



SCOPE OF SECTION 47 OF CODE OF CIVIL PROCEDURE

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INTRODUCTION

Execution, the most crucial part of a case, for the party to the case in whose favor decree is passed i.e. the decree holder. Any decree passed comes to court for its execution and only the court having competent jurisdiction can execute a decree. There are many provisions which deal with execution of a decree under the Code of Civil Procedure as it is considered the most essential part of any case and all the provisions in itself are very defining and very much practically important for any person in court of law. Whenever a decree is passed by the court, it is not necessary that the court executing such decree would be same and that is why there is necessity to draw a line between the court executing a decree and one deciding it. The executing court cannot make changes in a decree according to its whims but only when the law provides for it and there is need of it. There are certain restrictions on the court executing the decree but some powers also which the Code of Civil Procedure provides in its provisions, this covers the authority to decide the questions which arise between the parties to the suit in which a decree has been passed but some questions still arise at time of execution. The court executing such decree has power to decide such questions and there is no need to file a separate suit between the same parties relating to the decree that has been passed. Section 47 of the Code of Civil Procedure deals with this and provide that the executing court has this power so as to reduce the burden on the court

and also to save time of the court considering the amount of civil suits that are filed in India every year are great in number and the disposal of cases is not at an appreciable rate. There is always high chances of question arising between the parties at any stage of case as both the parties want to win the case and for that tries to put in effort to bend the case in their favor by bringing in different statements or scenarios, even when the judgment is delivered and decree has been passed the parties may raise questions and such cannot be ignored by the court as it would only increase the burden on the court because the parties may file a new suit if their questions are remain unanswered and that is why there are number of provisions dealing with this. One of such provision is section 47 of the Code of Civil Procedure which stands as a very important and crucial in execution chapter of the Code.

There have been cases filed in the court of law where the scope of section 47 has been determined by the courts but some differ from each other. The main intention of this paper is bring out the scope of section 47 of the Code which has been stated in various cases and throw some light on whether the initial precedents used for determining the scope of this section were fair enough for deciding the civil matters in court of law.

WHAT IS SECTION 47 OF CODE OF CIVIL PROCEDURE?

Section 47 of CODE OF CIVIL PROCEDURE embodies right in the executing court to decide all the questions that arise between parties to the suit or their legal representatives with respect to the decree that was passed in their case or execution or discharge or to satisfy such decree, therefore there arises no need for



filing a separate suit. Whenever an issue regarding determination of a representative party to a suit is to be considered, it shall be left upon the court to decide as per section 47(3) of CODE OF CIVIL PROCEDURE. According to first explanation that is provided under section 47, a suit which is dismissed, both the parties plaintiff as well defendant will be considered parties to the suit and the second explanation provides that a person who buys the property in result of execution of a decree shall be considered the party to the suit in which such decree was passed and all the queries with respect to passing of the possession or ownership to buyer will be dealt by the executing court, as such queries will be considered the same as concerning to execution of decree.¹ A suit separately is not allowed since exclusive or special jurisdiction is provided to Executing court by the CODE OF CIVIL PROCEDURE regarding the questions pertaining to execution of decree and any other queries so arising between the parties or their representative. The section 47 of the Code should be understood and interpreted liberally so as to give authority to executing court to decide the all the matters while execution, whatsoever arises, until and unless the matter undoubtedly falls outside the jurisdiction of the court executing the decree and it is immaterial whether queries arise before or after the execution of decree. There is assumption of existence of a decree in this section and any dispute or issue between a stranger and a party to the suit stands out of the scope of section 47 of CODE OF CIVIL PROCEDURE. The object of including this section in the CODE OF CIVIL PROCEDURE is to provide economical,

speedy and efficient trial to the parties as if there is separate suit filed for every query that arises, it would be very prolonged and lengthy process to determine a dispute. If the person in whose favor decree has been passed adds up some property which was not part of the decree, there lies right with judgment debtor to proceed to court with an application for claiming removal of such property of being sold in execution of the decree and he cannot file a separate suit for claiming the property.² The validity of a decree cannot be questioned under section 47 of the CODE OF CIVIL PROCEDURE since this question does not pertain to execution of a decree, hence a separate suit needs to be filed for the same. If any person claims interest in person in whose favor decree is passed shall be determined by the executing court. The disputes which could have been raised at the time of deciding the judgment but were not raised and the questions that are already decided by the court passing the decree will not be entertained by the executing court. Section 47 does not apply to decrees which are null in nature which means if decree is passed by a court which had no jurisdiction to pass or a decree which is given against a dead person or if the decree cannot be executed due non happening of some circumstances. These questions even if are decided before the passing of the decree can be raised in the executing court as well in order to carve out the validity of the decree. If there is some query or fact to be determined which will lead to change in the decree, such question cannot be taken up by the executing court, but if decree cannot be executed before deciding such question the executing court

¹ Section 47 of Code of Civil Procedure

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EXECUTIONS.PDF,
<http://cja.gov.in/data/Executions.pdf> (last visited Mar 4, 2020)



has the authority to decide the same because otherwise the decree would stand as nullity.³

HISTORY

The scope of section 47 of the CODE OF CIVIL PROCEDURE has been discussed in many cases and various views have been given by different High Courts. Some views are discussed below in various case laws.

The executing court has no right to go beyond the decree or to deal with any question on correctness or legality of a decree.

“Objections under section 47 of the CODE OF

CIVIL PROCEDURE are applications and are governed by Article 173 of the Limitation Act.”⁴

The Supreme Court of India decided in 1951 that executing court should give effect to expression of the decree that is passed and cannot go over what is passed, also it can interpret the decree but it cannot make and present new decree to the parties.⁵

In 1954, it was decided by the Supreme Court that it is a well-established principle that a decree which is passed without jurisdiction is null and the invalidity of a decree can be questioned at any stage whenever the decree is used, even at the time of execution. The defect can be defect in jurisdiction, pecuniary or territorial, can be related to subject-matter and any court which passes a decree with any of the defect, the defect cannot be removed or ignored even with the consent of the parties to the suit.⁶

The Supreme Court had observed in *Jugalkishore Saraf v. M/s Raw Cotton Co. Ltd.*⁷, that questions pertaining to complications in law or factual complications can be dealt in execution proceedings as section 47 gives right to executing court to decide any question in relation to execution of a decree and sub-section 2 of section 47 gives a right to treat execution proceedings as a suit thus removing the necessity for filing a separate suit.

The Patna High Court in 1956 decided that when validity of the decree passed was in question and the decree was against the appellant and he did not appeal against it. The defendants however appealed the decree and it was turned against them. The court of appeal had the option to nullify the decree but if it did not do so, the executing court does not have right under section 47 or either ways to hold the decree as void, if the court which passed the decree had the jurisdiction to pass it. The executing court can only not execute the decree and object its validity if the decree was passed by court without jurisdiction, this is “within narrow limits”. It is duty of the executing to court to conclude that whether a decree is executable or not, whether it is existent and operational or not, whether is null meaning thereby “a mere nothing”, and if decision is negative the court may not execute it. But these questions can only be determined if there are issues regarding the jurisdiction of the court which passed the decree or the court was not competent to pass that decree. The executing court has no right

³ TITLE NO.217(AS PER WORKSHOP LIST TITLE NO217 PDF).PDF, [http://mja.gov.in/Site/Upload/GR/Title%20NO.217\(As%20Per%20Workshop%20List%20title%20no217%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.217(As%20Per%20Workshop%20List%20title%20no217%20pdf).pdf) (last visited Mar 4, 2020)

⁴ Kalipada Sarkar v. Hari Mohan Dalai ((1931) I.L.R 9 Rang. 480)

⁵ V. Ramaswami Ayyangar And Others vs T.N.V. Kailasa Thevar (AIR 1951 SC 189)

⁶ Kiran Singh vs. Chaman Paswan (AIR 1954 SC 340)

⁷ 1955 AIR (SC) 376



to make orders for investigating the jurisdiction of the court which passed the decree. The executing court generally is tied up to deal with the matters pertaining to legality or validity of the decree. The court must execute the decree as it says and should not make any changes to it. The decree is binding to parties unless it set aside in appeal or revision. The executing court has no right to act as an appellate court and decide the validity of a decree.⁸

A decree is null and void if passed without jurisdiction and its correctness can be contested whenever and wherever needed it to be put in force and depended upon, this could be even at the stage of executing it.⁹ An example was given in the case of Chintami Saran Nath vs. Zahiruddin¹⁰ that, suppose sale of a particular land is not allowed by law and decree is passed for sale of such land, then it would be a null decree and the executing court can deny to execute it.

In 1961, the apex court decided whether in the case where a decree was executed in ejection case, the decree holder had got the possession and decree was satisfied and the judgment debtor later applied for getting back the land contending that the delivery was illegal, this should be allowed to be dealt under section 47 or not? The court held that this question was with respect to execution, discharge and satisfaction of the decree and should be dealt under section 47 of the CODE OF CIVIL PROCEDURE.¹¹

The apex court referred to Privy Council's decision in Ganapathy v. Krishnamachariar (AIR 1917 PC 121) and observed that section 47 should be read and understood liberally in case of an 'auction purchaser'. The auction purchaser should be considered party to the suit unless the possession of the property which is purchased is delivered to him.¹²

In Shaukat Hussain @ Ali Akram and ors. v. Smt. Bhuneshwari Devi by (dead) legal representatives¹³, an expensive property was sold for price less than its worth for completing off the remaining amount which was very less in an execution of decree. It was contended to set aside the sale of that property under section 47 of the CODE OF CIVIL PROCEDURE and court accepted the plea. The respondents contended if sale was with fraud or some irregularity, then only it can be set aside, but such was neither contested by the judgment debtors nor any evidences were present to prove it. The only issue raised was that the sale was void and illegal on the ground that it had been during an existing stay. The High Court opined that the stay if any provided was put to an end, also the stay order was void as it was given by Munsif Gaya which was not competent to do so. Thus, the sale was held as a valid sale which was done after attachment of property. The executing court can look into the decree and clarify it if it is needed and interpret it in order to implement it effectively.¹⁴

⁸ Kuldip Thakur vs. Sheomangal Prasad Thakur and another (AIR 1957 Pat 4)

⁹ Karansing Vs Chaman Pawan ((1955) 1 SCR 117)

¹⁰ AIR 1956 Pat 57

¹¹ Patankar vs. Sastri (AIR 1961 SC 272)

¹² Harnandrai Badridas v. Debidutt Bhagwati Prasad ((1973) 2 SCC 467)

¹³ 1973 AIR (SC) 528

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Bhavan Vaja V. Solanki
Hanjuji Khodaji Mansang (AIR 1972 SC 1371)



The executing has no right to accept any objection which is raised to deem the decree wrong in law or by fact.¹⁵

IMPORTANT PRECEDENTS

The Supreme Court has given the best rule to determine whether there is an irregularity in the decree or it is null and it can be decided by deciphering that whether the objection that have been raised can be waived off by the parties, if yes then there is only irregularity but if no then decree is null and void.¹⁶

The Supreme Court held that the executing does not have right to question the validity of a decree but if it questioned on its jurisdiction by the parties that the court which passed it did not have the jurisdiction. This does not mean that the executing court is going beyond the decree because if decree is null there is no existence of the decree and hence executing court is not wrong doing this. The executing court can deal irregularity in jurisdiction and it can be either pecuniary or territorial or related to subject matter. If there is no objection prima facie raised on jurisdiction of the court which passed the decree, but there are some other issues which were decided before passing the decree or could have been raised but were not, this will not give any authority to the executing court to decide the validity of the decree on basis of jurisdiction even if it was passed without jurisdiction.¹⁷

The identification of a property that has to be delivered in execution of a decree is very essential and be dealt under section 47 of the CODE OF CIVIL PROCEDURE.¹⁸

The phrase “holder of a decree for possession” means that the holder of the decree must be in hold of a valid decree and not a null or void decree.¹⁹

In *Dhurandhar Prasad Singh v. Jai Prakash University*²⁰, the court had held that the power under section 47 of the CODE OF CIVIL PROCEDURE given to the executing court if a trial and special compared to appellate and revision court. It is duty of the first appellate court to go into the factual questions.

In the case of *Amaresan v. S. Nagappan* (2010), the respondent challenged the validity of the decree on the ground of that it was an ex-parte decree and not a valid one. The court decided the scope of section 47 allows the questioning the validity if a decree on the ground incompetent jurisdiction and nothing else, thus the application under section 47 cannot be raised here.²¹

It is mandatory for the executing court to decide upon the matter if the party in whose favor decree was passed complains regarding non-compliance of decree. The questions

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Vasudev Dhanjibhai Modi Vs. Raja bhai Abdul Rehman (AIR 1970 SC 1475)

¹⁶ Dhivendra Nath Govai Vs. Sudhir Chandra Gosh (AIR 1964 SC 1300)

¹⁷ Kiran Singh Vs Chaman Paswan (1995 (1) SCR 117)

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Madhukar Timbak Gore vs Vasant Ramkrishna Kolhatkar (AIR 1983 Bom 277)

¹⁹ Mani Nariman Daruwala v. Phiroz N. Bhatena (1990 SCC OnLine Bom 275)

²⁰ (2001) 6 SCC 534

²¹ AMARESAN V. S.NAGAPPAN | MADRAS HIGH COURT | JUDGMENT | LAW | CASEMINE, <https://www.casemine.com/judgement/in/56090465e4b014971115e03d> (last visited Mar 6, 2020)



which are to be determined must be of nature as if they would arise in a proceeding between the parties on that complaint and should be relevant to the complaint.²²

Obstruction in execution of a decree by any person claiming through the person in whose favor decree was passed cannot be entertained by the executing court, but if there is an independent right with that person and any objection is raised by him and it is to be considered by the executing court if accepted, the decree cannot be executed against him.²³

In the case of *Rajesh Thakar vs. Suman Chaudhary* (2016), the judgment-debtor asked for the possession of the land which was the subject matter of the suit already been decided between the decree holder and him. The court held that an issue which already been adjudicated upon should not be again raised in the execution proceedings nor an issue which is deemed to be decided by the court which passed decree should be raised in an execution proceedings.²⁴

The powers provided under section 47 of the CODE OF CIVIL PROCEDURE is very narrow and microscopic, and thus the validity of a decree cannot be questioned on any other ground than jurisdiction of the court which passed the decree except when the decree is passed against any provision of law which was in force when it was passed or after the decree was passed but before it was executed some law proclaimed, which makes decree

against such law, thus making the decree void.²⁵

The Bombay High in 2009 held that section 47 of the CODE OF CIVIL PROCEDURE allows for limited and not much wide jurisdiction. The section gives right to raise objections to the parties, but it does not mean that the case wholly should be dealt again as if it is re-opened, this is not the intention of the legislature for including this section. The objection raised must fall within the purview and scope of section 47 which is quite limited and constricted. The executing court does not have right to act an appellant or review court and should stuck onto decree as it is.²⁶

CONCLUSION

Section 47 of the Civil Procedure Code deals with the questions that arise between the parties at the time of execution of the decree that had been passed in their suit. The views regarding scope of section 47 of the Civil Procedure Code have been variant from the one High Court to another but still most of them point the scope as special but very narrow in nature specially after The Code Of Civil Procedure (Amendment) Act, 1976 was passed. This Act removed the sub-clause 2 of section 47. The scope of section 47 however had been given a view pertaining to the facts and circumstances of each case, which is very much highlighted in most of the cases. There are many points which are common in all the cases like, the nullity if a decree can be questioned only if it was passed without jurisdiction and on any other point and it should only be done if there is an issue raised

²² *Silverline Forum Pvt. Ltd. v. Rajeev* (1998) (3) SCC 723)

²³ *Chavdas Totaram Bhortakke v. Papilabai* (1998 SCC OnLine Bom 225)

²⁴ RAJESH TAKHAR V. SMT SUMAN CHAUDHARY | RAJASTHAN HIGH COURT | JUDGMENT | LAW |

CASEMINE,
<https://www.casemine.com/judgement/in/572b9574e561094e5966e171> (last visited Mar 6, 2020)

²⁵ *Kamarunnissa and others v. A.M. Nagamian Chettiar and others* (2012)

²⁶ See Supranote 2



by the parties to the suit; the executing court should not act as an appellate or revision court; the executing court can interpret the decree for the better execution and understanding of the parties if there is any confusion: only the issues which are raised by the parties should be dealt by the execution court; the identification of property if any is very essential etc. The important points rely upon the discharge and satisfaction of the decree, the issues relating to this are important and can be dealt under section 47 of the Code by the executing court. The only object of this section is provide quick and speedy trial and to avoid the lengthy procedures and to make it effective for parties to put their issues in front of the court. The power to executing court is very essential, it should make proper use of it and should deny the issues until and unless they are completely out of the jurisdiction of the court executing the decree. Overall, section 47 of the Civil Procedure Code is a powerful section giving powers to the executing court.

