

## APPELLATE CIVIL.

*Before Mr. Justice Burn and Mr. Justice Stodart.*

RANI VEERAMMANI (FIRST PLAINTIFF), APPELLANT,

*v.*

RAJAVEERABASAVA CHIKKA ROYAL AND THREE  
OTHERS (DEFENDANT AND PLAINTIFFS 2 TO 4),  
RESPONDENTS.\*

1938,  
October 18.

*Code of Civil Procedure (Act V of 1908), O. XXI, r. 15—  
Joint decree-holders—Execution application by one of,  
without disclosing existence of other decree-holders—Validity  
of—Execution application not complying with requirements  
of O. XXI, r. 15—Amendment of, so as to remedy  
defects—Power of Court to allow—Arrangement between  
joint decree-holders conferring on one of them right to recover  
amount due under decree—Judgment-debtor's right to  
object to.*

The omission in an application by one of several decree-holders for execution to mention that there are other decree-holders does not necessarily invalidate the application.

Where an application for execution has not complied with any requirements of rule 15 of Order XXI of the Code of Civil Procedure, the Court when its attention is drawn to the defect subsequently can allow the application to be amended in order to bring it into compliance with the requirements of that rule.

An arrangement between joint decree-holders conferring the right to recover the whole or a portion of the decree amount on one of them is not one to which the judgment-debtor can take a valid objection; he can only request the Court under Order XXI, rule 15, to see that his interests are not in any way jeopardised by payment to one out of the several decree-holders.

*Ghanaya v. Madho Parshad*(1) and *Dharamdeo Rai v. Jwala Prasad*(2) followed.

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\* Appeal Against Order No. 194 of 1937.

(1) A.I.R. 1931 Lah. 600.

(2) A.I.R. 1930 All. 188.

APPEAL against the order of the Court of the Subordinate Judge of Chittoor, dated 12th November 1936 and made in Execution Petition No. 22 of 1936 in Original Suit No. 25 of 1930. VEERAMMANI  
v.  
CHIEKKA ROYAL.

*B. Sitarama Rao* for *S. V. Venugopalachari* for appellant.

*N. Srinivasa Ayyangar* for *N. C. Vijiaraghavachari* for first respondent.

*A. C. Sampath Ayyangar* and *T. U. Subramania Pillai* for respondents 3 and 4.

Second respondent was not represented.

The JUDGMENT of the Court was delivered by BURN J.—The appellant was the first plaintiff in Original Suit No. 25 of 1930 on the file of the Subordinate Judge of Chittoor. There were four plaintiffs altogether and the decree passed in the suit was in favour of all of them. In Execution Petition No. 22 of 1936, on 10th February 1936 the first plaintiff applied for execution of the decree without stating expressly that she was only one of the four decree-holders. It appears that in a subsequent suit, Original Suit No. 42 of 1933, in the same Court, which was a suit between the first plaintiff, and the second plaintiff in Original Suit No. 25 of 1930, there was a compromise by which those two persons agreed that out of the amount still due under the decree in Original Suit No. 25 of 1930 the first plaintiff, Rani Veerammani Garu, should receive Rs. 3,000 and the balance should be taken by the third plaintiff Rani Mahadevammani Garu without any further claim by the first two plaintiffs in Original Suit No. 25 of 1930. It was further declared in the decree in Original Suit No. 42 of 1933 that the first plaintiff be entitled to a first charge on the decree in Original Suit No. 25 of 1930 to the extent of Rs. 3,000 with interest thereon and that she be entitled to execute

BURN J.

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the said decree in her own name to the said extent. It is recited in the decree that Rani Mahadevammani and Raja Mahadeva Raja Varu, the third and fourth plaintiffs in Original Suit No. 25 of 1930, had recorded their consent to this arrangement in the compromise petition. It is not disputed that this latter recital is correct; when the third and fourth plaintiffs did agree to the first plaintiff taking Rs. 3,000 out of the amount decreed in Original Suit No. 25 of 1930.

It is not known how the Court came to pass the decree in Original Suit No. 42 of 1933 in those terms because it is not possible under the provisions of Order XXI, rule 15, for one of several decree-holders to execute the decree for his or her own benefit. However the decree was passed and it is quite clear that all the joint decree-holders in Original Suit No. 25 of 1930 did consent to that arrangement. It cannot therefore be alleged for a moment that the first plaintiff when she filed Execution Petition No. 22 of 1936 was attempting to perpetrate any fraud upon the Court or upon her fellow decree-holders. The judgment-debtor in Original Suit No. 25 of 1930 raised the objection that the execution petition was liable to be dismissed as it was filed only by one joint decree-holder. Notice was thereupon given to the other decree-holders in Original Suit No. 25 of 1930 and they for some unexplained reason supported the objection raised by the judgment-debtor. The learned Subordinate Judge dismissed the execution petition outright. Mr. Sitarama Rao, who appears for the appellant in this Court, concedes that the execution petition ought to have been filed on behalf of all the decree-holders in Original Suit No. 25 of 1930 but suggests that in the circumstances the lower Court would have been well advised to allow any necessary amendments to be made

in the execution petition to bring it into accord with the provisions of Order XXI, rule 15. Mr. Sampath Ayyangar, who appears for the third and fourth decree-holders in Original Suit No. 25 of 1930, has no strong objection to raise to such permission being granted at this stage. The learned Advocate for the judgment-debtor however opposes this suggestion. He says in the first place that the appellant, as soon as the defect in the execution petition was brought to her notice, might have filed a fresh application at once in accordance with Order XXI, rule 15, without pursuing the matter to the bitter end in the Subordinate Court and then preferring an appeal to this Court. He points out also that it is possible that by this time more than three years may have elapsed since the dismissal of the last prior execution petition. In that case he says that the judgment-debtor would be deprived of the plea of limitation if amendment of the execution petition were now allowed. We do not think that these considerations should prevent us from saying that the petition should be allowed to be amended now. It has been pointed out by SHADI LAL C.J. in the case of *Ghanaya v. Madho Parshad*(1) that the omission in an application by one of several decree-holders for execution to mention that there are other decree-holders does not necessarily invalidate the application. The learned Chief Justice observes :

“ Order XXI, rule 15, provides that any one or more of the joint decree-holders may apply for the execution of the whole of the decree for the benefit of them all ; and it is nowhere laid down that the omission on the part of a decree-holder to state in his application the names of all the persons who are interested in the decree is such a defect as would invalidate the execution proceedings.”

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(1) A.I.R. 1931 Lah. 600.

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The learned Chief Justice then refers to a case decided by a Division Bench of the Calcutta High Court in which it was held that such an omission does not render the execution proceedings invalid. It is pointed out also in the case of *Dharamdeo Rai v. Jwala Prasad*(1) that

“although under rule 15 of Order XXI no duty has been cast upon the Court receiving the application for execution to have the defects remedied, it does not follow that if any requirements of rule 15 of Order XXI have not been complied with by inadvertence or otherwise, the Court when its attention is drawn to the defect subsequently cannot allow the amendment.”

We agree with the observations of the learned Judges in that case at page 190 where they observe :

“The learned Judge has dismissed the last application on the additional ground that only one of the two decree-holders applied for execution without making it appear on the face of it that it was made for the benefit of the legal representatives of the deceased co-decree-holder. In taking to this course the learned Judge has allowed his mind to be influenced by too technical a consideration which is devoid of all substance and in utter disregard of the ends of substantial justice.”

We think the same remarks apply here. It is quite clear, as we have already said, that the appellant was acting in perfect honesty when she applied for execution of the decree for her own benefit to the extent of Rs. 3,000. That was the arrangement which had been come to between the four decree-holders and it was not an arrangement to which the judgment-debtor could take a valid objection; he could only request the Court under Order XXI, rule 15, to see that his interests were not in any way jeopardised by payment to one out of four decree-holders. This being so, we think that this appeal must be allowed and the order of the learned Subordinate Judge

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(1) A.I.R. 1930 All. 188.

dismissing the execution petition set aside. The execution petition must be restored to file and disposed of according to law after allowing the appellant to amend it in order to bring it into compliance with the requirements of Order XXI, rule 15. We think it is right to order that the appellant should pay the costs of all the respondents in the execution petition and in this appeal.

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A.S.V.

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APPELLATE CIVIL.

*Before Mr. Justice Abdur Rahman.*

SOMAVARAPU BALARAMI REDDI (FOURTH  
RESPONDENT), APPELLANT,

1938,  
November 1.

v.

THE OFFICIAL RECEIVER, NELLORE (PETITIONER),  
RESPONDENT.\*

*Provincial Insolvency Act (V of 1920), sec. 51 (1)—“Benefit of the execution” in—Meaning of—Execution sale of judgment-debtors’ property after admission of petition to adjudicate him an insolvent—Assets realised by—Right of attaching decree-holder or other decree-holder to retain benefit of execution as against Receiver—Right of attaching decree-holder to retain costs of execution out of money realised.*

Before K, who had obtained a money decree against two persons, could bring their property to sale in execution, an application for their adjudication was presented which was admitted shortly after. K nevertheless proceeded with his application for execution. Before the property was sold and money deposited in Court some other creditors who had also secured decrees against those judgment-debtors applied for execution and rateable distribution. In spite of the pendency of the insolvency petition, the property was sold and

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\* Appeal Against Order No. 465 of 1936.