

## **Ramzanali Gulamhussain Ramodiya and Others Vs Hamida Karim Ramodiya and Others**

**Court:** Bombay High Court

**Date of Decision:** March 27, 2002

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 58

**Citation:** AIR 2002 Bom 526 : (2002) 3 ALLMR 392 : (2002) 4 BomCR 575

**Hon'ble Judges:** C.K. Thakker, C.J; S. Radhakrishnan, J

**Bench:** Division Bench

**Advocate:** Abhay K. Abhayankar and Asha Bambwani, instructed by M.V.G. Krishna, for the Appellant; Pravin Samdani and S.N. Fadia, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

C.K. Thakker, C.J.

This appeal is filed against an order passed by the learned single Judge on October 9, 2001 in Chamber Summons

No. 562 of 2001 in Execution Application No. 20 of 1998 in Appeal No. 575 of 1994 in Suit No. 3033 of 1994. The Chamber Summons was

taken out on behalf of the applicants/original defendants praying for an order of stay of sale of immovable property fixed on April 27, 2001 as per

the proclamation issued by the Sheriff of Bombay on April 19, 2001 and for consequential reliefs.

2. As stated in the affidavit-in-reply in support of Chamber Summons, the respondents had filed a suit, No. 3033 of 1994, against the appellants,

which was settled by appointment of mediator and consent decree was passed on April 22, 1996. As per the said decree Ramodiya Mansion II

was to be sold and the respective shares were to be paid to respondents. It was contended by the learned counsel for the appellants-applicants

before the learned single Judge that the consent decree was in respect of the property and not for a particular amount. In view of the terms and

conditions of the consent decree, if the property could not fetch a particular amount, the appellants could not be held liable to pay a sum of money,

since the decree in question was not a money decree. It was stated that notional value of Ramodiya Mansion II was fixed at Rs. 4,32,00,000/-.

But the property was actually sold for an amount of Rs. 1,90,00,000/- only. In view of that, it was not open to the respondents to claim anything

more, and that too, by praying for realisation of the amount from other properties of the appellants. The said prayer, according to the appellants,

was illegal, unlawful, inequitable and could not be granted.

3. The case of the respondents, on the other hand, was that in the previous proceedings, the matter was settled, a mediator was appointed, and

consent decree was passed. Under the terms and conditions of the consent decree, the appellants were liable to pay a fixed amount, for which an

order was passed by a competent Court. As per the said order, it was obligatory on the appellants to pay the amount. Since there was failure to

comply with the decree, it was open to the respondents to get the said amount by taking appropriate proceedings in accordance with law, and the

appellants had no right to object to such a course being adopted by the respondents.

4. The learned single Judge, after considering the earlier proceedings and the orders passed from time to time, held that the appellants were not

entitled to any of the prayers in the Chamber Summons, as the proceedings were finally culminated in the decree, and, as per the terms and

conditions thereof, the respondents were entitled to a certain sum of money. Accordingly, the Chamber Summons was dismissed. The said order is

challenged in the present appeal.

5. We have heard the learned counsel for the parties.

6. It was contended by the learned counsel for the appellants that the decree in question was not a money decree, but it was in respect of

property, and, therefore, no direction could have been issued by the Court to the appellants to pay a particular sum of money. It was also

submitted that at the most, the respondents were entitled to a share from Ramodiya Mansion II. and no order could have been made directing the

appellants to pay further amount. When Ramodiya Mansion II did not fetch more than Rs. 1,90,00,000/-, the action of ordering the appellants to

pay any other amount from other property was not within the jurisdiction of the executing Court, and such a direction was unlawful and without

authority of law.

7. The learned counsel for the respondents, on the other hand, supported the directions issued by the learned single Judge. He also submitted that

the learned single Judge has considered all the orders and consent decree, and dismissed the Chamber Summons, and such action cannot be said

to be illegal or unlawful.

8. In our opinion, the order passed by the learned single Judge Impugned in the present appeal deals with all the contentions raised on behalf of the

appellants. It has been noted in the order that in the previous proceedings, a mediator was appointed, and consent decree was passed on the basis

of the decision of the mediator. In the consent decree, it was specifically stated that the appellants would pay certain amounts to the respondents. It

is on the basis of such an order and consent decree that execution proceedings were taken out. It was thereafter not open to the appellants to

contend that the decree could not be said to be a money decree, and merely a decree in the share of property of Ramodiya Mansion II. and no

amount could be claimed over and above the share in the property of Ramodiya Mansion II.

9. The learned single Judge, in this connection, rightly referred to the orders passed earlier, and observed that while deciding the amount to be paid

by the appellants to the respondents, the Court took into account all the relevant circumstances and arrived at a figure. It was the duty of the

appellants, thereafter, to pay the said amount, and when it was not done, the respondents had right to claim the said amount.

10. The learned counsel for the appellants, no doubt, contended that the learned single Judge has not considered the provisions of the Partition

Act, 1893, and in particular, Sections 2 and 3 thereof. The said provisions deal with power of Court to order sale of property instead of division in

partition suit and the procedure when sharers undertaken to buy the property in question. Our attention was also invited to a decision of the

mediator dated April 15, 1996 and the Minutes of order dated August 19, 1994. In our opinion, however, the learned counsel for the respondents

is right in submitting that after considering the entire material on record, consent terms have been arrived at, and under the said terms, the

appellants were required to pay certain amounts. It was, therefore, obvious that the appellants were liable to pay the said amounts, and the

respondents were entitled to get them. If there was default by the appellants in paying the said amount, the respondents could get the decree

executed. It is also clear that even in past, such a challenge was made by the appellants which could not succeed, and the orders had become final.

The provisions of the Partition Act, in our opinion, would not apply to the present case, as the learned single Judge was right in holding that the

appellants were liable to pay certain amounts as per the consent decree. If it is so, the order cannot be held to be illegal, unlawful or contrary to

law.

11. For the reasons aforesaid, we see no infirmity in the order passed by the learned single Judge. The appeal deserves to be dismissed, and is,

accordingly dismissed. In the facts and circumstances, however, there shall be no order as to costs.