

2. The *respondent No.1* filed execution petition for executing consent decree dated 27 November 2012 in L. C. Suit No.1505 of 2009 and L. C. Suit No.1506 of 2009.

3. In the earlier round of litigation the petitioner No.1 had filed an application for modification of consent terms. The said application was *rejected* by the Executing Court.

4. The decree holder has challenged the order of allowing modification by way of writ petition lodging No.2915 of 2021 and 2917 of 2021. The writ petition was filed by the present petitioner No.1. The petitioner No.1 also challenged the order as part of the relief was not granted by the Court.

5. This Court in Civil Writ Petition No.2915 of 2021 along with other connected group writ petitions has recorded following findings:

(i) Consent terms were forwarded by the petitioners to all partners of the firm.

(ii) Bhikamchand Jain has given a clear admission that he signed the terms of consent on behalf of the partnership firm and, therefore, no partner can now stake a claim that it does not bind the partnership firm.

(iii) In the wake of the aforesaid, Rajendra Jain cannot be absolved of his responsibility and, particularly, when it is the choice of the decree-holder to execute a decree against a firm and in absence of any property of the partnership firm, against any person who has appeared in the suit and who has admitted on

pleadings that he is a partner.

6. It appears that petitioner No.1 has filed an application for intervention and raising objections under Section 47 r/w Order 23(3) of the Code of Civil Procedure, 1908. The Executing Court by impugned orders permitted decree holder to add petitioner No.1 as judgment debtor No.5 and petitioner No.2 as judgment debtor No.6 to the execution petition. The judgment debtor being transferee pendente lite was restrained from creating third party rights in respect of 50% of share gifted to him. The said order is subject matter of present petition.

7. According to learned Advocate for the petitioners, petitioners were not parties to the suit and, therefore, could not have been added as judgment debtors. He submitted that the procedure under Order 21, Rule 50 of the Code of Civil Procedure, 1908 need to be followed and, therefore, petitioners could not have been added as judgment debtors. According to him, petitioner No.1 has retired in the year 2014 and, therefore, petitioner No.1 could not have been added as judgment debtor. According to him, procedure under Order 21, Rule 50 of the Code of Civil Procedure, 1908 is not followed by the Executing Court.

8. Per contra, learned Advocate for the decree holders contended that all such objections were raised in the earlier round of litigation before this Court. This Court after considering all objections, had repealed it. It is, therefore, submitted that the impugned order calls for, no interference under Article 227 of the Constitution of India.

9. I have heard learned Advocate for the petitioner and Advocate for the respondents.

10. On perusal of the judgment of this Court in Writ Petition No.2915 of 2021 along with other connected writ petitions, it appears that this Court had recorded a finding that the decree passed against defendant No.3 (partnership firm) is binding on all partners.

11. This Court also recorded a finding that the consent terms were sent by the *respondent* No.1. This Court also recorded a finding that the petitioner No.1 cannot be absolved of his responsibility and, it is the choice of decree-holder to execute a decree against a firm and in the absence of any property of the partnership firm, decree can be executed against any person who has admitted as a partner.

12. The effect of the impugned order is to add petitioners as judgment-debtor nothing more than that is done by the impugned order.

13. The petitioner No.2 being a person to whom judgment-debtor gifted suit flat is not entitled to any right to contest litigation as it is well settled that such person is bound by the decree and cannot be claim any independent right.

14. The position of law in this regard has been laid down by the Apex Court in the case of **Usha Sinha vs Dina Ram & Ors** reported in (2008) 7 SCC 144, therefore, in my opinion, the order passed by the Trial Court is justified, hence no interference under Article 227 of the Constitution of India.

15. Both the writ petitions are, therefore, dismissed. No costs.

(AMIT BORKAR, J.)

Note: This order is corrected as per order dated 26 September 2023. Corrections in paragraph Nos.2, 3, 4 & 11 are shown in italicize.