

**REPORTABLE****IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS. 281-282 OF 2015****KAPADAM SANGALAPPA AND OTHERS****... APPELLANT(S)****VERSUS****KAMATAM SANGALAPPA AND OTHERS****... RESPONDENT(S)****J U D G M E N T****PRASHANT KUMAR MISHRA, J.**

1. The present Appeals arise from a long-standing and deeply rooted dispute between two sections of Kuruba community in Anantapur District of Andhra Pradesh i.e., the Kapadam families of Gungulakunta village and the Kamatam families of Yerrayapalli village. The controversy, extending over several decades, centers upon the performance of religious rituals and the custody of idols and paraphernalia associated with the deity Lord Sangalappa Swamy, who is the common deity worshipped by both the sects.

2. The litigation traces back nearly a century. The first in the series of suits was O.S. No.486 of 1927 filed before the District Munsif Court, Anantapur by members of the Kamatam (respondents herein) sect of Yerrayapalli, seeking custody of *pooja* articles and religious paraphernalia

relating to Lord Sangalappa Swamy, which included items such as bronze horses, idols of Lord Sangalappa Swamy, and other articles of worship. Although these articles were of negligible material value, they carried immense sentimental and religious significance for the community.

3. On the other hand, the Kapadam (appellants herein) sect of Gungulakunta village resisted the claim. The suit, O.S. No. 486 of 1927, was dismissed, and an appeal, A.S. No. 114 of 1928 preferred before the District Judge, Anantapur, met with the same fate. While dismissing the appeal, the learned District Judge observed that a fresh suit could be filed in a representative capacity under Section 92 of the Code of Civil Procedure, 1908¹ for the proper management of the endowment, suggesting that such a proceeding would be appropriate to regulate the administration of the temple.

4. Acting upon those observations, the respondents family instituted O.S. No. 1 of 1931 before the Court of the District Judge, Anantapur, in a representative capacity. The matter was subsequently transferred to the Court of the Subordinate Judge, Anantapur, where it was renumbered as O.S. No. 15 of 1933. The said suit sought to establish the rights of the respective sects over the religious endowment, the performance of *pooja*, and the custody of the idols and paraphernalia.

5. During the pendency of O.S. No. 15 of 1933, parties arrived at a compromise, which was recorded by the Subordinate Judge, Anantapur.

¹ For short 'CPC'

Under Clause (1) of the compromise decree dated 01.11.1933, it was recorded that the appellants had been performing *pooja* to the deity till that date and meeting the associated expenses. It was agreed that the respondents would pay a sum of Rs. 2,000/- towards their half-share of the *pooja* expenses. If the respondents failed to pay, they will lose their right to perform *pooja*.

6. Under Clause (2), the compromise further provided that both the groups would appoint two trustees each to supervise the performance of *pooja* and other religious activities and to maintain accounts. The decree further stipulated that the idols of Lord Sangalappa Swamy should be installed alternately for six months each at Yerrayapalli and Gungulakunta village, and that the performance of *pooja* would rotate between the two sects every three months in sequence.

7. The 1933 compromise decree was expected to bring an end to the long-standing feud between the two villages. However, decades later, the dispute re-emerged. The appellants alleged that in 1999, the respondents refused to rotate the idols and paraphernalia as required by the terms of the 1933 decree. Consequently, the appellants family filed Execution Petition No. 59 of 2000 in O.S. No.15 of 1933 before the Court of the Principal Senior Civil Judge, Anantapur, seeking execution of the compromise decree dated 01.11.1933 passed in O.S. No. 15 of 1933.

8. The respondents, arrayed as judgment-debtors in Execution Petition No. 59 of 2000, filed a counter and subsequently sought to amend the same by filing E.A. No. 686 of 2001. Upon dismissal of that application, they

preferred C.R.P. No. 2777 of 2002 before the High Court of Andhra Pradesh. The High Court allowed that revision, permitting amendment of the counter and remitting the matter to the Executing Court with a specific direction to frame and decide a preliminary issue on the maintainability of the execution petition.

9. In compliance with those directions, the Executing Court framed a preliminary issue on the maintainability and, by order dated 14.10.2003, held that the execution petition was maintainable. Aggrieved thereby, the respondents preferred C.R.P. No. 6055 of 2003. The said revision was dismissed by the High Court on 12.04.2005, holding that the execution petition was maintainable under Section 9 of CPC and that Section 42 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, did not oust the jurisdiction of the Executing Court. However, the High Court left open the questions of limitation and *locus standi* of the decree-holders to execute the decree, directing the Executing Court to decide those issues.

10. Upon remand, the Executing Court on 13.09.2005 eventually allowed E.P. No. 59 of 2000 by directing the respondents to return the idols and *pooja* articles to the appellants within one month, failing which a warrant under Order XXI Rule 31 CPC was to be issued for seizure of the said items.

11. Aggrieved by the said execution order, the respondents filed Civil Revision Petition No. 5224 of 2005 before the High Court of Andhra Pradesh.

The High Court initially referred the matter to the *Lok Adalat*, Anantapur District Unit, for amicable settlement, but the attempt failed.

12. During adjudication, multiple issues were raised before the High Court, including **(i)** the maintainability of the revision under Section 115 of the CPC, **(ii)** whether the execution petition was barred by limitation, **(iii)** whether the appellants had *locus standi* to execute the decree, and **(iv)** whether the decree was executable on facts.

13. *Vide* judgment dated 06.01.2012, the High Court of Andhra Pradesh allowed the revision preferred by the respondents, holding that though the appellants had *locus standi* and the execution petition (E.P. No. 59 of 2000) was not barred by limitation, the execution petition could not be sustained on facts, as there was no proof presented by the appellants that the respondents had violated the terms of the compromise decree dated 01.11.1933. A review preferred against the judgment dated 06.01.2012 was also dismissed on 28.01.2013.

14. Being aggrieved, the appellants are now before us assailing the judgment(s) passed by the High Court which had set aside the execution of the compromise decree dated 01.11.1933.

SUBMISSION OF PARTIES

15. Shri Gaurav Agrawal, learned senior counsel for the appellants, argued that the High Court has erred in interfering with the finding of fact returned by the Executing Court.

16. Shri Gaurav Agrawal has submitted that the High Court was not correct in inferring that the appellants have failed to establish breach of the compromise decree dated 01.11.1933 on the part of respondents. He has vehemently argued that the deity items were sacred and it is impossible to believe that the respondents made replica of those idols and were worshipping the same.

17. Furthermore, Shri Gaurav Agrawal has pointed out that had the appellants themselves were in possession of the idols, there was no point for them filing an execution petition at the first place.

18. *Per contra*, Shri Gagan Gupta, learned senior counsel for the respondents, argued that even if the execution petition filed by the appellants is maintainable and within limitation, the execution petition in itself lacked factual foundation as there was no evidence to show that they were in possession of the idols or *pooja* articles described in the execution schedule, nor was there any proof that they had violated the terms of the compromise decree.

19. Shri Gagan Gupta further submitted that under the terms of the compromise decree, the appellants had been performing the *pooja* and were to continue doing so, while the respondents could claim participation only upon paying Rs. 2,000/- towards their share of the expenses. Since the respondents had not fulfilled that condition and there had been no exchange of idols between the parties since the date of compromise decree till present,

it was contended that there never existed any enforceable obligation upon the respondents.

20. Lastly, Shri Gagan Gupta argued that the compromise decree was never acted upon and over the time, both the parties have set up their own idols and neither of them have looked the other side to receive the idols for a period of six months in a year as was stated in the compromise decree. Therefore, according to the respondents, the High Court was right in setting aside the order of the Executing Court and ruling against the appellants.

ANALYSIS

21. We have heard the learned senior counsel for the parties and have carefully perused the material on record.

22. Considering that the respondents have not filed any appeal against the decision of the High Court holding the execution petition filed by the appellants as maintainable, the only short question that falls for our consideration is whether the compromise decree dated 01.11.1933 was capable of execution on the facts and whether the respondents had in fact violated its terms as alleged by the appellants.

23. At the outset, we must point out that the parties in E.P. No. 59 of 2000 before the Executing Court were not parties to the original suit of 1933. Before the Executing Court, the appellants had examined Kapadam Sangalappa (appellant no. 1 herein as PW-1) and the respondents had examined Kamatam Narayana (respondent no. 3 herein (now deceased) as

RW-1) to support their respective cases. The Executing Court had, however, accepted the version of the appellants and had ordered the delivery of idols from the respondents.

24. On scrutiny of the judgment passed by the Executing Court, we find that there was no convincing evidence before the Executing Court to establish that the respondents were in possession of the idols or had violated the compromise decree dated 01.11.1933. The Executing Court appears to have assumed that, since no quarrel was raised for several decades, the arrangement must have been in operation and that the respondents must, therefore, be in possession. Such inference, based merely on the absence of earlier dispute, is impermissible. Findings based on presumption cannot replace proof. A bare perusal of paragraphs 9 and 10 of the judgment passed by the Executing Court would show that the testimony of PW-1 and RW-1 were merely consisting of bare assertions, unsupported by any independent witnesses or documentary proof. Moreover, none of these witnesses were party to the original suit of 1933.

25. It is undisputed that the compromise decree between the parties was entered on 01.11.1933. A perusal of Clause (1) of the compromise decree would indicate that the appellants themselves were performing *pooja* and meeting the expenses in 1933. A presumption, therefore, follows that possession of the idols then was with the appellants. Learned senior counsel for the respondents has contended that the compromise decree was never acted upon and there has never been any exchange of idols between the

parties after the compromise decree came into force. To bolster his submission, he further points out that the condition of payment of Rs.2,000/- (towards *pooja* expenses) prescribed under Clause (1) of the decree has also not been proved to be followed by the respondents.

26. It is a trite law that in execution petition, the primary onus lies on the decree-holder to show that the judgment debtor has willfully disobeyed the conditions of the decree. However, to the contrary, in the present case, no evidence has been led by the appellants to show that possession of the idols ever passed to the respondents. PW-1 examined by the appellants has made no reference of Rs.2,000/- being paid by the respondents to appellants for continuous operation of the compromise decree. It is significant to notice that PW-1, in his cross-examination, admits that there were no accounts with regard to the income of the temple and, likewise, there was no sharing of income derived from time to time. He also admits that they got prepared the horse face, silver *padigalu*, silver umbrella to the deity with the income available and they used to spend the income for the repair of the ornaments of the deity and, in the past 60 years, they have purchased two or three silver *padigalu*, four or five silver umbrellas to the deity. Although, this witness says that these ornaments purchased after the compromise are now available with the respondents/judgment-debtors. However, in the further cross-examination, he again admits that due to wear and tear of the articles, they used to get them repaired and prepared afresh from time to time besides purchase of new ones and, therefore, he cannot say which of the articles were

in existence, out of the above, on the date of compromise. He could not mention the details of the articles that were prepared subsequent to the compromise, although, from his own admission, he was the *pujari* of the temple. Thus, the case of the respondents/judgment-debtors that the compromise was never acted upon and the articles always remained with the appellants/decreed-holders upon failure of the respondents to pay Rs.2,000/- to the appellants, appears highly probable. The non-payment of Rs.2,000/- by the respondents/judgment debtors is clearly proved from the admission of PW-1 where he admits that he is not aware of the payment of Rs.2,000/- to his ancestors, if any.

27. Pertinent is also the fact that there has been no evidence of compliance of Clause (2) of the compromise decree, which required appointment of two trustees from each sect to supervise and manage rituals and maintain accounts. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him and no one else. We find that no material has been produced by the appellants to show that any trustees were ever appointed or that accounts were maintained. The High Court was right in observing that had the scheme of appointment of trustees been implemented, such a dispute between the parties might not have arisen.

28. In this regard, having reviewed the entire material on record, we are of the view that the appellants had failed to establish violation of the compromise decree by the respondents. The burden of proving violation of the decree rests squarely on the decree-holders. In the absence of cogent proof of such

violation, the execution cannot be sustained. The burden of proof, which lay upon the appellants, had not been discharged. The Executing Court fell into an error in allowing the execution of the compromise decree dated 01.11.1933 on mere presumption without any proof and the High Court rightly set aside the Executing Court's order.

29. Consequently, we find absolutely no reason to interfere with the impugned judgments passed by the High Court. Accordingly, the Appeals are dismissed.

.....J.
(PRASHANT KUMAR MISHRA)

.....J.
(VIPUL M. PANCHOLI)

**NEW DELHI;
NOVEMBER 11, 2025.**