

(1938) 11 MAD CK 0028

Madras High Court

Case No: None

Joura Madhava Sahu
(dead) and Another

APPELLANT

Vs

Telli Satrughana Sahu

RESPONDENT

Date of Decision: Nov. 4, 1938

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 47

Citation: AIR 1939 Mad 499 : (1939) 49 LW 360 : (1939) 1 MLJ 473

Hon'ble Judges: Venkataramana Rao, J

Bench: Division Bench

Judgement

Venkataramana Rao, J.

This second appeal arises out of a suit for recovery of damages instituted by the plaintiff against the defendant in

the Court of the District Munsif of Berhampore. The plaintiff obtained a decree and it was confirmed in appeal by the learned District Judge of

Ganjam. It is against that decision that this second appeal has been preferred by the defendant.

2. The only point argued on his behalf by Mr. Jagannadha Das is that the suit is barred by Section 47, Civil Procedure Code. To appreciate this

contention a few facts may be necessary. The plaintiff instituted a suit (O.S. No. 518 of 1928) in the District Munsif's Court of Berhampore

against the defendant and his brother for arrears of rent due to him. The defendant instituted a suit (O.S. No. 365 of 1928) in the same Court for

the recovery of an amount due on a promissory note executed by the plaintiff in favour of the defendant. In both the suits consent decrees were

passed for equal amounts on the 23rd April, 1929. They were the result of an arrangement come to between the parties. This arrangement is

spoken to by P.W. 2 the pleader who represented the defendant in O.S. No. 365 of 1928. He states thus in his deposition:

I am defendant's pleader in O.S. No. 365 of 1928 who was plaintiff in that suit. In O.S. No. 518 of 1928 I defended the first defendant in a suit

filed by the present plaintiff against him. I and the plaintiff's pleader compromised the two suits, the terms being that the amounts due on each suit

was equalised and agreed that decree for equal amounts should be given to each. It was also agreed that the amounts should be set off against

each other and that no execution proceedings should be taken. This elaborate arrangement, instead of dismissal of the suits, was made because the

clients did not like the idea of the suits being dismissed.

3. The arrangement thus deposed has been found to be true by both the learned District Munsif and the learned District Judge. In accordance with

the arrangement, the plaintiff did not execute the decree obtained by him against the defendant but the defendant on 22nd April 1932, just a day

before the period for executing the decree would expire, filed an application for execution of his decree in O.S. No. 365 of 1928 and realised the

full amount due thereunder from the plaintiff. The plaintiff thereupon filed this suit for damages. The learned District Munsif was of the opinion that

the suit was not barred by Section 47, Civil Procedure Code, because the plaintiff could not set up this agreement in answer to the claim for

execution by reason of ninety days having elapsed from the date of the agreement and Order 21, Rule 2 precludes the recognition of any

adjustment after the expiry of the period of limitation for certifying the payment or adjustment. The learned District Judge was of the view that the

agreement arrived at was one attacking the decree and therefore could not be pleaded in bar of the plaintiff's application for execution. He relied

on the decision in Butchiah Chetti v. Tayar Rao Naidu (1930) 60 M.L.J. 721 : ILR 54 Mad. 184. Mr. Jagannadha Das contends that the view

taken in Butchiah Chetti v. Tayar Rao Naidu (1930) 60 M.L.J. 721 : ILR 54 could not be held to be correct in view of the Full Bench decision in

Adapa Papamma and Another Vs. Darbha Venkayya and Others, , which held that a pre-decree agreement not to execute the decree could be

pleaded in bar of execution. In this view Mr. Jagannadha Das further contends that as there was no question of any bar of limitation and therefore

no impediment to setting up this plea in answer to the plaintiff's claim for execution, the defendant is precluded by Section 47, Civil Procedure

Code, from instituting this suit as no cause of action can be founded thereon. Mr. Jagannadha Das also relied on the observations of Curgenvin, J.,

in (Cherukat Madhathil Etakramancheri Illath Karnavan) Narayanan Nambudri and Another Vs. (Peruvampura Devaswam Samudayi

Kizhakkiniyakath Polancheri Illath) Damodaran Nambudri and Others, , where the learned Judge has held at page 27 that an agreement originating

before a decree not to take out execution under it can be dealt with by the executing Court u/s 47, CPC and accordingly no suit would lie. Mr.

Chandrasekara Sastri for the respondent canvasses the soundness of this view, but I think it unnecessary to deal with this question. In my view the

agreement relied on was not merely one not to execute the decree. The agreement was that each should set off the amount of the decree obtained

by each against the other; in effect, each should take the amount of the decree obtained against him as payment towards the decree obtained by

him and satisfaction entered thereon. Therefore the moment the decrees were obtained by each, they operated as payment of the decrees obtained

by each against the other and there was an obligation to enter up satisfaction. Therefore, on the passing of the decrees in April 1929 there must be

deemed to have been a payment made by the plaintiff to the defendant in respect of the said decree with the consequent duty to certify the said

payment and enter up satisfaction of the decree. Though the agreement was before the decree, yet the payment and satisfaction were after it.

Whether the obligation is viewed as an implied promise or one arising under the provisions of Order 21, Rule 2, there was a breach of that

obligation on which a suit for damages would lie. It seems to me that this case is covered by the principle of the Full Bench decision in Viraraghava

v. Subbakka I.L.R.(1882) 5 Mad. 397 (F.B.) and Section 47, Civil Procedure Code, would be no bar to the plaintiff's claim. In the result, the

second appeal fails and is dismissed with costs.

4. Leave to appeal is refused.