

ANDHRA PRADESH HIGH COURT

Duvvuru Balasubramanya Reddy

Vs.

Duvvuru Munuswami Reddy

A.A.O. No. 231 of 1956.

(Sanjeeva Row Nayudu, J.)

14.02.1956. 20.10.1959

JUDGMENT

Sanjeeva Row Nayudu, J.

1. This appeal is directed against the judgment and decree of the District Judges Court, Nellore dated 14-2-1956 in A. S. No. 53 of 1955 setting aside the order of the Court of the Subordinate Judge of Nellore dismissing E. P. No. 243 of 1954 in O. Section 155 of 1948 on the file of the Sub-Court, Nellore and remanding the matter to the latter Court for fresh disposal.

2. The facts out of which this appeal has arisen are briefly as follows :

3. Duvvuru Pankajakshamma, 4th respondent in the appeal, obtained a decree for Rs. 682-4-0 on 31-7-1951 representing the costs allowed to her in O. Section 155/48 on the file of the Subordinate Judge's Court, Nellore against the present appellant. The appellant paid her the full amount due towards costs and subsequent interest to the decree-holder (4th respondent herein) and obtained a receipt on 7-9-1954. The decree-holder also filed a full satisfaction memo into Court of the Subordinate Judge, which passed the decree.

4. The 1st respondent in this appeal Duvvuru Munuswami Reddi, claiming to have obtained a transfer of the decree from the 4th respondent herein filed E. P. 243 of 1954 on 23-8-1954 praying for the recognition of the transfer of the decree in his favor and for an order for the execution thereof, by attaching and bringing the immoveable properties of the judgment-debtors to sale. The petition was opposed by the decree-holder and the judgment-debtors who pleaded that the transfer in question was not for consideration and was merely for collection, that in any event, as the decree-holder in whose favor the decree of the Court had been passed, was paid in full the decree amount, there was no scope for any proceedings by way of execution to be taken in the matter, and therefore the execution petition filed should be dismissed.

5. The learned Subordinate Judge held that the transferee-decree-holder is not entitled to the relief prayed for in the execution petition, as the decree itself has been satisfied by the payment of the full amount covered by the decree to the decree-holder and full satisfaction having been received by the decree-holder in question. So holding, the learned Subordinate Judge dismissed the execution petition in question.

6. On appeal, the learned District Judge of Nellore formulated the following as the only point for consideration in the matter, namely :

"Whether after assigning a decree, the original decree-holder can give a valid discharge of the decree by receiving the amount from the judgment-debtors without reference or notice to the transferee decree-holder."

He held that the original decree-holder transferred the decree in question to the appellant before him on 12-7-1954 by executing the transfer deed, that therefore she had no locus standi to receive or give full satisfaction of the decree after the said transfer. So holding, he set aside the order of the learned Subordinate Judge dismissing E. P. 243 of 1954, and remanded the case to the Court of First Instance, namely, the Court of the Subordinate Judge, Nellore, for fresh disposal, after enquiring whether the transfer to the petitioner (transferee of the decree) is supported by consideration, or whether it is a nominal one as contended by the original decree-holder. The present appeal is against this judgment and order of the learned District Judge.

7. The point for consideration formulated by the learned District Judge does not correctly represent the point that arises for determination in the matter, on the respective contentions of the parties. The question that really falls to be considered in this case is : whether a payment made by a judgment-debtor to the decree-holder, who had obtained the decree in the case, does not amount to a payment under the decree within the meaning of Order XXI, Rule 1, C. P. C.?

8. It is only when the answer to this question is 'yes' that the question whether the execution petition would require to be considered on its merits and should be ordered, would fall to be determined. Otherwise, that is. if the answer is that the above-mentioned payment amounts to a valid payment under Order XXI, Rule 11, C. P. C., the decree must be regarded as satisfied and the 1st respondent who claims to be an assignee for the decree-holder, cannot obtain any relief on the basis of the transfer of the decree in his favor, by way of execution.

9. A few further facts having bearing on the issue for determination in this appeal, may require to be noticed :

10. The decree in this case was obtained on 8-7-1951 in the trial Court, namely, Sub-Court, Nellore for Rs. 682-4-0 representing the costs of the suit as already stated. Steps were taken to

execute the decree by filing E. P. 138/52 on 30-7-1952, which was dismissed. Again another execution petition was filed on 3-9-1953 which was also dismissed, as sale batta was not paid. Subsequently on 7-9-1954, as aforesaid, the 1st judgment-debtor (the appellant herein) paid a sum of Rs. 700/- to the decree-holder (4th respondent herein) and a receipt was obtained to that effect. On the same day, a memo was filed by the decree-holder into Court representing that she has received Rs. 700/- in full satisfaction of the decree, and that it may be regarded by the Court that the decree has been fully satisfied. Some time before this, on 12-7-1954 the decree-holder (4th respondent herein) executed a deed of transfer in favor of the 1st respondent purporting to transfer the decree in his favor for a consideration of Rs. 500/-. In pursuance of this transfer deed, the 1st respondent, claiming to have obtained an assignment of the decree under the said deed, filed as previously stated, the present execution petition (E. P, No. 243/54) under Order 21, Rules 16, 54 and 66 C. P. C. on 23-8-1954, praying that the transfer of the decree in his favor may be recognized by the Court and the immovable properties set out in the schedule belonging to the judgment-debtors may be attached and sold in execution of the decree in question, Notice of this application was ordered returnable by 13-10-1954. On that date, the original decree-holder as well as the 2nd and 3rd judgment-debtors, that is, the respondents 2 and 3 herein, entered their appearance, and subsequently filed counters claiming that the decree has been satisfied and that no execution could be ordered. It was therefore contended in the counter that the alleged transfer in favor of the 1st respondent herein could not be recognized, and no execution can be allowed to take place in pursuance of the decree, which has been satisfied. It is also claimed in the counter that the transfer of the decree in favor of the 1st respondent by the decree-holder was not for consideration, and was only for collection, for the benefit of the original decree-holder and that therefore the transfer by itself did not confer any rights independent of the rights of the decree-holder herself. In any case, it is pointed out that the judgment-debtor paid the decree amount to the decree-holder bona fide, the amount due under the decree, which, as per the Court's records and as per the directions in the decree, she was entitled to be paid.

11. The learned counsel for the appellant relied on *Kadir Meera Saheb v. Pir Mahomed*¹, *Subramaniam v. Ramaswamy*², and *Puthiandi Mameed v. Avalil Moidin*³, in support of the contention that the judgment-debtor was bound to make payment to the decree-holder, who ostensibly is entitled to the decree amount, that any assignment by the decree-holder could only take effect and become operative on the transfer of the decree having been recognised by the court and an order for execution of the decree having been made. In 64 Mad LJ 732 at p. 734 : (AIR 1933 Madras 523 at p. 524), Walsh J. observed as follows :

"Order 21, Rule 1 states only three ways in which the judgment-debtor may make payment. It is expressly stated that it shall be in one of these three ways : (a) into the Court whose duty it is to execute the decree, or (b) out of court to the decree-holder, or (c) otherwise as the Court which makes the decree directs. There is absolutely no provision here for the judgment-debtor paying a third party merely because he happens to know of the assignment of the decree in the latter's favor by the decree-holder; and it is perfectly

clear that if he were to make such payment he would run the risk of having to pay money over again to the decree-holder. He cannot be asked to involve himself in disputes between the decree-holder and somebody to whom the former has assigned the decree. Order 21, Rule 16 definitely provides that the judgment-debtor shall have notice before the assignee decree-holder is permitted by the Court to execute the decree, and he is entitled to raise objections. On the view urged by

¹64 Mad LJ 732 : AIR 1933 Mad 523

³ ILR 20 Mad 157

²62 Mad LJ 562 (FB)

the appellant he will be shut out of his right completely. The decree-holder has only got to send a notice that he has assigned the decree and even if apparently he has already satisfied the decree, the judgment-debtor is bound to pay the assignee and not the decree-holder. He cannot object to the assignment because he has no locus standi until the decree-holder applies under Order 21, Rule 16, for permission to execute the decree. This means that the judgment-debtor either has to make payment to a person not authorised by the court or to refrain from discharging the decree at all until the assignee-decree-holder asks for permission to execute the decree. It is needless to say that there is absolutely no authority for this proposition. As regards the satisfaction of the decree which the decree-holder asks the court to regard, it is not open to the court to go into the question whether dissatisfaction was intended to defraud or defeat the rights of some third party who is not before it as a party to the suit, to whom the decree-holder is alleged to have assigned his interest under the decree."

12. I am fully in agreement with the reasoning adopted in the above observations. The decision in 62 Mad LJ 562 (FB), has no application to the facts of the present case. In that decision, a Full Bench of the Madras High Court considered the question whether an uncertified adjustment of a decree could be pleaded by the judgment-debtor when opposing an application for recognition of transfer under Order 21, Rule 16, and held that if the judgment-debtor is debarred from proving such an uncertified adjudgment under Order 21, Rule 2 C. P. C. he could not plead it in bar of the application under Order 21, Rule 16, C. P. C. Obviously this decision could have no application to a case like the present, wherein, the decree-holder himself had reported the adjustment to the court which passed the decree, and which is also the court whose duty it is to execute the decree, and no question of any bar as the one contained in Order .21, Rule 2 (3) C. P. C. arises in the case.

13. The same conclusion could be reached by an examination of the relevant provisions of the Civil Procedure Code. In Section 2 sub-sec. (3) 'decree-holder' is defined as follows :

" "decree-holder" means any person in whose favor a decree has been passed or an order capable of execution has been made." Sub-section (10) of the same section defines the 'judgment-debtor' as meaning "any person against whom a decree has been passed or an order capable of execution has been made."

14. From these provisions, it is clear that the only person who fulfils the definition of a "decree-holder" is the 4th respondent in this appeal, and similarly, the appellant and the respondents 2 and 3 are the judgment-debtors in the case. Order XXI, Rules 1 and 2 deal with payment under the decree. Rule 1 of Order 21 is as follows :

"1. (1) All money payable under a decree shall be paid as follows, namely :

- (a) into the Court whose duty it is to execute the decree; or
- (b) out of the court to the decree-holder; or
- (c) otherwise as the Court which made the decree directs.

(2) Where any payment is made under clause (a) of sub-rule (1) notice of such payment shall be given to the decree-holder."

It may be seen that this provides for the mode of paying the moneys due and payable under decrees of Courts, and one of the modes recognized by the rule is, payment to the decree-holder outside the Court. This rule has obviously been complied with in this case as the judgment-debtor claims to have paid the decree amount to the decree-holder, a fact admitted by the decree-holder herself. Rule 2 of O. 21 specifically deals with the payment of the decree amount out of court and the procedure to be followed thereafter. Sub-rule (1) of Rule 2 of O. 21 which is relevant, is as follows :

"Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly."

This sub-rule and Rule 1 of Order 21 contemplate and recognize as valid, any payment made to the decree-holder out of Court, of any amount payable under a decree. It also makes it obligatory on the part of the Court to record adjustment of the decree on the decree-holder certifying to the court the fact of such payment or the satisfaction of the decree. In the instant case, the 4th respondent is the decree-holder, the decree had been passed in her favor in the suit in question, and the decree-holder had received the amount payable under the decree out of court, and the decree-holder had certified that payment to the court that had passed the decree and which is vested with the duty of executing it. Thus all the above conditions having been fulfilled in this case, the court had no option, but to record full satisfaction of the decree, as directed by sub-rule (1) of Rule 2 of Order 21 C. P. C., and this is exactly what the learned Additional Subordinate Judge did, and in my opinion, quite rightly, as he had no option in the matter, but to comply with the compelling directions in sub-rule (1) of Rule 2 of Order 21, C. P. C.

15. It is contended by the learned counsel for the 1st respondent that as the decree had been assigned away to his client by the decree-holder, the decree-holder had no further right to collect the money under the decree or to execute the same. He placed reliance on *Sadagopa Chariar v.*

*Raghunatha Chariar*⁴, in support of this contention. The learned Judges who decided that case placed reliance on the decision in *Badri Narain v. Jaikishen Das*⁵, in support of the proposition that

"a person who, within the meaning of Section 232, Civil Procedure Code, is a transferee of a decree, is a representative within the meaning of Section 244, Civil Procedure Code, qua, the decree, of the party to the suit under whom he, by assignment in writing, has derived title to the decree, and that it is the assignment in writing, and not the recognition by the Court, which makes such transferee a representative of a party (not property) to the suit."

⁴ ILR 33 Mad 52

⁵ ILR 16 All 483

Apart from the fact that this is a decision under the Old Code of Civil Procedure, and I will presently show that the definition of the expression "decree-holder" in that Code was materially different from the definition in the present Code, it must be noticed that the learned Judges of the Madras High Court in ILR 33 Mad 62, were dealing with the case of the maintainability of a suit brought by an assignee of the decree, who failed to receive full satisfaction of the decree in execution, as, before he could apply for recognition of his, transfer and execution of the decree, the decree itself had been attached by some other decree-holder. So that, any question bearing on the rights of a transferee decree-holder as against the judgment-debtor, who had already given satisfaction of the decree to the decree-holder, did not arise for decision in that case. Apparently, in order that their observations may not be given the meaning not intended, the learned Judges in that case took care to make the following observations :

"No doubt the transfer of a decree may, in the absence of anything to the contrary, be regarded as conditional upon the court granting permission to the transferee to execute and it seems to us that it was upon this principle that ILR 20 Mad 157, was decided. The transfer in that case was not recognized by the court and the plaintiff was in consequence unable to obtain the full fruits of the assignment to him."

It is necessary in this context to note that the definition of the "decree-holder" as it occurred in the Old Code of Civil Procedure of 1882 included a transferee of the decree, as seen from the definition extracted below :

" 'decree-holder' means any person in whose favor a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred"

whereas the new Code i. e., the one now in force, advisedly omitted the inclusion of a transferee within the definition of a "decree-holder". This significant omission leaves no room for doubt that the framers of the new Code intended that a transferee of a decree should not come within

the definition of a "decree-holder" under the Code, and it is for this reason that in Order 21, Rule 16, provision is made for a transferee making application for execution of the decree to the court which passed the decree and for the decree to be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder. Order 21, Rule 16, C. P. C. is as follows :

"Where a decree or, if a decree has been passed jointly in favor of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that, where the decree or such interest as aforesaid has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the court has heard the objections (if any) to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others."

These provisions in Order XXI, Rule 16 read with the definition of the " decree-holder" in sub-sec. (3) of Section 2 C. P. C., leaves no room for doubt that until the court recognizes the transfer in favor of the alleged transferee of the decree on application made to it by such person, the decree would not be capable of execution by him or at his instance. In other words, any private assignment of or transfer of a decree of a Court, would not ipso facto be legally operative and become capable of being availed of by the assignee, by way of exercising the rights of the decree-holder under the decree, until the transfer is recognized by the court and the Court's seal of approval and recognition is impressed upon the assignment or the transfer of the decree, relied on by the transferee. The learned Judges in ILR 20 Mad 157, are therefore clearly correct when they observed as follows :

"All that the plaintiff got in law for the money he paid to the defendant for the transfer of his decree was an agreement to transfer it, not a complete transfer until recognized by the court. The completion of the transfer in this case was prevented by the attachment of the decree for the defendant's debts, and it was the defendant's duty to do all that was necessary to complete the transfer by removing the obstacle, the attachment. This he did not do and made it impossible for the transfer to the plaintiff to be completed by the recognition of the court."

The learned counsel for the 1st respondent sought to argue that this view in ILR 20 Mad 157, was dissented from in ILR 33 Mad 62. As already pointed out, this is not strictly correct, as their Lordships expressly recognized, that the transfer of a decree is to be regarded as conditional upon the court granting permission to the transferee to execute it. In any case, the decision in ILR 33

Mad 62, is a case under the Old Code of Civil Procedure, where the transferee under the decree had the same status as the decree-holder, having been included in the definition of 'decree-holder' under that Code. That apart, I regret, with great respect, I am unable to agree with those of the observations in ILR 33 Mad 62, which seems to support a contrary proposition to that laid down in ILR 20 Mad 157.

16. The learned counsel for the 1st respondent relied on *Krishnan Chettiar v. Lakshmanan Chettiar*⁶, In that case, although the judgment-debtor set up payment and full satisfaction under the decree, it was found as a fact, that no money was really paid and that the receipt in question was merely brought into existence to defraud the person entitled to the rights under the decree, a finding which was confirmed by the learned Judges of the High Court in that case. As an alternative, reliance was placed on a full satisfaction memorandum filed into court by the decree-holder, and it was contended that even if no money had been paid and the decree had not been really satisfied, nevertheless, as the decree-holder filed the memorandum of full satisfaction,

⁶1947-1 Mad LJ 270

the court had no jurisdiction to proceed with the execution. The learned Judges, who decided the case did not question the correctness of the decision of Walsh, J., in 64 Mad LJ 732 , and instead, decided the case on the particular facts of the case before them, which disclosed that the minor son, 1st respondent in the case, had obtained the right to the decree on the 28th December 1944, and held that if the decree had been really satisfied before that date, certainly nothing passed to the 1st respondent under the partition deed; but if, as has been found in that case, the decree had not really been satisfied by payment before 28th December 1944, the original decree-holder ceased to have any interest in the decree, which interest passed to the minor, the 1st respondent, by virtue of the registered partition deed dated 28th December 1944, entered into between his father, 2nd respondent and himself represented by the next friend. On the facts of that case, not only was it found that the alleged payment to the decree-holder was not true, but also, that the full satisfaction memo was only put into court by the 2nd respondent on the 6th August 1945, by which date he had already lost his rights in the decree by reason of the registered partition deed between himself and the 1st respondent, and therefore he had no locus standi to file the memorandum of full satisfaction on that date. It is thus clear that the decision in that case rested on the particular facts of that case and has no application to the facts of the present case.

17. It must be noted in this connection that the mere execution of a transfer deed purporting to transfer the rights under the decree would not by itself convey the rights arising under the decree, and the right to demand from the judgment-debtor satisfaction of the decree, until such a transfer is recognised by the court under Order 21, Rule 16 C. P. C. when, and when alone, the transferee would be invested with the rights of the decree-holder to execute the decree, as if he was the decree-holder.

Under Order 21, Rule 16 C, P. C. there is no compelling obligation on the part of the Court which 'passed the decree to automatically order execution. The rule merely provides that the transferee may apply for execution of the decree to the Court which passed it and that the decree

may be executed in the same manner and subject to the same conditions as if an application for execution were made by such decree-holder, provided the conditions laid down in the first proviso to the Rule are complied with, namely (1) notice of such application has been given to the transferor and the judgment-debtor; and (2) their objections, if any, to the execution are heard. Thus, the language of Rule 16 of Order 21 C. P. C. therefore contemplates also cases wherein the Court, to whom an application is made under that Rule, may refuse to execute, in which event the so-called transfer deed relied on by the transferee becomes in fructuous and inoperative. This shows, that so far as the decrees of courts of law are concerned, the mere execution of a transfer deed transferring the interest in the decree in favor of another, does not, merely by virtue of that transfer, convey complete rights under the decree and invest the transferee with the status of a decree-holder. In this regard one should not fail to notice the difference between such a transfer and a transfer in any other case. For example, under the Transfer of Property Act, Section 54 where a sale deed is executed and registered, conveying the interest of the executants in favor of the vendee, the execution and registration of the document completes the transfer and conveys the right, title and interest of the vendor to the vendee, and invests him with the status of the owner of the property transferred.

Similarly, in the case of movable property, where the property is transferred and possession is delivered to the vendee, the vendee becomes the owner of the movable property. But such a consequence and legal result would not follow from the mere execution of a transfer deed in respect of a decree of a court of law, and it is for this reason that the definition of the "decree-holder" under the Code of Civil Procedure, 1908, which governs the passing and execution of civil decrees, does not include the transferee from the decree-holder, and it is also for this reason that Order 21, Rule 16 C. P. C., requires the prescribed steps to be taken and an order of the Court to be made thereafter, recognizing the transfer and ordering execution of the decree at the instance of the assignee. This is obviously necessary in the case of the decree of courts, for, a decree could be discharged and satisfied by payment out of court to the decree-holder of the decree, whose names figures in the records of the court, which had passed the decree, as the decree-holder. If a judgment-debtor were to make a payment to the decree-holder out of court, which he is bound to do under the law so long as the decree is alive, and if by virtue of a private assignment a third person is permitted to enforce the decree against the judgment-debtor, it would undoubtedly result in injustice and hardship to the judgment-debtor, as very correctly pointed out by Walsh, J., in 64 Mad LJ 732, in that, having paid his debt due under the decree to the decree-holder which is the legally valid and the proper thing to do, he should again be asked to make a second payment, merely because, the decree-holder, for his own benefit, and for reasons best known to himself, had brought into existence a third person and purported to create rights in the latter's favor. It is to avoid such situations developing, and such hardship and injustice resulting, that the provision is advisedly made in the Civil Procedure Code placing a bar on the power of the Court to order execution of the decree at the instance of a transferee of the decree, without giving notice of the application at the instance of the transferee, to the decree-holder as well as to the judgment-debtor, and without hearing the objections, if any, offered by them.

From the above premises, the only conclusion to draw is, that the mere execution of a transfer deed purporting to transfer a decree in favor of another gives that other no rights to enforce the decree, and as any payment made by the judgment-debtor to the decree-holder would be a valid payment and would result in a valid satisfaction of the decree, until the stage of making an order for execution under Order 21 Rule 16 C. P. C. is reached, the transferee of the decree can have no rights against the judgment-debtor nor can he question the payments so made, resulting in the discharge of the decree.

18. It is contended by the learned counsel for the 1st respondent that the judgment-debtor had notice of the alleged transfer in favor of his client, and that consequently, any payment made by him to the decree-holder should not be regarded as a valid payment. This argument obviously, is not based on any authority. There is no provision either in the Civil Procedure Code or elsewhere, which provides that notice of an assignment would make any difference to the liability of the judgment-debtor to make payment of his debt to the decree-holder, such as, for example, a provision similar to the one contained in Section 53 and in Section 53-A of the Transfer of Property Act. It is not open to the judgment-debtor, nor is he bound or obliged in law to enter into an investigation of the validity or otherwise of an alleged claim by a person claiming to be a transferee, before he complied with the demand of the decree-holder to the payment under the decree. Such a duty is not cast under any provision of law, on a Judgment-debtor. On the other hand, Order 21 Rule 1 C. P. C. leaves the matter free from any doubt, that the judgment debtor is under law obliged to seek the decree-holder and make payment to him of the amount declared due under the decree, if he chooses to make the payment out of court.

19. The learned District Judge was quite wrong in thinking that the validity or otherwise of the transfer should be investigated, even after the decree itself had been validly satisfied and there was no further relief by way of execution that could be granted in respect of the decree.

20. In the result, this appeal is allowed. The judgment and order of the learned District Judge are set aside and the judgment and order of the learned Additional Subordinate are restored with costs throughout.

Appeal allowed.