

EXECUTION OF DECREE AGAINST LEGAL REPRESENTATIVES: AN ANALYSIS

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Death of a party to a suit during its pendency is common phenomenon. It is one of the principles of natural justice that both the parties must be heard (audi alterum partem). But, in case of death of a party the Court cannot arrive at a conclusion because there can be no order or decree against a dead man, for a dead man cannot be heard. Therefore, while on the one hand, the proceedings will not abate, on the other hand, it will not be possible for the Court to do anything in the way of execution until and unless the legal representatives have been brought on the record. This problem is solved by Sections 50 and 52 of the Civil Procedure Code, 1908. With the help of these provisions, the decree holder can not only execute the decree but also can recover the money out of the properties of the deceased. However, there remains a confusion regarding the scope of these two provisions. Through this paper, an attempt has been made to distinguish between Sections 50 and 52 and analyse the situations where they apply by referring to various judicial pronouncements.

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1. INTRODUCTION

'Legal Representative' means a person who, in law, represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and, where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.³ Section 2 (11) of the Civil Procedure Code, 1908 ("C.P.C.") defines the expression 'legal representative' as a person who in law represents the estate of deceased person, and includes any person who intermeddles with the estate of deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.⁴

Section 50 of the C.P.C. permits the decree-holder to get executed the decree against the legal representatives of the Judgment-debtor who dies after the decree is passed.⁵ Section 52 provides that when a decree is against the legal representatives of a dead person and is one for recovery of money out of the properties of the deceased, it may be executed by attachment and sale of any such property.⁶ It enables a decree-holder to execute his decree against the legal representatives of the Judgment-debtor, the liability, of course, in execution being confined to the extent of the deceased's property in the hands of the legal representative.⁷

The only difference is that there the decree is against the party and legal representative comes into picture during execution proceedings, while in the present section the decree is passed against the legal representative of the debtor. Upon the death of party, during the continuation of the suit, it is mandatory that the legal representatives of that deceased Judgment-debtor shall be brought on.⁸

The authors, through this paper, have sought to analyse Sections 50 and 52 of the C.P.C. The paper proceeds by referring the provisions related to execution of decree against legal representative in the C.P.C. Then, Sections 50 and 52 are dealt in detail by referring to *doctrine of representation* and the meaning of *legal representative*. Further, an attempt has been made to create a distinction between these provisions. And then finally recent judgments by Supreme Court and various High Courts has been referred.

1. SECTION 50

1.1. Scope

Section 50 permits the decree-holder to get executed the decree against the legal representatives of the Judgment-debtor who dies after the decree is passed.⁹ The application has to be moved before the executing Court. The section does not specifically mention about the legal representatives of deceased decree-holder but where the decree-holder dies after

³ Dinamoni Chaudhurani v. Elahadut Khan, (1904) 8 Cal WN 843.

⁴ Section 2(11), Civil Procedure Code, 1908.

⁵ Section 50, Civil Procedure Code, 1908.

⁶ Section 52, Civil Procedure Code, 1908.

⁷ *Ibid.*

⁸ D. Krishna Sachi v. Y. Vijay Lakshamma, AIR 1988 AP 60.

⁹ Section 50 of the Civil Procedure Code, 1908 reads:

“(1) Where a judgment debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of the deceased.

passing of the decree his legal representatives may be treated holder of decree or the transferees.¹⁰

An interesting question is whether a decree holder can proceed with the execution case in spite of the death of the Judgment-debtor, without impleading the legal representatives of the deceased Judgment debtor. It is one of the cardinal principles of law that justice must be done after hearing both sides to the dispute. The necessary corollary from this is that there can be no Order or decree against a dead man, for a dead man cannot be heard. The necessary conclusion, is that while, on the one hand, the proceedings will not abate, on the other hand, it will not be possible for the Court to do anything in the way of execution until and unless the legal representatives have been brought on the record.¹¹ **Therefore the words "may apply" used in the section bear the sense of "shall apply".**¹²

The words "fully satisfied" in Section 50 were put in substitution of the words "fully executed" for the purpose of negating a decision of the Allahabad High Court, that when once a property was attached the decree was fully executed. On that old view there was a special reason for holding that where the Judgment-debtor died after the attachment it was not necessary to bring his heirs on the record of the execution case. That special reason has been abolished by the amendment of the section.¹³

A decree which is passed against a person who has died either before the institution of suit or during the pendency of the suit without substitution of his legal heirs subject to Rule 6, Order XXII, is a nullity against him.¹⁴ Though decree passed against a dead person is nullity a decree passed in favour of dead person is not nullity.¹⁵

1.2. Doctrine of Representation.

There are two authoritative pronouncements of the Supreme Court in **Dayaram v. Shym Sundari**¹⁶ and **Mohd. Sulaiman v. Mohd. Ismail**¹⁷ which make the enunciation that a decree in a suit in which one of the persons dies and in which not all his legal representatives are brought on the record, or in which wrong legal representative is brought on the record, is binding upon the person who is not brought on the record, if the wrong legal representative was brought on the record pursuant to a bona fide enquiry and there was no fraud or collusion and the estate was adequately represented.¹⁸ The Court has therefore recognized the principle of representation of the estate by some heirs where the Defendant dies during the pendency of

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the court executing the decree may, of its own motion or on the application of the decree holder, compel such legal representative to produce such accounts as it thinks fit."

10 Ram Murti Devi v. Ralla Ram Tulsi Ram, AIR 1987 HP 1 at 4.

11 Rajlakshmi Dassi v. Bonomali Sen, AIR 1955 Cal 573.

12 Mubarak v. Sushil, AIR 1957 Raj 154.

13 Debi v. Raj Krishna Mondal, 32 Cal WN 418 (H).

14 Elissa v. A. Dass, AIR 1992 Mad 159.

15 Hamanshu v. Mahindra, AIR 1954 Cal 204.

16 Dayaram v. Shym Sundari, 1965 AIR 1049.

17 Mohd. Sulaiman v. Mohd. Ismail, 1966 AIR 792.

18 N.K. Mohammad Sulaiman v. N.C. Mohammad Ismail, AIR 1966 SC 792; Manjappa Moolya v. Rama Bhandary, AIR 1968 Kant 202.

a suit to enforce a claim against him, and not all the heirs are brought on the record.¹⁹ If after bona fide enquiry, some but not all the heirs of a deceased Defendant are brought on the record represent the entire estate of the deceased, and the decision of the Court in the absence of fraud or collusion binds those who are not brought on the record as well as those who areimpleaded co nomine.²⁰

1.3. Legal representative.

Section 50(2) of the Civil Procedure Code enables a decree-holder to execute his decree against the legal representatives of the Judgment-debtor, the liability, of course, in execution being confined to the extent of the deceased's property in the hands of the legal representative.²¹ That precisely is also the position Under Section 128 of the Transfer of Property Act.²² It is thus well settled that legal representatives of Judgment-debtor are liable for the debts of the predecessor to the extent of the estate acquired by the legal representatives from their predecessors.²³

Section 2 (11) of the Code defines the expression 'legal representative' as a person who in law represents the estate of deceased person, and includes any person who intermeddles with the estate of deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.²⁴ No execution can proceed against deceased Judgment-debtor unless his legal representatives are brought on record.²⁵ The liability of legal representatives extends only to the extent of property or assets acquired by him on the death of Judgment-debtor. A nominee of a Judgment-debtor-policy holder is his legal representative and creditor decree-holder can realize his dues from money reached into the hands of such nominee.²⁶ Even a stranger who does not claim title but is in possession of deceased Judgment-debtor's property can be proceeded against as legal representative under the section in execution proceedings.²⁷

2. SECTION 52

It is well settled that legal representative of judgment-debtors are liable for the debts of the predecessor to the extent of estate acquired by the legal representative from their predecessors.²⁸

Section 52 (1) empowers a creditor to execute his decree against the property of deceased in the hands of legal representative so long as it remains in his hand.²⁹ For application of this clause the decree should have passed against the party as the legal representative of the

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Supra* note 6.

²² *Dayanandan v. Venugopal Naidu*, AIR 1964 Mad 78.

²³ *Madhukar Sagun Karpe v. Institute of public assistance*, 1998 (3) Bom CR 101.

²⁴ Section 2(11), Civil Procedure Code, 1908.

²⁵ *Raj Laxmi v. Banmali*, AIR 1955 Cal 573.

²⁶ *Raja Ram v. Mata Prasad*, AIR 1972 All 167.

²⁷ *Baliram v. Mukunda*, AIR 1951 Nag 145.

²⁸ *Madhukar Sagun Karpe v. Institute of Public Assistance*, AIR 1998 Bom 201.

²⁹ Section 52 of the Civil Procedure Code, 1908 reads:

deceased person, and it should be for the payment of money out of the property of the deceased. Section 52 (2) empowers a creditor to execute his decree against the legal representative personally if he fails to accounts for the properties received by him from deceased person.³⁰ 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.³¹

2.1. Scope

This section is, to some extent, similar to Section 50. The only difference is that there the decree is against the party and legal representative comes into picture during execution proceedings, while in the present section the decree is passed against the legal representative of the debtor. Upon the death of party, during the continuation of the suit, it is mandatory that the legal representatives of that deceased Judgment- debtor shall be brought on.³² Non-impleadment is not fatal to the proceedings as long as there is a representation. The doctrine of representation depends upon the representation of the estate in effect and on the honest belief that it is represented, there being no fraud or collusion.³³ It has as much application to those cases as to a case where one of the parties to the suit dies and the estate is adequately represented by the others and a decree is made without the legal representative of the deceased having been brought on the record.³⁴

Section 52(1), Civil Procedure Code, provides that **when a decree is against the legal representatives of a dead person and is one for recovery of money out of the properties of the deceased, it may be executed by attachment and sale of any such property.**³⁵ The decree-holder would not be entitled to proceed personally against any of the legal representatives until it has been shown that no one of them is in possession of any other property of the deceased. The decree-holder would have first of all to ascertain which of the legal representatives of the deceased debtor retains the property of the deceased intact and then proceed against him. That would lead to this result; the person who has disposed of all the properties of the deceased would be the last individual who can be proceeded against.³⁶

“(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.”

30 *Ibid.*

31 *Supra note 6.*

32 D. Krishna Sachi v. Y. Vijay Lakshamma, AIR 1988 AP 60.

33 Manjappa Moolya v. Rama Bhandary, AIR 1968 Kant 202.

34 *Ibid.*

35 *Supra note 6.*

36 Chekka Suryanarayana v. Yenumulla Rajyalakshmi Devi Amma, AIR 1950 Mad 407.

3. DISTINCTION BETWEEN SECTIONS 50 AND 52

Section 50 provides for a case where a decree has been passed against a party and the party dies before the decree is fully satisfied and the decree is sought to be executed against the legal representative. While Section 52 provides for a case where a decree is passed against the legal representative of a deceased person. In the latter case, the legal representative is the judgment-debtor.³⁷

Sections 50 and 52 apply in two different situations. Section 52 applies where the defendant dies during the pendency of the suit and his legal representatives are brought on record and decree is passed against them. Under Section 50 the decree is passed against the original debtor and the decree is sought to be executed against his legal representatives. Therefore, under Section 50 the burden is on the decree-holder to show that the property in question has come into hands of the legal heirs. But, under Section 52 the burden is on the legal representative to show that they have not received the property from the deceased.

4. RECENT JUDICIAL PRONOUNCEMENTS

The Court in *B.S. Ashok S/o Late B. Subbarama Setty vs. The Investment Trust of India Ltd.* held that the Plaintiff is only a legal representative and as such the claim against the legal representative would be only to the extent of property of the deceased which has not been duly disposed of against which decree can be executed.³⁸

In *Smt. Shivamma vs. Arogyamma*, it was held that sub-clause 1 of Section 52 of C.P.C. makes it clear that where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.³⁹

The Court in *Someswara Swamy Vari Devasthanam vs. Dasam Suryanarayana*, held that A decree passed against the personal property of the legal representatives in violation of Section 52 C.P.C. is a nullity and therefore inexecutable.⁴⁰

In *Co-op. Society vs. Kartiyayani Unni*, the Court said that though Sections 50 and 52 of the CPC make provision for the course of action to be adopted if the judgment debtor dies, except Section 146, there is no other specific provision dealing with the subject.⁴¹ Even after impleading the legal representatives of the decree holder, the executability or otherwise of the decree can be adjudicated by the executing court. The accident that the decree holder died before deciding that issue already raised by the judgment debtors cannot be a fetter to the impleadment of the legal representatives of the decree holder.⁴²

The Supreme Court in the landmark judgment of *V. Uthirapathi vs. Ashrab Ali*, held that if after the filing of an execution petition in time, the decree holder dies and his legal representatives do not come on record or the judgment debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution

37 Birdichand v. Badasahed, AIR 1927 Bom 52.

38 B.S. Ashok S/o Late B. Subbarama Setty vs. The Investment Trust of India Ltd. (A Public Limited Company) represented by its Executive Director, 2010 (2) KCCR 822.

39 Smt. Shivamma v. Arogyamma, 2011(3) KCCR 2458

40 Someswara Swamy Vari Devasthanam v. Dasam Suryanarayana and Ors., AIR 2004 AP 223.

41 Co-op. Society v. Kartiyayani Unni, 2011(2) KLJ 209.

42 Ibid.

petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the execution Court.⁴³

5. CONCLUSION

It is very difficult for a court to decide the suit in case when one of the party to the suit dies. The court cannot pass an order or decree against dead person and there must be a living person to represent the deceased person. In such cases, the decree holder is on a disadvantaged position. But, the Civil Procedure Code, 1908 under Sections 50 and 52 provides certain mechanisms with the help of which a decree holder can not only execute the decree but also can recover the money out of the properties of the deceased. Under Section 50, the decree holder can execute the decree against the legal representative of the judgment debtor. Section 52, on the other hand provides for a situation where a decree is passed against the legal representative of a deceased person. The decree holder, under this Section can execute the decree against the property of the deceased in the hands of the legal representatives and the legal representatives are liable to satisfy the decree only out of the assets of the deceased on their hands.

In light of the judgments referred in the paper, it can be very validly concluded that there is a distinction between Sections 50 and 52. Section 50 provides for a case where a decree has been passed against a party and the party dies before the decree is fully satisfied and the decree is sought to be executed against the legal representative. While Section 52 provides for a case where a decree is passed against the legal representative of a deceased person. In the latter case, the legal representative is the judgment-debtor.

43 V. Uthirapathi v. Ashrab Ali, AIR 1998 SC 1168.