

PETITIONER:
LAKSHMI NARAYANAN

Vs.

RESPONDENT:
S.S.PANDIAN

DATE OF JUDGMENT: 04/09/2000

BENCH:
Syed Shah Mohammed Quadri J. & Y. K. Sabharwal J.

JUDGMENT:

Syed Shah Mohammed Quadri, J.
L.....I.....T.....T.....T.....T.....T.....T.....T...J
These appeals, by special leave, are directed against the common order of the High Court of judicature at Madras passed in C.R.P.Nos.2705 and 2706 of 1996 on June 19, 1997 confirming the order of the Small Causes Court at Madras (executing court) dated February 20, 1995.

The appellant is the owner of premises Nos.31 and 32, measuring four thousand feet, of Namasivaya Chetty Lane, Madras (for short, the suit premises) and the respondent is the tenant on a monthly rent of Rs.5,000/-. The appellant filed eviction petition (R.C.O.P.No.2852 of 1989) under the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 for eviction of the respondent, which was decreed ex parte on May 2, 1990. The appellant (decree holder) filed E.P.NO.459 of 1990 in the Small Causes Court at Madras for execution of the said ex parte decree to have the respondent (judgment-debtor) evicted from the suit premises. During the pendency of the execution proceedings the parties entered into a compromise outside the court on November 7, 1990. Pursuant thereto, the respondent surrendered possession of the front portion of Door No.32, measuring 840 square feet, and for the rest of the suit premises, viz., Door No.31 and a back portion of Door No.32 (for short, the premises), the parties entered into an agreement of lease for three years, rate of rent remaining the same. The compromise, inter alia, provides that if the respondent fails to vacate the premises on the expiry of the said period, the appellant will be entitled to have the decree executed against him and get possession of the same. On filing the memo of compromise in the court, the E.P. was dismissed as "not pressed".

Just before the expiry of the said period, the appellant by a written notice, sent by his advocate, asked the respondent to hand over vacant possession of the premises on November 6, 1993, the date on which the period of three years would expire. On the respondent failing to do so, the appellant filed a fresh E.P. (No.664 of 1993), for execution of the decree for recovery of possession of the premises and the executing court ordered delivery of possession on November 16, 1993. While so, the respondent filed E.A. No.973 of 1993, praying for recalling the order of November 16, 1993 and for dismissal of the E.P. The appellant also filed E.A. No.299 of 1994 for permission to

amend the description of the property in the execution petition. On February 20, 1995 the executing court by a common order dismissed the appellants petition and allowed the respondents petition. The appellant filed the aforementioned two Civil Revision Petitions in the High Court challenging the validity of the said common order. The High Court dismissed the revision petitions by the impugned order and thus the appellant is before us in these appeals.

Mr. T.L.V. Iyer, learned senior counsel appearing for the appellant, argued that the compromise between the parties did not extinguish the decree itself; it merely postponed the execution of the decree and as the respondent did not vacate the premises on the expiry of three years granted to him, the appellant is entitled to have the decree executed and recover possession of the premises. In any event, submits the learned senior counsel, as the compromise/adjustment of the decree was not recorded by the executing court in view of Rule 3 of Order 21, the court cannot recognise the same and hold that the decree was extinguished in proceeding under Section 47 of the Code of Civil Procedure (for short, 'the C.P.C.').

Mr.S.Sivasubramaniam, leaned senior counsel appearing for the respondent, contended that the compromise and execution of a new lease deed for three years, during the pendency of the execution proceedings, extinguished the decree; as the respondent would be enjoying the protection of the Act, he was not liable to be evicted under the existing decree. He argued that Order 21 Rule 2 of the C.P.C. was enacted for the benefit of a decree holder and that apart no mode of recording adjustment of the decree by the court having been prescribed under the C.P.C., the order of the court dismissing the E.P. on filing of the memo of compromise would amount to recording adjustment of the decree within the meaning of Rule 2 of Order 21 of the C.P.C., therefore, the executing court rightly took note of the compromise and dismissed the E.P.

In view of these contentions, the point that arises for consideration is : whether in view of the compromise entered into between the parties and execution of a new lease deed, the ex parte decree dated May 2, 1990 got extinguished as such the appellant cannot get possession of the premises in execution of the existing decree.

It may be pointed out here that after the rights of the parties are crystallised on passing of a decree by a competent court, in law they are not precluded from settling their disputes outside the court. But to have the compromise recognised by a court, it has to be recorded under Rule 2 of Order 21, C.P.C. The consequence of not having it so recorded is contained in Rule 3 of Order 21 of the C.P.C. Rules 2 and 3 of Order 21 read as under :

2.Payment out of Court to decree-holder -

(1) Where any money payable under a decree of any kind is paid out of Court, [or a decree of any kind is otherwise adjusted] in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor [or any person who has become surety for the judgment-debtor] also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(2-A) *** **

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any court executing the decree.

Sub-rule (1) of Rule 2, noted above, requires that where any money payable under a decree is paid out of Court or the decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, he shall certify that payment or adjustment in the Court which is to execute the decree and the Court is enjoined to record the same. Sub-rule (2) thereof enables the judgment-debtor or a person who has become surety for him to inform the Court of such payment or adjustment and prescribes the procedure to have it recorded. Rule 3 prohibits every Court executing the decree from recognising a payment or adjustment which has not been certified or recorded by the Court under the aforementioned sub-rules.

This Court after reviewing the entire case law in Sultana Begum vs. Prem Chand Jain [1997 (1) SCC 373] laid down as follows :

It is open to the parties namely, the decree-holder and the judgment-debtor to enter into a contract or compromise in regard to their rights and obligations under the decree. If such contract or compromise amounts to an adjustment of the decree, it has to be recorded by the court under Rule 2 of Order 21. An agreement, contract or compromise which has the effect of extinguishing the decree in whole or in part on account of decree being satisfied to that extent will amount to an adjustment of the decree within the meaning of this rule and the court, if approached, will issue the certificate of adjustment. An uncertified payment of money or adjustment which is not recorded by the court under Order 21 Rule 2 cannot be recognised by the executing court. In a situation like this, the only enquiry that the executing court can do is to find out whether the plea taken on its face value, amounts to adjustment or satisfaction of decree, wholly or in part, and whether such adjustment or satisfaction had the effect of extinguishing the decree to that extent. If the executing court comes to the conclusion that the decree was adjusted wholly or in part but the compromise or adjustment or satisfaction was not recorded and/or certified by the court, the executing court would not recognise them and will proceed to execute the decree.

That decision was followed by this Court in Badamo Devi & Ors. vs. Sagar Sharma [1999 (6) SCC 30].

Where in any execution proceedings objection to executability a decree is taken under Section 47 of the C.P.C. on the ground that by virtue of a compromise, the

decree got extinguished and became inexecutable, the germane question that should be asked is whether the compromise was recorded by the court whose duty it is to execute the decree.

As long back as in 1939, the Privy Council in *The Oudh Commercial Bank Limited vs. Thakurain Bind Basni Kuer & Ors.* [1938-39 (66) PC 84] laid down the law on the subject as follows :

"If it appears to the Court, acting under Section 47, that the true effect of the agreement was to discharge the decree forthwith in consideration of certain promises by the debtor, then no doubt the Court will not have occasion to enforce the agreement in execution proceedings, but will leave the creditor to bring a separate suit upon the contract. If, on the other hand, the agreement is intended to govern the liability of the debtor under the decree and to have effect upon the time or manner of its enforcement, it is a matter to be dealt with under Section 47. In such a case to say that the creditor may perhaps have a separate suit is to misread the Code, which by requiring all such matters to be dealt with in execution discloses a broader view of the scope and functions of an executing court. Their Lordships are in agreement with the statement in the case of *Goburdhan Das (I)* that in numerous cases a compromise between the decree-holder and the judgment-debtor entered into in the course of execution proceedings, which was duly recorded, has been enforced and they are not of opinion that the practice, which is both widespread and inveterate, is contrary to the Code. They are of opinion that in the present case the compromises can and should be enforced in these execution proceedings".

This Court in *Smt. Kalloo & Ors. Vs. Dhakadevi & Ors.* [1982 (3) SCR 207] held as follows :

"When a compromise petition is filed in an execution proceeding, and a contention is raised by the judgment-debtor on a subsequent execution being started by the decree-holder that the compromise has given rise to a fresh contract between the parties and that the decree sought to be executed is not executable, what is to be seen is whether the decree has been extinguished as a result of the compromise and a fresh contract has emerged. When a compromise takes place in the course of execution of a decree for eviction, the compromise may extinguish the decree and create a fresh lease, or the compromise may provide a mere mode for the discharge of the decree. What actually takes place depends on the intention of the parties to the compromise. And the intention has to be gathered from the terms of the compromise and the surrounding circumstances including the order recorded by the Court on the basis of the compromise".

In a case where parties compromise after the decree in a case has been passed, the effect of the compromise on the executability of the decree depends upon the intention of the parties, which is a mixed question of law and fact and has to be determined by the executing court on an application under Section 47 of the C.P.C. on interpretation of the decree and the compromise in the light of the facts and circumstances of each case. If on such determination it is gathered that the intention of the

parties is to extinguish the decree and either the decree holder or the judgment-debtor got the compromise recorded under Rule 2 of Order 21 of the C.P.C. by the court whose duty it is to execute the decree, the execution of the decree cannot be proceeded with by the executing court. But if the intention of the parties is to keep the decree alive and to give effect to it in the manner agreed upon between the parties in the compromise, the decree will be given effect to accordingly or executed as it is depending upon whether the compromise is recorded by the court as aforementioned or not.

In the instant case, as noticed above, after the decree was passed in favour of the appellant for ejection of the respondent, the parties entered into compromise during the pendency of the execution proceedings which, inter alia, mentions that a portion of the suit premises was handed over to the appellant and in respect of rest of it the respondent was allowed three years to vacate the suit premises and hand over possession of it to the appellant for which an agreement of lease was also entered into between the parties. Clause (6) of the compromise memo is as follows :

"(6) On the expiry of 3 years from the date of the agreement if the tenant does not surrender vacant possession of the above referred properties, the landlord shall be entitled to execute the order of eviction granted in RCOP No.2852/89 without any notice to the tenant (except 3 pump sets and other movables)."

On filing of the compromise in the Court, the E.P. was dismissed as not pressed. There is thus no recording of the compromise as contemplated in Rule 2 of Order 21, therefore, the court cannot recognise the compromise having regard to the language of sub-rule (3).

However, the contention of the respondent, based on the finding of the executing court that the parties have entered into a new lease in respect of the suit premises on 7.11.90, is as a new lease was entered into between the parties, he is entitled to the protection of the Act and unless a fresh decree of eviction is passed against the respondent by a competent court, the appellant cannot evict him from the suit premises by executing the existing decree. On a plain reading of the decree, the memo of compromise and on the facts of this case, we have no doubt that the existing decree is not extinguished. The parties agreed upon the mode and time of the enforcement of the decree by satisfying the decree in part and postponing the execution of the decree in respect of the remaining part by three years.

The fact that the parties entered into a new lease deed for three years pursuant to the compromise cannot be taken note of for reasons more than one. First, because the compromise was not recorded under Rule 2 of Order 21 and secondly, because the agreement of tenancy though for three years is not a registered document as it should be in view of the provisions of Section 107 of the Transfer of Property Act and Section 17 of the Indian Registration Act. Be that as it may, we do not propose to rest our decision on the second ground as this point was not taken either before the executing court or before the High Court. We are now left with the first reason only. The executing court has simply dismissed the earlier E.P. as not pressed. It did not

record the compromise between the parties, for this reason alone the compromise cannot be pleaded to bar the execution of the decree in view of the provisions of Rule 3 of Order 21 of the C.P.C.

However, the contention of Mr.Sivasubramaniam is that as no specific procedure or method of recording the adjustment has been prescribed under the rules, the order dismissing the E.P. as withdrawn must to be taken as recording of the compromise by the executing court. We are afraid, we cannot accept this contention of the learned counsel. It is true that no specific procedure or formula is prescribed for recording the adjustment in the said Rules; what is required under rule (2) is that the Court should take cognizance of the fact of the compromise and pass appropriate orders accepting or giving effect to it. Admittedly, no such order is passed in this case. Even assuming, without so holding that the order amounts to recording of the compromise inasmuch as it did not have the effect of extinguishing the decree, as held above, the decree has to be executed. The compromise indicates that there has been part satisfaction of a part of the decree and in regard to the remaining part, they contemplated granting time for three years to the respondent for vacating the premises. Even so, this does not justify the conclusion that the decree has become inexecutable with regard to the rest of the suit premises.

This being the position, there is no legal bar to have the decree executed and the executing court has clearly erred in recalling its earlier order of November 16, 1993, directing the delivery of possession to the appellant. The High Court also fell into an error in confirming the order of the executing court.

For the above reasons, we are unable to sustain the order under challenge. The appeals are accordingly allowed; the order of the High Court dated June 19, 1997 passed in C.R.P.Nos.2705-06/96 confirming the order of the executing court dated February 20, 1995, is set aside. Consequently, the executing court shall give effect to the order passed on November 16, 1993. The respondent shall pay the costs of these appeals to the appellant.