

Shivlingappa Mallappa Sadalgi Vs Shidmallappa Nurandappa Kapali and Another

Court: Bombay High Court

Date of Decision: Feb. 13, 1924

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 41

Citation: 80 Ind. Cas. 752

Hon'ble Judges: Norman Macleod, C.J.; Shah, J

Bench: Division Bench

Judgement

1. These are execution proceedings in a decree passed on December 13, 1906. We are now in 1924. It might be suggested that the law of

procedure was at fault and has been the cause of delay. But that is not the fact. The relevant provisions of the Code are quite adequate but they

have not been complied with, as they have not been understood by the Judges in the Courts below. The decree was originally passed by the

Chikodi Court, and was transferred for execution to the Gokak Court on January 11, 1907. The Gokak Court would continue to have jurisdiction

to execute the decree until it certified to the Chikodi Court that the decree had been execute, or where it failed to execute the same, the

circumstances attending such failure. There is no evidence whatever in this case that the Gokak Court certified as required by law either the

execution of the decree or the failure to execute it, to the Chikodi Court, and once that fact has been realised, it will be seen how the lower Courts

have fallen into error.

2. Certain payments were made under an instalment order of November 26, 1908, and those payments appear to have been noted in the register

of suit in the Chikodi Court. It was suggested apparently in argument that the fact of such entry was proof of certification. The lower Courts have

rightly declined to accept that argument. It may very well be that the Gokak Court informed the Chikodi Court that certain payments had been

made in satisfaction of the decree, and in consequence of such notification certain entries were made in the register of suits in the Chikodi Court

showing those payments. But such notification would not be certification u/s 41 of the Code. Thereafter Darkhast No. 340 of 1911 was filed. That

darkhast was struck off for non-prosecution on June 11, 1912. The result of the execution is found to have been recorded in the register of suits in

the Chikodi Court. Both the lower Courts have now come to the conclusion that the proper inference to be drawn from that is that the Gokak

Court had made certification to the Chikodi Court. ""We think that such inference is not permissible. Certification is a very important step when a

decree has once been transferred to another Court, for its consequence is that the latter Court ceases to have jurisdiction to execute the decree.

We are, therefore, clearly of opinion that there must be a formal certification by the Court to which the decree has been transferred for execution

to the Court which passed the decree. Another Darkhast No, 370 of 1914 was filed but met the same fate as the previous darkhast. When

Darkhast No. 294 of 1917 was filed, it was struck off by the Gokak Court on the ground that no certificate of non-satisfaction of the decree had

been produced from the Chikodi Court. That was an error which has not been in any way explained. That error resulted in another mistake being

made because when the unfortunate creditor applied in 1919 to the Chikodi Court for a certificate it was refused. Not knowing what he ought to

do, he filed the present darkhast on September 13, 1920, in the Gokak Court. The Judge represents his action as being ""reminiscent of a sheep,

which failing to mind or rather find a gap in a wall, attempts to ram its way through."" The simile is hardly a happy one as it invites the remark that

the applicant could not be expected to find the gap which had been closed by the decisions of the Courts. In our opinion the decree has been

resting throughout in the Gokak Court and the applicant is entitled to execute it there provided he is within time. The order of the lower Court will

be set aside and the darkhast allowed to proceed with costs throughout on the respondent.