due to the appellant from the said firm. The firm was sued through one Kodumal alleged to be one of the five partners of the said firm, and the service of summons was effected on him as partner of the said firm. None of the other partners was impleaded individually in the suit. On November 8, 1948, the Chief Court, Sind, decreed the suit against the firm. By the time the decree came to be passed, India was partitioned into two Dominions, and the Chief Court, Sind, became a foreign Court, and, therefore, the decree, being one passed by a foreign Court, became inexecutable in India. Thereafter, the appellant filed a suit in the Court of Civil Judge, Agra, being Suit No. 205 of 1949, on the basis of the said foreign judgment. To that suit the firm of Kundomal Gangaram was made the first defendant, represented by its partner Kodumal, and respondents 2 to 6, the other partners of the firm, were impleaded as defendants 2 to 6. The learned Civil Judge, Agra, decreed "the plaintiffs suit for Rs. 12,140-1-0 with costs and future and pendente lite interest at 3 per cent per annum against defendant No. 1 and such property of the firm M/s. Kundomal Gangaram as may be found in the hands of defendants 2 to 8". No appeal having been filed against that decree, it has become final. In execution of the decree, the appellant attached certain properties of the respondent-firm at Agra mainly comprising of a shop and the assets therein. Respondents 2 to 6 objected to the attachment on the ground that the shop and the articles therein were not the assets of the firm Kundomal Gangaram, but were the personal properties of defendants 2 to 6. The learned Civil Judge held that the assets sought to be attached were not the assets of the firm, and that though the shares of respondents 3 to 6 therein were not liable to attachment,

the one-fifth share of Kundomal Gangaram in the firm was validly attached. Kundomal Gangaram appealed to the High Court against that part of the order of the Civil Judge which was against him, & the decreeholder filed cross-objections in respect of that order in so far as it excluded the liability of the other four partners. It may be mentioned that neither to the appeal nor to the cross-objections, the respondents 3 to 6 were made parties. The High Court dismissed the cross-objections on the ground that respondents 3 to 6 were not parties to the appeal or the cross-objections. The High Court also allowed the appeal filed by the partners of the firm Kundomal Gangaram on the ground that the decree was only against the firm and its' assets, and, therefore, it was not executable against the personal properties or the share or shares of the partners in the joint family property. The decree-holder filed the present appeal for establishing his right to proceed in execution against the personal properties of respondents 2 to 6.

2a. The learned Attorney-General, appearing for the appellant, contended that on a true construction of the decree in Suit No. 205 of 1949, on the file of the Court of Civil Judge, Agra, it must be held that the decree was made against the firm without any limitations, and, if so construed the appellant would be entitled to execute the decree under Order XXI, Rule 50, Civil Procedure Code, against the personal assets of the partners of the firm, respondents 2 to 6. To appreciate this contention it would be convenient to read, at this stage, the relevant provisions of the Code of Civil Procedure.

Order XXI, Rule 50: "(1) Where a decree has been passed against a firm, execution may be granted--

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under Rule 6 or 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of Section 247 of the Indian Contract Act, 1872."

Order XXX, Rule 3: "Where persons are sued as partners in the name of their firm, the summons shall be served either--

(a) upon any one or more of the partners, as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without India."

Rule 6 : "Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm."

The gist of the said provisions may be stated thus: A decree against a firm can be executed (i) against the property of the partnership, (ii) against any person who has appeared in the suit individually in his own name and has been served with a notice under Rule 6 or 7 of Order XXX of C. P. C., (iii) against a person who has admitted on the pleadings that he is or has been adjudged a partner, or (iv) against any person who has been served with notice individually as a partner but has failed to appear. The decree against the firm can be executed against the personal property of such persons.

3. So stated the legal position is unexceptional and indeed it has not been disputed by the learned counsel for the respondents, but what is contended is that the decree sought to be executed expressly excluded personal liability of the partners and, therefore, notwithstanding the provisions of Order XXI, Rule 50, the executing Court is precluded from going behind the decree. The decree consisted of two parts. The first part of the decree reads:

"I decree the plaintiff's suit for Rupees 12,140-1-0 (twelve thousand one hundred and forty and anna one only) with costs and future and pendente lite interest at 3 p. c. p.
a. against defendant No. 1".

If those words exhausted the decree, the provisions of Order XXI, Rule 50, were automatically attracted, for the decree was against the firm. But the decree continued to state:

"any such property of the firm M/s. Kundomal Gangaram as may be found in the hands of defendants 2 to 6."

This part of the decree would be redundant if it was intended only, as the learned Attorney-General contended, to convey nothing more than the idea that the decree was against the assets of the firm, for that was really the effect of the first part of the decree. A decree against a firm without any further directions can be executed, subject to the provisions of Order XXI, Rule 50, C. P. C., against the properties of the firm in the hands of its partners. To avoid tautology, it is therefore necessary to read the decree as a whole to fit in the two parts in an integrated scheme. So construed, the reasonable interpretation would be that the first part gave a decree against the firm, and the second part confined its operation to the assets of the firm in the hands of its partners.

4. At the worst the decree can be said to be ambiguous. In such a case it is the duty of the executing Court to construe the decree. For the purpose of interpreting a decree, when its terms are ambiguous, the Court would certainly be entitled to look into the pleadings and the judgment: see *Manakchand v. Manoharlal*, . In the plaint in the Agra suit, Suit No. 205 of 1949, not only relief was asked for against the firm, but also a personal decree was claimed against defendants 2 to 6. The said defendants inter alia raised the plea that a personal decree could not be passed against them because they were not made parties to the suit filed in the Chief Court, Sind, and were not personally served therein. The learned Civil Judge, Agra, in accepting the plea made the following observation:

"The defendants 2 to 6 were not made parties in Suit No. 533 of 1947 and were not individually served in that case. I think, therefore, the plaintiff cannot get a personal decree against defendants 2 to 6."

After citing the relevant passage from the decision of the Madras High Court in *Sahib Thambi Marakayar v. Hamid Marakayar*, ILR 36 Mad. 414, the learned Civil Judge concluded thus:

"That being the law there is no reason for construing the decree obtained by the plaintiff in Suit No. 533 of 47 as creating a larger liability against the defendant partners of the firm than to make the partnership property in their hands liable. I hold, therefore, that a personal decree against defendants 2 to 6 cannot be given but only as regards the property of the firm defendant No. 1 which may be found in their hands. The plaintiff is thus entitled to a decree for Rs. 12,140-1-0 with costs further and pendente lite interest at 3 p. c. p. a. against defendant No. 1 as may be found in the hands of defendants 2 to 6."

Then followed the decretal order. It is manifest from the pleadings and the judgment of the learned Civil Judge that when a personal decree was sought against respondents 2 to 6 on the same grounds that would have been open to the appellant for executing the decree against them under Order XXI, Rule 50, C. P. C., the learned Judge, for specific reasons mentioned by him, refused to give the appellant the said relief and expressly confined it to the assets of the firm in the hands of the partners.

5. The question is whether in such circumstances an executing Court can go behind the decree & give the relief to the appellant which was expressly denied to him in the suit. The question so posed can only have one answer. It is a well-settled principle that a Court executing a decree cannot go behind the decree: it must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit. If the contention of the appellant were to be accepted, it would contravene the said principle; for, while the decree as construed by us, has directed that it should not be executed against the personal properties of the partners, the executing Court would be directing execution against the said partners. While the decree excluded persona] liability, the executing Court would be imposing the same. This cannot obviously be done.

6. The conclusion arrived at by the learned Judges of the High Court is correct. The appeal fails and is dismissed with costs. The appellant is directed to pay the court, fee payable by him to the State.