

Execution

2009 (9) SCC 680 :

Before :- B.Sudershan Reddy : R.V.Raveendran : J J

Shub Karan Bubna @ Shub Karan Prasad Bubna

Versus

Sita Saran Bubna & Ors.

A suggestion for debate and legislative action

11. The century old civil procedure contemplates judgments, decrees, preliminary decrees and final decrees and execution of decrees. They provide for a `pause between a decree and execution. A pause has also developed by practice between a preliminary decree and a final decree. The `pause is to enable the defendant to voluntarily comply with the decree or declaration contained in the preliminary decree. The ground reality is that defendants normally do not comply with decrees without the pursuance of an execution. In very few cases, the defendants in a partition suit, voluntarily divide the property on the passing of a preliminary decree. In very few cases, defendants in money suits, pay the decretal amount as per the decrees. Consequently, it is necessary to go to the second stage that is levy of execution, or applications for final decree followed by levy of execution in almost all cases.

12. A litigant coming to court seeking relief is not interested in receiving a paper decree, when he succeeds in establishing his case. What he wants is relief. If it is a suit for money, he wants the money. If it is a suit for property, he wants the property. He naturally wonders why when he files a suit for recovery of money, he should first engage a lawyer and obtain a decree and then again engage a lawyer and execute the decree. Similarly, when he files a suit for partition, he wonders why he has to first secure a preliminary decree, then file an application and obtain a final decree and then file an execution to get the actual relief. The common-sensical query is: why not a continuous process? The litigant is perplexed as to why when a money decree is passed, the court does not fix the date for payment and if it is not paid, proceed with the execution; when a preliminary decree is passed in a partition suit, why the court does not forthwith fix a date for appointment of a Commissioner for division and make a final decree and deliver actual possession of his separated share. Why is it necessary for him to remind the court and approach the court at different stages?

13. Because of the artificial division of suits into preliminary decree proceedings, final decree proceedings and execution proceedings, many Trial judges tend to believe that adjudication of the right being the judicial function, they should concentrate on that part. Consequently, adequate importance is not given to the final decree proceedings and execution proceedings which are considered to be ministerial functions. The focus is on disposing of cases, rather than ensuring that the litigant gets the relief. But the focus should not only be on early disposal of cases, but also on early and easy securing of relief for which the party approaches the court. Even among lawyers, importance is given only to securing of a decree, not securing of relief. Many lawyers handle suits only till preliminary decree is made, then hand it over to their juniors to conduct the final decree proceedings and then give it to their clerks for conducting the execution proceedings. Many a time, a party exhausts his finances and energy by the time he secures the preliminary decree and has neither the capacity nor the energy to pursue the matter to get the final relief. As a consequence, we have found cases where a suit is decreed or a preliminary decree is granted within a year or two, the final decree proceeding and execution takes decades for completion. This is an area which contributes to considerable delay and consequential loss of credibility of the civil justice system. Courts and Lawyers should give as much importance to final decree proceedings and executions, as they give to the main suits.

14. In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant. We hope that the Law Commission and Parliament will bestow their attention on this issue and make appropriate recommendations/amendments so that the suit will be a continuous process from the stage of its initiation to the stage of securing actual relief. The present system involving a proceeding for declaration of the right, a separate proceeding for quantification or ascertainment of relief, and another separate proceeding for enforcement of the decree to secure the relief, is outmoded and unsuited for present requirements. If there is a practice of assigning separate numbers for final decree proceedings that should be avoided. Issuing fresh notices to the defendants at each stage should also be avoided. The Code of Civil Procedure should provide for a continuous and seamless process from the stage of filing of suit to the stage of getting relief. In money suits and other suits requiring a single decree, the process of suit should be a continuous process consisting of the first stage relating to determination of liability and then the second stage of execution and recovery, without any pause or stop or need for the plaintiff to initiate a separate proceedings for execution. In

suits for partition and other suits involving declaration of the right and ascertainment/quantification of the relief, the process of the suit should be continuous, consisting of the first stage of determination and declaration of the right, second stage of ascertainment/division/quantification, and the third stage of execution to give actual relief.