

# ANDHRA PRADESH HIGH COURT

Satyanarayan

Vs

Sindhu Bai Sharma

(G Ekbote, J.)

18.04. 1963

## JUDGMENT

### **G Ekbote, J.**

1. The main point in this revision raises a short but difficult question. The central facts of the case are that one Sindhu Bai filed an eviction petition against her tenant who is the petitioner before me. On the basis of a compromise, eviction order was passed in favour of Sindhu Bai on 22-9-1959. Thereby the tenant was directed to vacate on or before the end of December 1959. I am to vacate on or before the end of December 1959. I am not concerned with the terms of the compromise. After the eviction order was passed and within almost a month the said Sindhu Bai sold the premises to Arun Naik, minor, through his mother guardian. Subhadra Bai, the respondent, on 12-10-1959. As the petitioner failed to vacate as agreed to by him in the compromise and as directed by the Rent Controller, the respondent filed an application for execution of the order of the Rent Controller on 26-6-1960. When the execution order was issued, the petitioner appeared before the Rent Controller and took two days' time to vacate voluntarily which was granted to him on 27-10-1960. Instead of thus vacating the premises the tenant filed an application before the Rent Controller raising various objections. The main objection was that the eviction order was passed in favour of Sindhu Bai and that the respondent who is the purchaser of the property from Sindhu Bai cannot execute the order of eviction as the decree was not transferred in his favour. The tenant also pleaded with the tenant on 16-9-1959 on account of which the respondent cannot execute the eviction order.

(2) After hearing the parties the Rent Controller dismissed the executive petition holding that as the decree for eviction has not been transferred in favour of the respondent, he cannot execute the same although he is a transferee of the property which is the subject-matter of the decree. The respondent therefore went in appeal.

(3) The appellate authority allowed the appeal. It was held that although Order 21, Rule 16 may not apply to the facts of the case by virtue of S. 146 C. P. C. the respondent who is the purchaser of the property from the decree-holder can file an execution petition. It is this view of the appellate authority which is assailed in this revision.

(4) Mr. T. S. Narasing Rao. who appears for the judgment-debtor, raised two contentions before me. It was firstly argued that a distinction must be made between the transfer of the property which is the subject-matter of the decree and the transfer of a decree. In view of the distinction, which he says is real, his submission is that the purchaser of the property cannot execute the decree. It was secondly submitted that in view of the agreement entered into by Gangadhar Naik on 16-9-1959 the respondent cannot execute the decree.

(5) Turning now to the first submission of the learned advocate, in order to appreciate which I must look into the relevant provisions of the Civil Procedure Code. Order 21, Rule 16 C. P. C. provides that "Where a decree or, if a decree or, if a decree has been passed jointly in favour 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." I am not concerned with the two proviso of that Rule. From a reading of Rule 16 it becomes clear that the principle underlying it is that no one can execute a decree except the decree-holder or a person to whom a decree is transferred by assignment in writing or by operation of law. A third person cannot therefore apply for the execution of a decree unless there is a transfer to him of the decree from the original decree-holder. It follows therefore that a transfer in writing of property which is the subject-matter of a suit without in terms transferring the decree passed or to be passed in the suit in relation to that property, does not entitle the transferee to apply for execution of the decree as a transferee of the decree by assignment in writing under O. 21 R. 16. The Supreme Court in *Jugalkishore v. M/s Rao Cotton Co. Ltd.*, (S) R after a review of the case law on the subject laid down that the provisions of O. 21 R. 16 on a strict construction thereof contemplate the actual transfer of decree by an assignment in writing executed after the decree is passed and that while a transfer of or an agreement to transfer a decree that may be passed in future may, in equity, entitle the intending transferee to claim the beneficial interest in the decree after it is passed, such equitable transfer does not relate back to the prior agreement and does not render the transferee a transferee of the decree by an assignment in writing within the meaning of O. 21, R. 16. In the light of this very clear decision it cannot now be disputed that it is only the decree-holder or his assignee in writing, or assignee by operation of law who can alone execute the decree under O. 21, R. 16. In all other cases where other persons can execute the decree, O. 21, R. 16 cannot applied.

(6) No arguments were advanced on the applicability of O. 22 R. 10 C. P. C. to the facts of the present case. Although R. 12 of O. 22 does not specifically mention that the provisions of O. 22 R. 10 are not applicable to the execution proceedings of any decree, I do not find it necessary to deal with that question because no submission were made to me in that regard.

(7) The only Section therefore which has to be carefully considered is Sec. 146 C. P. C. That Section is in the following :

"Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him."

(8) When it is conceded that O. 21 r. 16 is not applicable to the facts of the case, then it becomes necessary to see whether the provisions of Sec. 146 C. P. C. are applicable. The opening words of the Section "Save as otherwise provided by this Code or by any law for the time being in force" should, in my judgment, receive beneficial construction and similarly the Section must also receive a beneficial interpretation and it has to be read as supplementing the rules of the Code of Civil Procedure. Its scope should not be whittled down by placing a too limited and narrow construction on it. The Section appears to me wide enough to entitle a person to file an execution petition or continue a proceeding started by another person under whom he claims. Two questions emerge from a consideration of this Section. It has to be seen firstly whether the other provisions of the Civil Procedure Code or of any other law make any provision in that regard. If is found, as is found in this case, that Order 21 Rule 16 is not applicable and there is no other provision in this respect in either the Civil Procedure Code or in any other law, then it is obvious that Sec. 146 can be applied. Secondly, it has to be seen whether the person trying to execute the decree claims under the person who obtained the decree. I feel no difficulty on that account to hold that a purchaser of the property which is the subject-matter of a decree, claims under the decree-holder. Now a person claiming under the party to a litigation can be one who either has succeeded to the position of the latter in litigation, or has acquired from him subsequent to the commencement any interest in its subject-matter. In either case he must be deemed to be claiming under the concerned party. In this case as the respondent has acquired subsequent to the passing of the decree an interest in the subject-matter of the decree, he must considered to be claiming under the decree-holder or the vendor.

(9) Mr. Narasing Rao, however, relies on the following cases : (S) AIR 1955 SC 376 *Lakshmi Pillai v. Yacob Nadar*<sup>2</sup>, *Oommen Chacko v. Varghese*<sup>3</sup>, *Chimanlal v. Gulam Nabi*<sup>4</sup>, *Perumal Naidu v. Marukri Thammal*<sup>5</sup>, His contention, based on the above said rulings, is that even under Sec. 146 C. P. C. the purchaser of the subject-matter of the decree cannot file a petition for

execution of a decree. Curiously enough the Supreme Court case is relied on by both the sides. I must therefore carefully examine that case.

(10) The facts of that case were that two persons namely Mahmedali Habib and Sakerhanoo Mahomedali Habib were carrying on a business under the name and style of Habib and Sons. In 1948 that firm instituted a suit in the Bombay City Civil Court against Jugalkishore Saraf for recovery of some money said to be due in respect of certain transactions in gold and silver. During the pendency of that suit a document was executed whereby it was agreed that the two partners would transfer and Messers. Raw Cotton Company would accept the transfer of, inter alia, all book and other debts due to them in connection with their business and full benefit of all securities for the debts and all other property to which they were entitled in connection with the said business. The Limited Company did not take steps under O. 22 R. 10 C. P. C. to get themselves substituted as plaintiffs in the place and stead of Habib and Sons, the plaintiffs on record, but allowed the suit to be continued in the name of the original plaintiffs. The partners subsequently migrated to Pakistan and their property vested in the Custodian of Evacuee Property. On 15-12-1949 a decree was passed in that suit. On 11-12-1950 the Custodian of Evacuee Property informed the Limited Company that by an order dated 2-8-1950 the Additional Custodian of Evacuee Property had confirmed the transaction of transfer of the business of Habib and Sons to the respondent Company. The respondent-Limited Company on 25-4-1951 presented before the Bombay City Civil Court an execution petition under O. 21 R. 11 C. P. C. The judgment -debtor which was raised before the Supreme Court was whether the respondent-company were the transferees of the decree within the meaning of O. 21 R. 16. The Supreme Court found that the decree as such was that transferred because there was not decree in existence when the agreement between the parties came into existence, and as the decree was not transferred, O. 21, R. 16 is inapplicable. Nevertheless the Supreme Court applied Sec. 146 C. P. C. and allowed the respondent-Limited Company to continue the execution petition. The ratio decidendi of that case certainly helps the petitioner before me to the extent that O. 21 R. 16 is applicable to a case where in fact a decree is transferred. It must however be remembered that in the case before the decree was passed, and in the present case the sale deed the decree was passed, and in the present case the sale deed was executed subsequent to the passing of the decree, but the decree has not been transferred. The decision of the Supreme Court however goes directly against the revision petitioner inasmuch as it decides that in case where O. 21 R. 16 is not applicable, Sec. 146 would apply. I am not concerned with the other aspects of that decision which deals with equitable assessment. As far as Section 146 is concerned it was observed by their Lordships of the Supreme Court:

"There is nothing in O. 21 R. 16 which, expressly or by necessary implication, precludes a person, who claims to be entitled to the benefit of a decree under the decree-holder but

does not answer the description of being the transferee of that decree by assessment in writing or by operation of law, from making an application which the person whom he claims could have made."

It was further observed :

"When the respondent company (transferee) became the owner of the decree immediately on its passing they must, in relation to the decree, be also regarded as persons claiming under the transferors. The respondent company would not have become the owner of the decree unless they were the owners of the debt and if they claimed the debt under the transferors they must also claim the relative decree under the transferors as transferee of the debt. In my opinion, the respondent company are entitled under Sec. 146 to make the application for execution which the original decree-holder could do..... I do not see why the executing Court may not apply its mind to the simple equitable principle which operates to transfer the beneficial interest in the after-acquired decree or to questions arising under S. 146. .... As the assignees from the plaintiff of the debt which was the entire subject-matter of the suit the respondent company were entitled to be brought on record as a representative of the plaintiff within the meaning of Sec. 47 of the Code."

(11) These observations related to a case where an agreement to sell the debt which was the subject-matter of the suit was transferred prior to the passing of the decree, and in my judgment are equally applicable to the present case where after the decree was passed the subject-matter of the decree was transferred. If the argument of Mr. Narasing Rao is accepted, it would produce an impossible result. It is not denied that when during the pendency of a suit if the subject-matter of the suit is transferred, the transferee can continue the suit either under the provisions of O. 22 R. 10 or under Sec. 146. It is also not disputed that even after passing a preliminary decree if the property involved in the suit is transferred, the transferee can proceed with the proceedings for passing a final decree. Even after the decree is passed if the subject-matter of the suit is transferred, the transferee can prefer an appeal or continue the appeal if the transfer takes place during the pendency of the appeal. Order 21 R. 16 makes it clear that when a decree is transferred, the transferee can execute the decree passed in favour of his predecessor. Why then a transferee of the subject-matter of the decree be alone precluded from filing an application to execute the decree although it may not come under O. 21 R. 16? Why should such a transferee not fall within the ambit of Sec. 146 particularly when it is not disputed that such a transferee claims under his vendor who happens to be the decree-holder? Even in cases under the Rent Act it has been held that "the definition of 'landlord' in Sec. 2 clause (3) is wide enough to include the

vendor and the purchaser, and nothing in the wording S. 7 (2) (i) compels the view that arrears should have been of the rents due to landlord who applied for eviction after his purchase from the previous landlord. Sec. 7 (2) allows the landlord who seeks to evict his tenant to apply to the Rent Controller and Sec. 7 (2) (i) (corresponding to Sec. 15 (2) (i) of the Hyderabad Buildings (Lease and Rent Control) Act, 1954) does not insist or require that the arrears should have been due to the applicant. It is sufficient that the rent had not been paid or tendered by the tenant within 15 days of the expiry of the time fixed in the agreement of tenancy with his landlord. The landlord here referred to might be either the applicant or a person who happened to be the landlord at the time when the rent fell into arrears. The right to evict the erring tenant is not a personal right peculiar to a landlord as to be unavailable to his heir or legatee or a purchaser from him. There is nothing in the language of Sec. 7 (2) (i) which compels one to uphold that the default in payment of rent under Sec. 7 (2) (i) is limited in its effect as to be available only to the person, who at the time of the default was the landlord." See *Apparao v. Salimunnisa Bibi*, 1955 Andh WR 894. Similarly in another case *Somasundara v. Madras Provincial Co-operative Society Ltd.* it was held that the unauthorised sub-letting by the tenant made at the time of previous landlord is a cause of action available to the new landlord for evicting the tenant. Rajamannar C. J. observed :

"There is nothing from which it can be urged with any force that the transfer or sub-letting must have been made not merely after the commencement of the Act but also after the date on which the petitioning landlord became a landlord. According to the definition, the term "landlord" would include both the vendor and the purchaser; it appears to be an unreasonable construction to confine the rights of the landlord to rights which accrued to him only after he became a landlord."

(12) When the transferee in such a case can avail of the cause of action which arose during the time of the previous landlord, I fail to understand how a decree passed on the basis of the same cause of action cannot be made available for execution to the transferee who also is a landlord. In this regard Secs. 8 and 109 of the Transfer of Property Act must also be borne in mind. These provisions particularly Sec. 109 provides that if the lessor transfers the property leased, the transferee shall possess all the rights as to the property so long as he is the owner of it. Thus where the entire property is transferred, the transferee can sue to eject the tenant on the basis that the tenancy has terminated or on the basis of a forfeiture or breach of condition which is a quality annexed to the estate. When that is so, why should a purchaser from a landlord who had obtained a decree of eviction against the tenant be deprived of the benefits of the decree? If it is held that such a transferee cannot execute the decree obtained by his predecessor-in-title then the only course which will be left open to him is to file a fresh petition for eviction on the old cause of action which was merged in the decree. Such a transferee will immediately be faced with a

difficulty of the existence of a decree. When once the cause of action has already been merged in the decree, it is doubtful whether on the same cause of action the transferee can file such an application. In that case it will be difficult to reconcile with the decisions already quoted above. Mr. Narsing Rao could not show me any reason as to why provisions of Sec. 146 cannot be applied to a case where a transferee takes the entire property by way of transfer and steps in the shoes of the transferor, and why a transferee cannot continue the execution petition already filed by his transferor or file a fresh execution petition. I am therefore of the opinion that far from assisting the petitioner, the above-said Supreme Court case goes to a great extent against the petitioner in so far as it decides the applicability of Sec. 146 C. P. C.

(13) Turning next to the two cases of the T. C. High Court it is clear from the decision in AIR 1952 Trav-Co. 254 that what held was that the only persons who can execute decree are those mentioned in O. 21 R. 16 and the transferee of an immovable property is not a transferee of a decree in respect of that property within the meaning of that rule, nor is he a person claiming under the decree-holder within the meaning of Sec. 146. Hence the transferee of the equity of redemption of an item of immovable property cannot execute a decree for redemption obtained by the transferor. Looking careful into that portion of the judgment, which deals with Sec. 146 it is seen that their Lordships referred to Mahanandi Reddi v. Venkatappa, AIR 1942 Mad 21 and distinguishing that case on the facts, their Lordships thought it unnecessary to consider the question as to whether the transferee of the rights of the plaintiff in a pending litigation can execute the decree or not. In that case there was not transfer of any right in respect of any litigation. The transfer was merely of the rights in a certain item of the immovable property. On that ground alone their Lordships thought that Sec. 146 is not applicable. As far as O. 21 R. 16 is concerned, the decision in that case is not open to any criticism. The decision in that case that the transferee is not a person claiming under the decree-holder within the meaning of Sec. 146 is however open to criticism. From the judgment no such express decision seems to have been given. The Madras High Court in Sita RamaSwami v. Lakshmi Narayanan Narasamma; AIR 1919 Mad 755 (2) however has decided that the expression 'claiming under' in Sec. 146 is wide enough to cover cases of devolution etc., mentioned in O. 22 R. 10 C. P. C. Similarly in M. Seshadri v. P. Venkata Reddy, AIR 1924 Mad 709, a Bench of the Madras High Court held that the words "claiming under" in Sec. 146 include a case where the interest of a person has been assigned to or devolved upon another under O. 22 R. 10 in that case it was argued that the respondent-petitioner was a transferee of the property concerned in the decree, which he desired to execute, not of that decree itself. Their Lordships did not think the distinction substantial, and observed : "For we cannot understand how one person can be claiming under another, in respect of property, when he does not claim under him, equally in respect of the decree default with the property." This view is further supported by the observations respectively agree with the decision which take the view that a transferee of the property in the decree claims under the decree-holder

within the meaning of Section 146.

(14) In the other case of AIR 1952 Trav-Co, 555 it was decided that a Transfer of Property which is the subject-matter of suit will not make the transferee an assignee of the decree which is subsequently passed in the suit so as to enable him to apply for execution of the decree under O. 21 R. 16, and for entitling a person to apply for execution under O. 21 R. 16 the decree must have been transferred in his name by assignment in writing or by operation of law. Section 146 C. P. C. never came for discussion. That case therefore is of no assistance to the petitioner in that regard.

(15) The next case relied on by Mr. Narasing Rao is AIR 1946 Bom 272. That case is hardly useful to the petitioner as it concerns itself only with the discussion of O. 21, R. 16 Section 146 was not considered in that case and I have already observed that O. 21 R. 16 is not applicable to this case also.

(16) The last case is AIR 1927 Mad 240, where Krishnan, J., held that a purchaser of property included in a decree does not thereby become the assignee-decree-holder and does not get the right to execute the decree or to get possession of the property purchased by way of execution. It must however be understood that no arguments in relation to Sec. 146 were advanced before the learned Judge. I have already come to the conclusion that merely because a property which is the subject-matter of the decree is transferred, the decree thereby will not be deemed to have been transferred and consequently the provisions of O. 21 R. 16 do not apply in such a case. The question however is whether such a transferee can under Sec. 146 C. P. C. execute the decree. On this topic the above-said Madras decision is hardly helpful.

(17) In this connection it is perhaps beneficial to consider a Bench decision of the Madras High Court in AIR 1942 Mad 21. In that case pending suits filed on the basis of some promissory notes the plaintiff assigned the entire amounts due in respect of two suits for a consideration of Rs. 8,000/- A decree was passed and the assignee sought the execution of the decree. It was held that he could not execute the decree under O. 21 r. 16, as it did not apply to a case where there is no decree in existence at the time of the assessment. It was further held that he could execute the decrees under Sec. 146, and Order 21 R 16 did not prohibit him, and the words "Save as otherwise provided by this Code" in Section 146 should be liberally interpreted as permitting application for execution of such decrees. This is a case substantially and it is this view which appears to have been upheld by the Supreme Court.

(18) Lastly Munavar Basha v. Narayan, is perhaps more helpful. Jagadisan, J., decided that "the purchasers of an immovable property in the occupation of a tenant get transferred to themselves all the rights of the lessor under Sec. 109 of the Transfer of Property Act and are entitled to

enforce an order of eviction obtained by the vendor against the tenant and the attornment of the tenant to the purchaser has not impact on the lease except for the substitution of the landlord for another and the terms and incidents of the lease continue to operate as before attornment and it does not bring about a new tenancy or lease." I respectfully agree with the said observations.

(19) On a careful review of the provisions of the Civil Procedure Code and the various authorities cited to me I am clearly of the view that a transferee of the subject-matter of the decree can continue the execution petition if it is already filed by the transferor-decree-holder or can file a fresh execution petition on the ground that he is such a transferee under Sec. 146 C. P. C. and there is nothing in Order 21, Rule 16 which precludes such a transferee from carrying on the execution of the decree obtained by this transferor, the subject-matter of which was subsequently transferred. The appellate authority therefore in my view has not decided anything which is inconsistent with the provisions of the Civil Procedure Code. I am not therefore inclined to interfere with the decision of the Court below on that account.

(20) The only point which now survives is: What is the effect of the letter given by Gangadhar Naik on 16-9-1959? The Gangadhar Naik is the father of Arun Naik who is the respondent before me. It must however be remembered that Arun Naik conducted the whole litigation under the guardianship of natural mother, Subhadra Bai. The sale deed was executed in favour of the minor showing the natural mother, Subhadra Bai as the guardian. Gangadhar Naik did not figure anywhere in the transaction. That apart, the letter relied on merely says: "The question of eviction will be friendly, and sympathetic and positive." That does not mean that Gangadhar Naik on behalf of the minor undertook to execute the decree, or agreed that the tenant will not be evicted from the premises. The conduct of the decree-holder has been friendly and sympathetic but to say the least the judgment-debtor was undoubtedly taking undue advantage of it. That apart, this letter is dated 16-9-1959 and the order of eviction was passed on 22-9-1959 and the order of eviction was passed on 22-9-1959. The above-said letter therefore being prior to the decree cannot be treated as a basis for pleading that the decree cannot be executed. I do not therefore consider that the argument in that respect has any strength. As it is utterly devoid of any substance, I have no difficulty in rejecting it.

(21) Even otherwise I am satisfied that this is not a case in which I should interfere. From the facts mentioned above it will be clear that the judgment-debtor entered into a compromise agreeing to vacate the premises by the end of December, 1960. Admittedly he went back and did not vacate. Even when the warrant of execution was issued on the petition of the present respondent, he made the Rent Controller and the respondent believe that he is going to vacate within two days voluntarily. The Rent Controller granted time only on that account. Instead of vacating the premises he raised various objections, and thus delayed the eviction. As the order of

the appellate authority, in my opinion, has produced just and fair result and does not cause any harm or injury to the tenant, who had already agreed to vacate, I consider that it is not a fit case in which this Court interfere in revision. This revision petition, therefore, is dismissed with costs.

(22) Petition dismissed.

#### Cases Referred.

1A.I.R 1955 SC 376

2AIR 1952 Trav-Co. 254

3AIR 1952 Trav-Co 555

4AIR 1946 Bom 272

5 AIR 1922 Mad 240