

# **Seamless And Continuous Process In Suits Till Delivery Of Relief : Argument For Its Need**

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After disposal of a suit by way judgment, a decree follows. The decree may be executed either by the Court which passes it or by the Court to which the decree is sent for execution.

## **Execution of decrees and orders**

Part II of Code of Civil Procedure pertains to execution of decrees and orders. Provisions starting with Section 51 of the Code provide procedure to be followed in execution. Order XXI CPC also pertains to Execution of decrees and orders.

## **Application for execution**

Where the holder of a decree desires to execute it, he shall apply to the Court, which passed the decree, or to the officer appointed. Rule 10 of Or.XXI CPC so provides.

Every application for execution of decree has to be in writing. Such an application is required to be signed and verified by the applicant or by some other person acquainted with the facts of the case.

Sub-rule (2) of Rule 11 of Or.XXI CPC contains a tabular form in which the execution application is to be submitted.

The court, to which such an application is made, may require the applicant to produce certified copy of the decree.

Rules 24 and 25 provide as to the process for execution, where the requisite preliminary steps have been taken. Then, there are rules which provide for different modes of execution of the decrees.

## **Why an execution application**

As noticed above, the holder of a decree, who desires to execute it, has to apply to the Court. But the question arises as to why the party should be required to file an application for execution of the decree or order. In other words, why Courts straightaway do not continue with the proceedings after passing of the decree, on disposal of the suit by way of judgment?

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\* Special Judge-2, Central District, Tis Hazari Courts, Delhi.

Undisputedly, party comes to Court with certain claim and prayer to have the fruit. Party does not file claim or pray to the Court for a paper- decree only. When the party has paid requisite Court fee and followed the due process of law in disposal of the suit, leading to decree, it remains unexplained as to why the party should be required to file written application for execution.

### **Oral execution-application**

Interestingly, Rule 11 of Or.XXI CPC provides for oral application, and not any written application for immediate execution of a decree for payment of money. Such oral application is permissible at the time of passing of the decree, where same is required to be executed by arrest of the judgment debtor, if the judgment debtor is available within the precincts of the Court.

In a suit for money, plaintiff wants money. In case of a suit for property, he wants the property. Plaintiff would not feel satisfied if he is given by the Court only a paper decree. He may feel more dissatisfied where he is asked to file application for execution of such a decree for money or property.

Aforesaid procedure of making of oral application for execution should be allowed to be followed by the Courts for execution of other decrees too. In other words, requirement of the decree-holder filing a written application for execution should be done away with.

In case of a decree for recovery of money, only on making of oral application, Court should be required to fix the date for payment of the requisite sum by the judgment debtor. Where the Judgment debtor fails to comply with the decree within the stipulated date, Court may proceed with the procedure for realization of the amount under the money decree. Such a step would be in the interest of justice and avoid filing of an application for execution.

### **Views expressed by Apex Court**

On the present requirement of filing of written application for execution of a decree, reference need to be made to the views expressed by Hon'ble Apex Court in *Shub Karan Bubna v. Sita Saran Bubna*.<sup>1</sup>

In the instant case in the year 1960, the first respondent and his mother filed a suit against the petitioner and two others, in the Court of the First Additional Judge, Muzaffarnagar for partition and separate possession of their one-third share in the plaint scheduled properties i.e. three non-agricultural plots and some movables and also for rendition of accounts.

The suit was contested. It was decreed on 25-2-1964. Court ordered a preliminary decree for partition in regard to the one-third share of the plaintiffs

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<sup>1</sup> (2009) 9 SCC 689

in the said plots and a final decree to be drawn up through appointment of a Commissioner for actual division of the plots by metes and bounds.

Feeling aggrieved, the petitioner and others filed appeal before High Court, but the appeal was dismissed on 29-3-1974.

On 15.1.1987 the first respondent filed an application for drawing up final decree. On the other hand, the petitioner filed an application on 15-4-1991 with prayer for dropping the final decree proceedings on the ground that same were barred by limitation. The application was dismissed by the trial court holding that once the rights/shares of the plaintiff had been finally determined by a preliminary decree, there was no limitation for an application for affecting the actual partition/division in accordance with the preliminary decree, as it should be considered to be an application made in a pending suit.

The said order was challenged by the petitioner by way of a revision petition. Revision petition came to be dismissed by the High Court.

It led to filing of special leave petition by the petitioner before Hon'ble Apex Court seeking leave to appeal against said decision of the High Court.

Before Hon'ble Supreme Court, following contentions were raised on behalf of the appellants:

- (i) when a preliminary decree is passed in a partition suit, a right accrues to the plaintiff to apply for a final decree for division of the suit property by metes and bounds;
- (ii) that whenever an application is made to enforce a right or seeking any relief, such application is governed by the law of limitation;
- (iii) that an application for drawing up a final decree would be governed by the residuary Sec. 137 of the Limitation Act, 1963 which provides a period of limitation of three years;
- (iv) that as such right to apply accrues on the date of the preliminary decree, any application filed beyond three years from the date of preliminary decree (i.e. 12-3-1964) or at all events beyond three years from the date when the High Court dismissed the defendant's appeal i.e. 29-3-1974 would be barred by limitation.

In support of this contention, reliance was placed by the petitioner on the decision of *Sital Parshad v. Kishori Lal*,<sup>2</sup> *Jowad Hussain v. Gendan Singh*,<sup>3</sup> and *Thakur Pandey v. Bundi Ojha*.<sup>4</sup>

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<sup>2</sup> AIR 1967 SC 1236.

<sup>3</sup> AIR 1926 PC 93

<sup>4</sup> AIR 1981 Pat.27

While dealing with the question, whether the provisions of the Limitation Act are inapplicable to an application for drawing up a final decree, under the caption, “A suggestion for debate and legislative action”, Hon’ble Court observed in the manner as:

“23. 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.”

Hon’ble Court further observed -

“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”.

### **Why a continuous process after the decree**

With the above observations, Hon’ble Court raised the commonsensical query : why not a continuous process?

Taking into consideration the ordeal which the decree holder faces during pendency of application for execution of decree, Hon'ble Court went on to observe:

“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.

Hon'ble Court suggested that 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.

It is noteworthy that in some of the states, this very procedure, as suggested by Hon'ble Apex Court, is already been adopted. In other words, after the passing of preliminary decree in a partition like suit, courts give date for appointment of Commissioner to find out if partition of the property by metes and bounds is or is not possible, and there is no need to file an application in this regard.

In view of the above observations, Hon'ble Court raised a clear query as to why is it necessary for the holder of the decree to remind the court and approach the court, at different stages?

### **On which the Focus should be**

It has been observed that generally in Trial Courts 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 securement of relief* for which the party approaches the court. So has been further observed by the Hon'ble Court.

#### **(a) Role of Trial Judges in execution proceedings**

As per observations made by Hon'ble Supreme Court, Trial Court Judges treat execution proceedings as ministerial functions. Many trial Judges tend to believe that adjudication of the right being the judicial function. The advice is they should concentrate on that part. In this way, it has been highlighted that adequate importance is not being given to the final decree proceedings.

#### **(b) Role of Lawyers in Execution Proceedings**

As regards the role played by lawyers, it has been expressed that even among lawyers, importance is given only to securing of a decree, not securing of relief. As observed, 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.

Taking notice of the fact that 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, Hon'ble Court has further observed that this is an area which contributes to considerable delay and consequential loss of credibility of the civil justice system.

Having regard to all this Court, advice has come that Courts and lawyers should give as much importance to final decree proceedings and executions, as they give to the main suits.

Undisputedly, success in a suit means nothing to a party unless he gets the requisite relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get quickly a decree, but to get quickly the relief as well.

Having regard to all this, Law Commission and Parliament must bestow their attention on this issue and make appropriate recommendations/amendments so that the suit becomes a continuous process from the stage of its initiation to the stage of securing actual relief.

## **Other Suggestions**

In *Shub Karan Bubna's case*,<sup>5</sup> some other significant observations have also been made by Hon'ble Supreme Court.

No separate proceedings for enforcement of decree : The present system has been observed to be one 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. As suggested, issuing of fresh notices to the defendants at each stage should also be avoided. The CPC should provide for a continuous and seamless process from the stage of filing of suit to the stage of getting relief.

In case of execution of money decree : As regards execution of money decrees, Hon'ble Court has clearly observed that in such suits, 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. Same process should be adopted in case of other suits requiring a single decree.

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<sup>5</sup> *Supra* n. 1

In Suits for partition and other declaratory suits : As regards claims in suits for partition and other suits involving declaration of the right and ascertainment/quantification of the relief, Hon'ble Court has felt that 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.

As noticed above, the Code does not contemplate filing an application for final decree. Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. Since it is the duty and function of the court, performance of such function does not require a reminder or nudge from the litigant.

## **Conclusion**

To cap it all, it is advisable that procedure of making of oral application for execution should be allowed to be followed by the Courts for execution of decrees, without requiring the decree-holder to file a written application for execution of the decree to reap the fruit quickly.