

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.26 of 2019

1. Smt. Dhira Mishra alias Dhira Devi, Wife of Murlidhar Mishra, Daughter of Late Shyama Devi.
2. Smt. Runa Mishra @ Runa Devi, Wife of Ghanshyam Mishra, Daughter of Late Shyama Devi. Sl.No. 1 and 2 are resident of Village- Khokha Tola, Balu Tal, Paikpara, P.S.- K. Nagar, District- Purnea.
3. Smt. Sheela Jha @ Shela Devi, Wife of Keshav Deo Jha @ Krishna Deo Jha and Daughter of Late Shyama Devi, resident of Village and P.O.- Ramai, P.S.- Purnea, District- Purnea.
4. Dulal Chand Thakur @ Neeraj Thakur @ Neeraj Kumar, Son of Praful Chand Thakur.
5. Neeraj Kumar Thakur @ Neeraj Thakur @ Neeraj Kumar, Son of Prafull Chand Thakur Sl.No. 4 to 5 are resident of Village- Guagachhi, P.O.- Budhijagir, Via- Islampur, District- West Dinajpur W.B..

... .. Petitioner/s

Versus

1. Md. Laique Ahmad, Son of Late S.K. Tajuddin.
2. Md. Hasim, Son of Late Karamat Ali, Both resident of Village- Khokha Tola, Fariyani No.2, P.S. K. Nagar, District- Purnea.
3. Md. Kasim, Son of SK. Masleuddin. resident of Village- Paikpara, P.S.- K. Nagar, District- Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Dwivedi, Sr. Adv. Mr. Dhanendra Chaubey, Advocate Mr. Amit Shrivastava, Sr. Adv.
For the Respondent/s	:	Mr. Vikram Singh, Advocate Mr. Girish Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 06-02-2024

The lament of Right Hon. Sir James Colvile in the year 1872 in a case before the Privy Council (*The General Manager of the Raj Durbhunga, Under the Court of Wards vs. Maharajah Coomar Ramaput Sing*), (1871-72)14 MIA 605, also reported in (1872) SCC OnLine PC 16 “that the difficulties



of a litigant in India begin when he has obtained a decree” still holds true and the situation has not improved even after a century and half.

2. This prophetic observation has been taken note by the Hon’ble Supreme Court in the cases of *Jini Dhanrajgir and Anr. Vs. Shibu Mathew and Anr.*, reported in *2023 SCC OnLine SC 643* and *Predeep Mehra Vs. Harijivan J. Jethwa (Since Deceased Thr. LRS.) & Ors.*, reported in *2023 SCC OnLine SC 1395*. There is no gainsaying the fact that even after lapse of so much time, the woes of decree-holders have not subsided and execution proceedings are being used by judgment-debtors with impunity who exploit every provision to their benefit to the fullest extent possible to frustrate the execution proceedings making the whole process look like a farce and the courts become unwitting tools in the shenanigans of unscrupulous litigants. But the observation of the Hon’ble Supreme Court in the case of *Jini Dhanrajgir and Anr. (supra)* is to be kept in mind that the situation is indeed disquieting, viewed from the perspective of the decree holders, but the law, as it stands has to be given effect whether the court likes the result or not.

3. In the present case, the instant petition has been filed for setting aside the order dated 06.10.2018 passed by the



learned Munsif Sadar, Purnea in Title Execution Case No. 02 of 2015 by which the learned Munsif has rejected the petition dated 23.03.2017 filed by the petitioners, who are judgment debtor nos.2 to 6 and respondent nos. 1 and 2 are the decree holders.

4. The respondent 1st set (Respondent Nos. 1 and 2) filed Title Suit No. 479 of 1990 before the Court of learned Munsif Sadar, Purnea against Krishna Devi (Defendant 1st party), Smt. Shyama Devi (defendant 2nd party) and Md. Kasim (Respondent No.3/defendant 3rd party) seeking following relief(s):-

“A. Let it be decided and declared by the Court that the Defendant No. 1 Defendant finalized to sell the suit land with the Plaintiffs on 21.09.1990 and in pursuance to that the Defendant No.1 received a sum of Rs.2,100/- as an advance from Plaintiffs and executed and Registered a Jarbeyananama 22.09.1990 and agreed and promised to execute and Registered Sale Deed with respect to the suit land in favour of the Plaintiffs on receipt of balance consideration money.

B. After above adjudication, it be declared by the Court that Defendant No.1 during the subsistence of the valid contract could not sell the suit land to the Defendant No.2 and the Sale Deeds executed and Registered by the Defendant No.1 to the Defendant No.2 for the suit land on 31.10.1990 / 01.01.1990 in sham and collusive transaction and the same is without consideration and the Defendant No.2 did not acquire any valid, right, title, interest or possession over the suit land the



same be set-aside.

C. After the above adjudication, a decree for specific performance of contract for the suit land be passed in favour of the Plaintiffs, against the Defendants and the Defendant No.1 be directed to execute and Register the Sale Deed with respect to the suit land in favour of the Plaintiffs on receipt of balance consideration money within the time fixed by the Court and the Defendant No.2 also be directed to join hands with the Defendant No.1 and if the Defendants failed to execute and Register the Sale Deed with respect to the suit land on receipt of the balance consideration money in favour of the Plaintiffs, the Court be pleased to execute and Register the Sale Deed for the suit land on behalf of the Defendants to the Plaintiffs on the cost of the Defendants on deposit the balance consideration money in Court by the Plaintiffs and the possession be delivered to the Plaintiffs through the process of Courts.

D. Cost of the suit together with any other relief or reliefs to which the Plaintiffs be found entitled under the circumstances of the case be also decreed in favour of the Plaintiffs against the Defendant.”

5. The defendant no. 2 entered appearance and filed written statement. Subsequently, defendant no.2 died and the petitioners, representing her estate being heirs and legal representatives, came on record. After adjudicating the facts in issue, the learned Munsif dismissed the title suit vide judgment dated 25.06.2001 with following directions:-

“The Defendant No.1 is directed to pay Rs. 2100/- to



the Plaintiffs within two months from the date of this Order with 13 percent compound annual interest till realization of money. If the Defendant No.1 will be failed to pay the money, the Plaintiff shall have right to realize the money from Defendant No.1, from the process of Court, on the cost of Defendant No.1”.

6. Aggrieved by the decision of the learned Munsif Sadar Purnea, the plaintiffs (respondent 1st set herein) filed Title Appeal No. 49 of 2001 and the said appeal was heard and decided by learned Additional District Judge-IIInd, Purnea. The learned Additional District Judge-IIInd, Purnea vide judgment 19.06.2015 allowed the appeal with following directions:-

"प्रस्तुत अपील स्वीकार किया जाता है तथा निम्न न्यायालय के निर्णय दिनांक 25.6.2001 एवं डिक्री दिनांक 07.7.2001 को अपास्त किया जाता है। कार्यालय को आदेश दिया जाता है कि अपीलार्थीगण के पक्ष में डिक्री जारी करें।"

(The present Appeal is allowed and Judgment of lower Court dated 25.06.2001 and Decree dated 07.07.2001 are set aside. The Office is directed to issue a Decree in favour of the Appellants).

7. The decree was accordingly prepared by the first appellate court in the following terms:-

"प्रस्तुत अपील स्वीकार किया जाता है तथा निम्न न्यायालय के निर्णय दिनांक 25.06.2001 एवं डिक्री दिनांक



07.07.2001 को अपास्त किया जाता है /"

(The present appeal is allowed and the judgment dated 25.06.2001 and decree dated 07.07.2001 of the learned lower court are set aside).

The petitioner, being aggrieved with the judgment and decree passed in Title Appeal No. 49 of 2001, preferred Second Appeal No. 171 of 2015 before the High Court.

8. During pendency of the second appeal, defendant no.1, namely, Krishna Devi died and this fact was brought to the notice of this Court by filing I.A. No. 6806 of 2017. The second appeal was heard and dismissed by the High Court vide judgment dated 03.10.2017. Against the judgment passed in Second Appeal No. 171 of 2015, the petitioners filed Special Leave Petition(Civil) No. 3737 of 2018 before the Hon'ble Supreme Court and the said Special Leave Petition(Civil) was dismissed by the Hon'ble Supreme Court vide order dated 13.04.2018, which reads as under:-

"Heard learned counsel appearing for the petitioners.

We are not inclined to interfere with the impugned order.

The special leave petition is dismissed.

Pending application, if any, shall also stands disposed of.

Learned Counsel for the petitioners, prays for



granting liberty to the Petitioners to pursue legal remedy, if any, against Respondent No.4. There is no need to grant any such liberty as it is always open for the Petitioners to work out their rights in accordance with law.”

9. Further case of the petitioners is that the plaintiffs (respondent 1st set) filed Title Execution Case No. 2 of 2015 before the Munsif Sadar, Purnea with following prayer:-

“Prayed that direction be given through the process of the Court to the Judgment Debtors to execute and register proper sale deed in favour of the Decree Holders on receipt of balance consideration money of Rs. 25,900/- within time fixed by the Court, failing which the Court be pleased to execute and Register proper Sale deed in favour of the Decree Holders at their own cost.”

10. The petitioners filed objections in Title Execution Case On 23.03.2017, stating *inter alia*, that the appellate decree was not executable at all. The learned Munsif after hearing the parties on petition dated 23.03.2017 filed by the petitioners rejected the same and the said order has been challenged in the instant petition.

11. Mr. Shashi Shekhar Dwivedi, learned senior counsel appearing on behalf of the petitioners, submitted that decree has been defined in Section 2 of Sub-section (ii) of the Code of Civil Procedure (hereinafter ‘the Code’) which means formal



expression of adjudication and in the present case, the operative part of the order only shows that the appeal is allowed and the judgment dated 25.06.2001 and decree dated 07.07.2001 are set aside by the learned first appellate court. Office was directed to issue decree in favour of the appellants. But the learned trial court has not passed any direction against the present petitioners who are the successor-in-interest of the defendant no.2. The learned appellate court has neither given any specific directions against these petitioners nor remitted the case to the learned trial court for passing decree or any other specific order. In such circumstances, the directions of the learned first appellate court is not executable. Learned senior counsel further submitted that the learned Munsif has not applied his judicial mind while rejecting the petition filed by the petitioners and passed the orders only on the basis of judgments and orders passed in Second Appeal No. 171 of 2015 and Special Leave Petition (civil) No. 3737 of 2017. Moreover, in view of Section 38 of the Code of Civil Procedure, a decree may be executed either by the court which passed it or the court to which it is sent for execution. The duty and power of the executing court are limited and it could give effect only to the terms of decree and not beyond it. It is well settled principle that the executing court cannot go behind the decree and it has to execute the decree as it



is. Now in the instant case, the respondent 1st set prayed before the learned executing court for direction to the judgment debtors to execute a registered sale deed after receiving balance consideration money of Rs. 25,900/-. The learned trial court in its judgment, directed the defendant no.1 to pay Rs.2100/- to the plaintiffs within two months along with 13% compound interest from the date of order till realization of money. The learned appellate court merely set aside the judgment and decree of the learned trial court and did not pass any specific order with regard to relief which might be granted to the plaintiffs/respondent 1st set. The moot question which arises in the present case is how the executing court is going to execute the decree in absence of specific directions/orders because the executing court has got nothing to execute as it is a case of specific performance of contract?

12. In support of his contention, Mr. Dwivedi relied on a decision of Hon'ble Supreme Court in the case of ***Vedic Girls Senior Secondary School, Arya Samaj Mandir, Jhajjar Vs. Rajwanti and Ors.*** reported in ***AIR 2007 SC 1779***. It's paragraph nos. 24, 26 and 27 read as under:-

“24. Having heard the learned counsel for the respective parties we are unable to agree with the reasoning both of the High Court as also of the executing court since the decree does not



indicate the basis on which the dues of Respondent 1 were to be calculated. When there were conflicting claims regarding the salary payable to Respondent 1, the said respondent ought to have taken steps to amend the prayers in the plaint so that proper relief could be provided to her. The same not having been done, the executing court had no jurisdiction to go beyond the decree as passed, despite the fact that the trial Judge had noticed the dispute and had even decided the same.

26. In our view, the executing court appears to have been misled by the application filed on behalf of the decree-holder Respondent 1 on 25-1-1999 indicating that her suit had been decreed by the court with a direction upon the school authorities to make payment to her by cheque of her dues as per government scale

27. The words “as per government scale” do not find place in the decree as passed by the trial court and this has resulted in the anomaly with which we are faced in these proceedings. The executing court was required to act within the bounds of the decree and not travel beyond it or to widen its scope without invocation of the provisions of Section 47 of the Code of Civil Procedure.”

13. Learned senior counsel for the petitioner further relied on the decision of the Hon’ble Supreme Court in the case of ***State of Punjab vs. Krishan Dayal Sharma***, reported in ***(2011) 11 SCC 212***. In this case, the facts before the Hon’ble



Supreme Court were that the respondent, a retired Deputy Superintendent of Police, after his retirement, filed a suit for declaration that he was entitled for promotion from the post of Police Inspector to the post of Deputy Superintendent of Police with the date when his juniors were promoted as Deputy Superintendent of Police. He further claimed relief for all consequential benefits, rights and privileges. The suit was dismissed by the trial court and in appeal the suit was decreed with consequential service benefits. In execution proceedings, respondent claimed compound interest @ 12% per annum on arrears of salary and other benefits and the executing court awarded the same. The Hon'ble Supreme Court held that it was not open for the executing court to award interest unless it was pleaded or specifically directed in judgment or decree. The executing court has though power to award interest on arrears of salary but such power cannot be exercised in absence of any direction in decree. By awarding interest, the executing court acted in excess of its jurisdiction.

14. Mr. Dwivedi referring back to the facts of the present case submitted that the executing court cannot read something which is not present in the decree. In absence of specific direction in the judgment or decree, the executing court cannot proceed on its notion of fairness and justice.



15. Mr. Dwivedi further submitted that the learned appellate court completely failed to adhere to the provision of law as contained in Order 41 Rule 31 Sub-rule (d) of the Code as it failed to mention the relief to which the appellant was entitled. Learned senior counsel stressed the fact that if the respondent 1st set wants any relief, the option open is to go to the first appellate court seeking review of the judgment and decree and no other option was available. The learned executing court did not take into consideration the aforesaid aspects of the matter and passed the order mechanically. So the impugned order is not sustainable and the same needs to be set aside.

16. Mr. Amit Shrivastava, learned senior counsel appearing on behalf of the respondent 1st set, at the outset submitted that decisions cited on behalf of the petitioners are not relevant as the facts are different and the matters were not relating to the Specific Relief Act and for contract of specific performance.

17. Mr. Shrivastava vehemently opposed the other contention made on behalf of the petitioners. Learned senior counsel submitted that there is no quarrel with the fact that the executing court cannot go behind the decree but in the present case it could not be said that the decree is not executable. The plaintiffs brought a suit for specific performance which was



dismissed by the learned trial court but the judgment and decree of the learned trial court was set aside by the learned appellate court. Now the task before the executing court is very much clear that in order to enforce the decree, it has to get the contract of specific performance performed between the parties. The issue of form of decree in case of specific performance of contract was considered by the Hon'ble Supreme Court in the case of ***Lala Durga Prasad and Ors. vs. Lala Deep Chand and Ors***, reported in ***AIR 1954 SC 75***. Paragraph nos. 36, 42, 43 and 44 of the said decision read as under:-

“36. Now arises a question which touches the Custodian, Uttar Pradesh. The contract was for Rs 62,000. The plaintiff paid Rs 10,000 as earnest money but this was later returned, so Rs 62,000 is still due. But there is a conveyance outstanding in favour of the appellants for which they have paid, according to their case, Rs 58,000. If the Rs 62,000 due to the Nawab is paid to him, or to the Custodian, U.P. who represents his estate, it is evident that the Nawab, who is at fault, will be paid twice over for the same property and his estate will benefit accordingly while the appellants will be left to pursue their remedies against the Nawab or his estate. The question is whether we have the power to direct that the Rs 58,000 be paid to the appellants instead of to the Nawab and thus obviate further, and possibly fruitless, litigation. But before we decide that, we will consider another question which is bound up with it, namely, the proper form of decree in such cases.

42. In our opinion, the proper form of decree is to



direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in Kafiladdin v. Samiraddin [Kafiladdin v. Samiraddin, AIR 1931 Cal 67 : 1930 SCC OnLine Cal 46] and appears to be the English practice. See Fry on Specific Performance, 6th Edn., p. 90, Para 207; also Potter v. Sanders [Potter v. Sanders, (1846) 6 Hare 1 : 67 ER 1057] . We direct accordingly.

43. That brings us to the question of the Rs 62,000. We do not think it would be right to lay down that in every case the balance of the purchase money should be paid to the subsequent transferee up to the extent of the consideration paid by him. There may be equities between the vendor and the subsequent transferee which would make that improper, so unless they fight the question out as between themselves and it is decided as an issue in the case, the normal rule should be to require that the money be paid to the vendor. But the circumstances here are peculiar. The parties before us were prepared to compromise, and had the Nawab been here it is more than probable that he would have been glad to agree so as to avoid further litigation. But he is in Pakistan and is beyond the jurisdiction of the Indian courts. We think it would be inequitable to leave the appellants to pursue what in all probability is only a will-o'-the-wisp and for us to augment the Nawab's estate by what would appear to be an unjust enrichment. This is an equitable relief and we have a wide discretion. We joined the Custodian, U.P. to afford him the opportunity of showing why we should not take



what appears to be the just and equitable course. We have afforded him an opportunity of showing how the Nawab could have defended a suit by the appellants for refund of the consideration. As he has not been able to show us anything in the contract between the Nawab and the appellants, or in the covenants of their deed, which would disentitle the appellants from claiming Rs 58,000 from the Nawab, we consider it right that Rs 58,000 should be paid to them and Rs 4000 to the Custodian, U.P. All that the Custodian, U.P. was able to urge was that the whole amount had vested in him and so was his. But that is not so. The plaintiff was directed to pay a sum of Rs 62,000 into court as a condition precedent to the execution of a sale deed in his favour. Curiously enough, the decree does not say what is to be done with the money when it is paid into court. But so long as it is in court under those conditions it lies there subject to such decree as may ultimately be passed in appeal. We therefore have full power to direct payment of Rs 58,000 to the appellants instead of to the Nawab, especially as there is this curious lacuna in the decree.

44. The High Court's decree will now be modified as follows:

- (1) The Nawab will be directed to execute a sale deed in the plaintiff's favour in accordance with the terms of the contract entered into between them.*
- (2) The appellants will be directed to join in the conveyance to the extent indicated above.*
- (3) After the conveyance has been executed, the appellants will be paid Rs 58,000 out of the Rs 62,000 now lying in deposit in court as compensation for the loss they had suffered, without prejudice to any further rights they may have against the Nawab or his estate.*



(4) After this has been done, the Custodian, U.P. will be at liberty to withdraw the balance of the Rs 62,000.

Except for these modifications, the decree stands and the rest of the appeal is dismissed.”

18. Similar issue was considered in the case of ***Vijay A. Mittal and Ors. vs. Kulwant Rai***, reported in ***(2019) 3 SCC 520***. Mr. Shrivastava submitted that in case there is lacuna in decree, the court can move in to ensure that the decree is interpreted in the manner it could be given effect to and the decree does not get frustrated. Learned senior counsel next relied on another decision of the Hon’ble Supreme Court in the case of ***Babu Lal vs. Hazari Lal Kishori Lal*** reported in ***(1982) 1 SCC 525***.

Paragraph no.8 reads as under:-

“8. In Balmukand v. Veer Chand [AIR 1954 All 643 : 1954 All LJ 255 : 1954 All WR (HC) 424] the decree for specific performance of a contract of sale was silent as to the relief of delivery of possession even though such relief was claimed in the suit. It was held by the Allahabad High Court that the executing court was still competent to deliver the possession. It was further held that it was not necessary in a suit for specific performance either to separately claim possession nor was it necessary for the court to pass a decree for possession. A decree for specific performance of a contract includes everything incidental to be done by one party or another to complete the sale transaction, the rights and obligations of the parties in such a matter being governed by Section 55 of the Transfer of Property Act. In Janardan Kishore v. Girdhari Lal [AIR 1957



Pat 701 : 1957 BLJR 368] the Patna High Court took the view that the relief of possession is inherent in a relief for specific performance of contract for lease, and the court executing a decree for specific performance of such a contract can grant possession of the property to the decree-holder even though the decree did not provide for delivery of possession. In Subodh Kumar Banerjee v. Hiramoni Dasi [AIR 1955 Cal 267] the Calcutta High Court took a similar view that the right to recover possession springs out of the contract which was being specifically enforced and not as a result of the execution and completion of the conveyance, and as such the judgment-debtor was bound to deliver possession to the decree-holder.”

19. Mr. Shrivastava submitted that reliance on these cases is with regard to proposition that the executing court can construe the decree and can enforce it with regard to ancillary relief even though same being not mentioned in the decree. Learned senior counsel further relied on a decision of the Hon’ble Apex Court passed in Civil Appeal No. 11040 of 2013 **{Shaifuddin (Dead) Thr. LRS. vs. Kanhaiya Lal (Dead) Thr. LRS & Ors.}**. Sub-paragraph nos. (iii), (iv) and (v) of paragraph no.4 read as under:-

“(iii) The purpose of an execution proceeding is to enable the decree-holder to obtain the fruits of his decree.

(iv) In case where the language of the decree is capable of two interpretations, one of which assists the decree-holder to obtain the fruits of the decree and the other prevents him from taking the benefits of the decree, the interpretation which assists the



decree-holder should be accepted.

(v) A decree is not to be rendered futile on technicalities. A rational approach is necessitated in cases where a decree has been the subject of prolonged litigation and a fair construction is to be given thereto."

20. The learned senior counsel also invited the Court's attention towards the decision of the Hon'ble Supreme Court in the case of ***Manickam @ Thandapani & Anr. vs. Vasantha***, reported in ***2022 Live Law (SC) 395***, which relied on the case of ***Babu Lal vs. Hazari Lal (supra)***.

21. Mr. Shrivastava further submitted that a decree cannot be allowed to be frustrated on the ground of technicalities. In the present case litigation has been going on between the parties since 1990 and on the ground of technicalities, the prolonged litigation cannot be rendered futile.

Mr. Shrivastava further relied on the decision of the Hon'ble Supreme Court in the case of ***Satyawati vs. Rajinder Singh & Anr.***, reported in ***(2013) 9 SCC 491*** submitting that unreasonable delay in delivering relief to the plaintiff was agonising and there should not be unreasonable delay in execution of a decree and if the decree-holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

22. In rebuttal, Mr. Dwivedi, learned senior counsel



appearing on behalf of the petitioners, submitted that he has no opposition to the authorities cited by the learned counsel appearing on behalf of the respondent 1st set since the authorities are with regard to the proposition that possession is incidental to execution of sale deed and even if it was not mentioned in the decree, the orders for possession could be passed. But in all such cases there was already direction to execute the sale deed. Hence, all the decisions cited by the learned senior counsel for the respondents 1st set are distinguishable on the facts from the present case. Learned senior counsel further submitted that there were certain directions which were executable and if something incidental was left to be mentioned, the Hon'ble Supreme Court held that the executing court can pass such incidental orders and it would not amount to going behind the decree. Mr. Dwivedi further submitted that the learned executing court has to act under the provisions of Order XXI of the Code which is a code in itself and cannot go beyond it. The executing court does not have right to expand or shrink the decree. In the instant case, there is nothing to interpret for the learned executing court and, hence, order passed by it is fit to be set aside. Learned senior counsel for the petitioners further distinguished the facts of the case of *{Shaifuddin (Dead) Thr. LRS. vs. Kanhaiya Lal (Dead) Thr. LRS & Ors.}* (*supra*) relied on by Mr. Shrivastava on the



point that the same was with regard to period of limitation and not in connection with any specific performance of contract.

23. Having regard to the rival submissions, it is very much clear that the issue before this Court is whether the decree passed in favour of the respondents, who were appellants, before the first appellate court is executable in absence of specific directions in the decree. Main objection on behalf of the petitioners is that it is a decree for specific performance of contract and without mentioning the specific details and the manner in which the contract was to be performed, the decree is not executable. So this Court is mainly concerned with the fact that whether the decree in question is executable or not in absence of details?

24. Decree has been defined in Section 2 (2) of the Code which provides as under:-

*“decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within 1*** section 144, but shall not include-*

(a) any adjudication from which an appeal lies as an appeal from an order; or

(b) any order of dismissal for default.

Explanation:- A decree is preliminary when further proceedings have to be taken before the suit can be



completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;”

Decree holder has been defined in Section 2 (3) of the Code as any person in whose favour a decree has been passed or an order capable of execution has been made. The aforesaid provision does not say anything about the form and manner in which the decree would be drawn.

25. Thus the essentials of a decree may be summarized as follows:-

- (i) There must be an adjudication.
- (ii) The adjudication must be done in a suit.
- (iii) The adjudication must determine the rights of the parties with regard to or any of the matter at issue.
- (iv) Such determination must be conclusive in nature.
- (v) There must be a formal expression of such adjudication.

26. Section 47 of the Code reads as under:-

“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any



person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

5[Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and (b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]”

27. The law is well settled that executing court could not go beyond the decree and this observation has been made by Hon’ble Apex Court in a number of cases including the case of ***Topanmal Chhotamal Vs. Kundomal Gangaram & Ors.***, reported in ***AIR 1960 SC 388*** and ***J & K Bank Ltd. & Ors. Vs. Jagdish C. Gupta*** reported in ***(2004) 10 SCC 568***. But at the same time Hon’ble Supreme Court in the cases of ***Rajinder Kumar Vs. Kuldeep Singh & Ors.***, ***Mohinder Kumar Gupta vs. Kuldeep Singh & Ors.*** and ***S.K. Gupta (Dead) Through Legal Representatives & Ors. Vs. Kuldeedp Singh & Ors.*** reported in ***(2014) 15 SCC 529.***, has held that if there is any ambiguity in



the decree, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. It further held that the court cannot go behind the decree or beyond the decree but while executing a decree for specific performance, the court, in case of any ambiguity, has to necessarily construe the decree so as to give effect to the intention of the parties. Similar to the effect is the decision of the Hon'ble Supreme Court in the case of ***Meenakshi Sexena & Anr. Vs. ECGC Limited & Anr.***, reported in ***(2018) 7 SCC 479***. In this case, the Hon'ble Supreme Court held that the whole purpose of execution proceedings is to enforce the verdict of the court. Executing court, while executing the decree, is only concerned with the execution part of it but nothing else. The court has to take the judgment at its face value. It is settled law that the executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree.

28. At that juncture, the executing court has to be very cautious in supplementing its interpretation and conscious of the



fact that it cannot be draw a new decree. The executing court shall strike a fine balance between the two while exercising the jurisdiction in the process of giving effect to the decree. The case of ***Topanmal Chhotamal Vs. Kundomal Gangaram & Ors.***, reported in ***AIR 1960 SC 388*** was relied on in ***Rajinder Kumar (supra)*** and ***Meenakshi Sexena & Anr. (supra)***. Paragraph nos. 9 and 12 of ***Topanmal Chhotamal Vs. Kundomal Gangaram & Ors.***, read as under:-

“9. At the worst the decree can be said to be ambiguous. In such a case it is the duty of the executing Court to construe the decree. For the purpose of interpreting a decree, when its terms are ambiguous, the Court would certainly be entitled to look into the pleadings and the judgment : see Manakchand v. Manoharlal, (1943-44) 71 IA 65 : (AIR 1944 PC 46). In the plaint in the Agra suit, Suit No. 205 of 1949, not only relief was asked for against the firm, but also a personal decree was claimed against defendants 2 to 6. The said defendants inter alia raised the plea that a personal decree could not be passed against them because they were not made parties to the suit filed in the Chief Court, bind and were not personally served therein. The learned Civil Judge, Agra, in accepting the plea made the following observation:

“The defendants 2 to 6 were not made parties in Suit No. 533 of 1947 and were not individually served in that case. I think, therefore, the plaintiff cannot get a personal decree against defendants 2 to 6.”

12. The question is whether in such circumstances an executing Court can go behind the decree & give the relief to the appellant which was expressly denied to him in the suit. The question so



posed can only have one answer. It is a well-settled principle that a Court executing a decree cannot go behind the decree : it must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit. If the contention of the appellant were to be accepted, it would contravene the said principle; for, while the decree as construed by us, has directed that it should not be executed against the personal properties of the partners, the executing Court would be directing execution against the said partners. While the decree excluded personal liability, the executing Court would be imposing the same. This cannot obviously be done.”

29. Recently in the case of ***Sanwarlal Agrawal & Ors.*** ***Vs. Ashok Kumar Kothari & Ors.***, reported in (2023) 7 SCC 307, the principles were reiterated by the Hon’ble Apex Court about the power of executing court to construe decree when it is ambiguous.

30. The aforesaid decisions of the Hon’ble Supreme Court make it very clear that in case of ambiguity the executing court can seek guidance from the judgment and can even refer to the pleadings. But in the instant case we are faced with piquant situation as details are conspicuous by their absence in the decree sought to be executed.

31. Now, the suit before the learned trial court was for specific performance of contract. The learned trial court framed the following issues:-

“(i) Is the suit as framed legally maintainable?”



- (ii) Whether the plaintiffs have not any valid cause of action and right to sue?*
- (iii) Whether the suit is barred by law of limitation, as well principles of waiver, estoppel and acquiescence?*
- (iv) Is the suit suffers from misjoinder and non-joinder of necessary party?*
- (v). Whether the Zarbainama dated 22.09.1990 alleged to have been executed by Krishna Devi in favour of the plaintiffs is genuine, valid and for consideration and the same is binding upon the defendant no.2?*
- (vi) Whether defendant no.2 had got knowledge about Zarbainama dated 22.09.1990 executed by Krishna Devi in favour of the plaintiffs at the time of execution and registration of Kewala of suit land in favour of defendant no.2?*
- (vii) Whether Zarbainama dated 06.06.1990 executed in favour of defendant no.2 is forged, fabricated, collusive and antedated?*
- (viii) Is the kewala executed in favour of defendant no.3 valid?*
- (ix) Whether the plaintiffs are entitled to get any other relief?"*

The learned trial court recorded its finding that *Zarbainama* (agreement to sale) dated 22.09.1990 executed by Smt. Krishna Devi in favour of the plaintiffs with respect to the suit land was a genuine, valid and for consideration document and defendant no.2 has got knowledge of the same at the time of execution of sale deed dated 01.11.1990. At the same time, it held that *Zarbaynama* dated 06.06.1990 executed by Krishna Devi in favour of defendant no.2 was neither forged nor fabricated nor collusive nor ante-dated.



32. In the first appellate court, however, the same issues were taken up for consideration but issue no.(v) was decided in favour of the plaintiffs and it was also held binding upon defendant no.2, setting aside the finding of the learned trial court that though the *Zarbainama* dated 22.09.1990 was a valid and genuine document, it was not binding upon respondent no.2 in the light of previous *Zarbainama* of defendant no.2 with Krishna Devi and in the same manner, the learned first appellate court held that *Zarbainama* dated 06.06.1990 executed in favour of defendant no.2 was forged, fabricated, collusive and ante-dated document. Thus, the learned first appellate court recorded the finding that the *Zarbainama* dated 22.09.1990 was binding upon defendant no.2. In this manner, the learned first appellate court set aside the judgment and decree of the learned trial court.

33. It has been the contention of the Mr. Dwivedi appearing on behalf of the petitioners that the decree is inexecutable. However, decree becomes inexecutable only under two circumstances when (i) the decree is *void ab initio* and is a nullity; (ii) the decree being not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree inexecutable after its passing, in other words in contravention of



law rendering it *non est*. So, an erroneous decree cannot be equaled with one which is a nullity.

34. On this point, paragraph nos. 21 and 22 of the judgment of Hon'ble Apex Court in the case of ***M/s. Brakewel Automotive Components (India) Pvt. Ltd. Vs. P.R. Selvam Alagappan*** reported in (2017) 5 SCC 371 may be referred:-

“21. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

22. Judicial precedents to the effect that the purview of scrutiny under Section 47 of the Code qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness are plethoric. This Court, amongst others in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman [Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1970) 1 SCC 670 : AIR 1970 SC 1475 : (1971) 1 SCR 66] in essence enunciated that only a decree which is a nullity can be the subject-matter of objection under Section 47 of the Code and not one which is erroneous either in law or on facts. The following



extract from this decision seems apt: (SCC pp. 672-73, paras 6-7)

“6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.”

35. Thus, it is settled that scope of scrutiny under Section 47 of the Code in a decree is limited to objections to its



executability only on the ground of jurisdictional infirmity or voidness.

36. From the law enunciated by the Hon'ble Supreme Court, it is crystal clear that only decree which is a nullity can be subject matter of objection under Section 47 of the CPC and not only which is erroneous either in law or on facts. In the instant case, objections came to be filed under Section 47 of the Code on behalf of the judgment debtor nos. 2 to 6 on a number of grounds but not on the ground of jurisdictional infirmity or voidness.

37. Mr. Dwivedi has raised the issue that while reversing the trial court decree, the first appellate court has not mentioned the relief to which the appellant was entitled in terms of Order XLI Rule 31 of the Code. Order XLI Rule 31 of the Code provides as under:-

*“31. Contents, date and signature of judgment.—
The judgment of the Appellate Court shall be in writing and shall state—
(a) the points for determination;
(b) the decision thereon;
(c) the reasons for the decision; and
(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges*



concurring therein.”

38. From bare perusal of the aforesaid provision, it is very much clear that as the decree appealed from has been reversed, it was mandatory for the first appellate court to state the relief to which the appellant was entitled. However, this issue could not be given undue importance in the facts and circumstances of the case. The decision of the first appellate court was challenged before the High Court in second appeal and the judgment and decree of the first appellate court were upheld by this Court but this issue was not felt worth consideration by this Court in second appeal as no substantial question of law was framed and answered on this point.

39. Even supposing that the decree has been passed without following the provisions of Order XLI Rule 31 (d) of the Code but in case of **Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman & Ors.** reported in (1970) 1 SCC 670, the Hon’ble Apex Court held that only a decree which is nullity can be the subject matter of objection under Section 47 of CPC and not one which is erroneous either in law or on facts.

40. Taking in account various decisions of the Hon’ble Supreme Court referred hereinbefore, I am of the opinion that the decree in question could not be said to be inexecutable. If it



is not inexecutable, then what would be the mode of execution in absence of specific directions/order to be executed?

41. For specific performance of a contract, it was incumbent upon the learned first appellate court to indicate in what manner the contract was to be performed like in the present case. After recording its finding, it should have give direction that within which time period the balance amount was to be paid by the plaintiffs and thereafter what was the time period available to the defendant nos. 1 and 2 to execute the sale deed in favour of the plaintiffs. In default, thereof, what steps were to be taken. But these ingredients of specific performance are woefully lacking in the judgment of the first appellate court as well as in the decree. But as I have already discussed, the same would not make the decree non-executable because the executing court can always look into the judgment of the first appellate court where a clear cut finding has been recorded in favour of the decree holders regarding specific performance of contract.

42. The executing court, though cannot go behind or beyond the decree, but in the present circumstances, it can certainly meaningfully construe the decree by taking recourse to the judgment of the first appellate court and pleadings before the



learned trial court as well as in the appeal. The case in hand is no doubt an exceptional one. But the conspectus of events will be helpful. The original suit was instituted in the year 1990. Though the respondents lost the suit before the trial court, the decision was reversed by the first appellate court and further upheld by the second appellate court. The petitioners were unsuccessful in making out any case even before the Hon'ble Supreme Court in Special Leave Petition(Civil) No. 3737 of 2018. After institution of suit in the year 1990, we are in the year 2024. The petitioners did not get any relief on merits in any of the appellate courts. On mere technicality, a decree lawfully issued cannot be allowed to be frustrated since the decree is not a nullity. Merely because the learned appellate court omitted to mention details in decree though it set aside the judgment and decree of the learned trial court, for no fault of the respondents/decreed holders, decree cannot be allowed to be put on hold for all times to come, in such circumstances, the learned executing court can look into and prescribe the manner for satisfaction of the decree as it deems fit and proper. The executing court can decide a reasonable time frame towards execution of specific performance of contract and by doing so, it would not be going beyond or behind the decree. The said power is inherent in the executing court under Section 151 of



the Code and by doing so, the executing court will not be reading something which is not in the decree rather as per the observation of the Hon'ble Supreme Court in the case of *M/s. Brakewel Automotive Components (supra)* the executing court can refer to the judgment and even pleading of the parties. The relief portion of the suit of the plaintiffs quoted earlier in preceding paragraphs is quite illuminating for the aforesaid purpose.

43. On the stand taken by the petitioners/defendants, I think the objections raised by the petitioner/defendants are only for the purpose of avoiding the execution proceedings. At worst, decree can be said to be ambiguous and the *Topanmal Chhotamal (supra)* makes it abundantly clear that it is the duty of the executing court to construe such decree. For the purpose of interpreting a decree, when its terms are ambiguous, the court can look into the pleadings and the judgment. Moreover, the learned executing court has got ample powers under Section 151 of the Code to ensure execution with reasonable terms.

44. Mr. Dwivedi has harped the fact time and again that the decree has become inexecutable in absence of specific directions but the essentials of decree as discussed before does not leave any doubt in the mind that the decree in question remains executable even in absence of specific directions. It



fulfills the essentials and it is not a case of either of the parties that no adjudication was reflected or that rights of the parties have not been conclusively determined or any issue has been left open which was matter in issue before the learned trial court.

45. Another aspect which has been stressed on behalf of the petitioners that an executing court cannot go behind or beyond the decree. But I think there is no occasion for executing court to go beyond or behind the decree since what the executing court would be doing in the circumstances would only be giving effect to the decree though it could not go beyond the relief which was claimed by the plaintiffs. It would not be adding anything more than what has been sought under the reliefs in the suit. Since the judgment and decree of the learned trial court was set aside by the learned first appellate court, natural inference is that the reliefs in the suit filed by the plaintiffs has been granted since the appeal has been filed with prayer to set aside the judgment and decree of the learned trial court and allow the reliefs claimed by the plaintiffs as appellants. Moreover, it is common practice in this part that while drawing the decree if the suit or appeal is allowed, the relief portion is reproduced in its entirety without any change. In case like one before me, if certain directions are to be given for



execution of relief claimed by the plaintiffs, certainly the executing court is not handicapped.

46. The Hon'ble Supreme Court in the case of ***Sir Sobha Singh & Sons (P) Ltd. vs. Shashi Mohan Kapur (Deceased) through legal representative*** reported in (2020) 20 SCC 798, has held that an execution petition can be preferred even if formal decree is not drawn by the trial court. Paragraph no. 39 reads as under:-

“39. This takes us to examine the next question, namely, what is the effect of not filing the copy of the decree along with the execution application filed by the appellant. In our view, even though the appellant did not file the certified copy of the decree along with the execution application for the reason that the same was not passed by the court, yet the execution application filed by the appellant, in our view, was maintainable. Indeed, so long as the formal decree was not passed, the order dated 1-6-2012 was to be treated as a decree during the interregnum period by virtue of Order 20 Rule 6-A(2) of the Code. In other words, notwithstanding the fact that the decree had not been passed, yet by virtue of principle underlined in Order 20 Rule 6-A(2) of the Code, the order dated 1-6-2012 had the effect of a decree till the date of actual passing of the decree by the court for the purposes of execution or for any other purpose. This empowered the executing court to entertain the execution



application and decide the objections raised by the respondent on merits”

47. Therefore, I do not find merit in the submission of the learned senior counsel appearing on behalf of the petitioners that the decree has become inexecutable and for this reason the reliance placed on the decision of the Hon’ble Supreme Court in the case of ***Vedic Girls Senior Secondary School, Arya Samaj Mandir, Jhajjar Vs. Rajwanti and Ors. (supra)*** and ***State of Punjab vs. Krishan Dayal Sharma (supra)*** is not of much help since the facts of the two cases are quite different.

48. The fact is also not to be lost sight of that it is the duty of the court to see that the process of court and the law of procedure are not abused by judgement-debtors in such a manner as to defraud creditors, who have obtained decree in accordance with their legal rights. (***Kuer Jang Bahadur Vs. Bank of Upper India Ltd.***, reported in ***AIR 1925 Oudh 448***).

49. In the light of discussion made so far, I am of the view that the learned executing court has not committed any error in rejecting the application filed on behalf of the petitioners/defendants and the same does not require any interference from this Court. The impugned order has been



passed well within the jurisdiction of the learned executing court.

50. Hence, I do not find any reason to interfere with the impugned order dated 06.10.2018 passed by the learned Munsif Sadar, Purnea in Title Execution Case No. 02 of 2015 and, accordingly, the same is affirmed.

51. Accordingly, the instant petition stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	A.F.R.
CAV DATE	21.12.2023
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