

(1990) 09 KL CK 0032
High Court Of Kerala
Case No: C.R.P. 2236 of 1984

N. Usman Kutty Haji

APPELLANT

Vs

Mother India Corporation

RESPONDENT

Date of Decision: Sept. 18, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 50, Order 21 Rule 50(1), Order 21 Rule 50(2), Order 21 Rule 50(3), 115(2)

Hon'ble Judges: M.M. Pareed Pillay, J

Bench: Single Bench

Advocate: M.C. Nambiar, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

M.M. Pareed Pillay, J.

E.A. 974 of 1979 was filed under Order 21, Rule 50(2) of the CPC for leave to execute the decree in O.S. 103 of 1956 against the revision Petitioner. The executing Court allowed the application overruling the various objections raised by the revision Petitioner.

2. Order 21, Rule 50 CPC provides for the execution of decree against firms. Decree against a firm can be executed:

(i) against any property of the partnership;

(ii) against any person who has appeared in the suit individually in his own name or who has admitted or who has been adjudged to be a partner;

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

Decree against a firm can be executed against the personal property of such persons. A decree against a firm has the same effect as the decree against all other

partners. Hence the decree can be executed against the whole of the partnership property as provided under Order 21, Rule 50(1)(a). A decree can also be executed against one or more of the partners personally complying with the procedures prescribed under Rule 50.

3. Persons mentioned under Clauses (b) and (c) are evidently persons who had knowledge of the suit and their liability as a partner was established. Order 21, Rule 50(2) envisages that a decree can be executed against any person other than such a person as is referred to in sub-rule (1), Clauses (b) and (c), as being a partner of the firm, of course with the leave of the Court. For the application of Sub-rule (2) it is not necessary that summons should be served on the partners individually to enable the decree holder to proceed against the partnership property. But it is necessary to make an application under Sub-rule (2) for leave to proceed, not against the partnership property which has already been provided under Sub-rule (1) but against his individual property. Sub-rule (2) gives opportunity to a person sought to be proceeded against as a partner to vindicate his stand that he has nothing to do with the partnership.

4. Order 21, Rule 50(2) provides that where the decree holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in Sub-rule (1) Clauses (b) and (c) as being a partner in the firm it is open to him to make necessary application to the Court which passed the decree for leave and the Court may grant leave where the liability is not disputed. The latter part of Order 21, Rule 50(2) makes it clear that where the liability is disputed the Court has to determine it in any manner in which any issue in a suit is tried and determined. As the revision Petitioner disputed his liability the Court below considered the matter and held against him. That decision is appealable and hence no revision lies. Order 21, Rule 50(3) provides that where the liability of any person has been tried, and determined under Sub-rule (2), the order shall have the same force and be subjected to the same condition as to appeal or otherwise as if it were a decree. Thus the order granting leave has the effect of a decree and is appealable. As the impugned order is an appealable one the C.R.P. is ill conceived. Section 115(2) provides that the High Court shall not vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto. As the impugned order is appealable as provided under Order 21, Rule 50(3) the C.R.P. is not maintainable.

The C.R.P. is accordingly dismissed. There is no order as to costs.