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EXECUTION- CLAIM PETITION

INTRODUCTION:

Execution has not been defined in the code the expression execution means enforcement or implementation or giving an effect to the order or judgment passed by the court of justice. The expression execution simply means the process for enforcing or giving effect to the judgment of the court.

The principles governing execution of decree and orders are dealt in Sections 36 to 74 and Order 21 of Civil Procedure Code.

Hon'ble Apex Court in Ghanshyam Das v.AnantKumar Sinha (AIR 1991 SC 2251) dealing with provision of the code relating to execution of decree and orders, observed in following words -

“ so far as the question of execution of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all aspects. The numerous rules of Order 21 of the code take care of different situations providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors, as the case may be.”

Order XXI of the CPC is the lengthiest order provides detailed provisions for making an application for execution and the manner that, how they are to be entertained and decided

PRINCIPLES WITH REGARD TO EXECUTION OF DECREE:

Principles with regard to execution of decree and order can briefly be summarized as under -

- Provision of CPC relating to execution of decree and order are made applicable to both Appeal and Suit.

- A decree may be executed by the court which passed the judgment and decree or by some other court which is having competency to implement the judgment passed by such other court.
- The court which passed the decree may send it for execution to other court either on application of the applicant (decree-holder) or by the court itself.
- A court may order for execution of decree on the application of decree holder (a) by delivery of any property which was in possession of judgment-debtor and decree has been specifically passed concerning such property (b) by attachment and sell of the property of the judgment-debtor (c) by arrest and detention (d) by appointing a receiver (e) in such other manner which depends upon nature of relief granted by the court.
- Upon the application of decree-holder, the court may issue “percept” to any other court which is competent in that regard.
- All questions arising between the parties to the suit in the decree shall be determined by the court while executing the decree and not by separate suit.
- Where a decree is passed against a party as the “legal representative” of a deceased person and decree is for payment of money out of the property of deceased person, it may be executed by attachment and sell of any such property.
- Where immovable property has been sold by the court in execution of a decree such sale shall be absolute. The property shall be deemed to be invested in the favour of purchaser, and the purchaser shall be deemed as a party to litigation.
- The court to which decree is sent for execution shall require certifying to the court which has passed decree stating the manner in which decree has been implementing concerning the fact of such execution.

Section 38 of the Code specifies that, a decree may be executed either by the Court who passed it or by the Court to which it is sent for execution. Section 37 defines the expression ‘Court which passed a decree’ while sections 39 to 45 provide for the transfer for execution of a decree by the Court which passed the decree to another Court, lay down conditions for such transfer and also deal with powers of executing Court.

Section 38 lays down the general rule that, a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. The executing Court has no power to entertain any objection as to the validity of the decree or as to the legality or correctness of the decree. The reason under line the above rule is that, although a decree may not be according to law, it is binding and conclusive as between the parties to the Suit, unless it is set aside in appeal or revision. It is for the same reason that, the Court executing a decree cannot alter, vary or add to the terms of the decree even with the consent of the parties.

In *Ramswami Vs T.N.V.Kailash Theyar* reported in AIR 1951 S.C,189(192), it was observed that, "the duty of an executing Court is to give effect to the terms of the decree. It has no power to go beyond its terms. Though, it has power to interpret the decree, it cannot make a new decree for the parties under the guise of interpretation ".

In *Topanmal Vs M/s Kundomal Gangaram* reported in AIR 1960, SC 388, it was held by the Supreme Court that, an executing Court must take the decree as it stands. An executing Court cannot go behind the decree. It can neither add something in the decree already passed, nor alter the decree.

Whereas an objection to attachment or claim to attach property if made by a third party, the objector may either proceed by an application under this rule before the executing Court or he may bring a suit to Establish his objection. His failure to proceed by an application under this Rule is no bar to a separate suit. The object of this rule is to give a speedy and summary remedy, but this rule does not deprive him of his remedy by Way of suit.

The claim petition is to be tried like a suit and the burden of proof lies on the claimant to lead evidence if the claim petitioner fail to lead evidence in support of his claim the court cannot be found fault with especially after the original and appellate court have also confirmed the dismissal.

In claim petition, the burden is on the claimant to prove that on the date of attachment, he has some right, title or interest or was in Possession of property attached. If the claimant is succeeded in proving that fact, then burden is shifted on decree-holder to prove that the objector was not the owner or holds any interest for judgment-debtor. In a suit filed by a third party to the litigation, burden of establishing right, title or interest in the property is upon the plaintiff.

The Honorable Apex Court in the case of BrahmdeoChoudhary V/s Rishikesh Prasad Jaiswal AIR 1997 SC 856 held that, it cannot be said that the only remedy available to the stranger to the decree for possession who has resisted its execution, to have his claim adjudicated is the one under R. 99 of O.21 after he has lost possession to the decree-holder and that he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceeding.

In the case of Silver line Forum Pvt Ltd. v. Rajiv Trust and another AIR 1998 SC 1754 held that, “ Resistance or obstruction made even by a third party to the execution of decree can be gone into under O.21 R.97. Rule 97 to 106 are substantial under the caption “ resistance to delivery of possession to decree-holder or purchaser.” Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by “ any person” in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub rule (2) makes it incumbent upon such complaint in accordance with procedure laid down. It is also held that all question arising between the parties to a proceeding on an application under R. 97 or R. 99 shall be determined by the executing court, if such question are relevant to the adjudication of the application.

CONCLUSION -

From the above discussion it clearly appears that execution is the enforcement of decrees and orders by the process of Court so as to enable the decree-holder to realize the fruits of the decree. Order 21 contain elaborate and exhaustive provision for execution of decrees and order, by taking care of different type of situation, Courts have to provide effective remedies not only to the decree-holder and judgment-debtors but also to the objectors and third parties.