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Execution of decree against legal representatives

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Abstract---A common occurrence in litigation is the death of one of the parties while the case is still ongoing. The right to be heard by all parties is one of the principles of natural justice (audi alterum partem). However, if one of the parties dies, the Court will be unable to issue a judgement since a dead man cannot be ordered or decreed against. As a result, although the proceedings will not be halted, the Court will be unable to take any enforcement action until the legal representation has been registered in the record. This is addressed under Sections 50 and 52 of the Code of Civil Procedure, 1908. These provisions may be used by the decree holder to not only carry out the decree, but also to collect money from the decedent's estate. However, the extent of these two sections is still a matter of debate. By reference to numerous court opinions, this article aims to distinguish between Sections 50 and 52 and examine the conditions in which they apply.

Keywords---execution, decree, deceased, legal representative, section 50.

Introduction

'Legal Representative' refers to a person who, by law, represents a dead person's estate, and includes anybody who interferes with the deceased's estate, as well as the person to whom the estate will pass upon death. or the defendant as a

representation of the defendant. (*Dinamoni Chaudhurani v. Elahadut Khan*, 1904). The term "legal representative" is defined as "a person who at law represents the estate of a deceased person and includes any person who interferes in the estate of a deceased person, and when a party sues or is sued in a representative capacity, the person to whom the inheritance corresponds at the death of the suing or suing party" in Section 2 (11) (Mulla, Prasad, & Mohan, 2015) The holder of the decree may have the decree enforced against the legal representatives of the Judgment debtor who dies after the decree is approved, according to Section 50 of the Code of Civil Procedure. (Sharma, 2014)

When a decree is made against the legal representatives of a dead person in order to collect money from the deceased's assets, it may be done via the seizure and sale of such assets, according to Section 52. Allows a decree holder to enforce his decree against the Judgment debtor's legal representatives, with the legal representative's enforcement obligation limited to the amount of the decedent's property retained by him. (Mulla, Prasad, & Mohan, 2015). The main difference is that "the decree in this section is against the party, and legal counsel is engaged throughout the execution procedure, while the decree in this section is against the debtor's legal agent" (*D. Krishna Sachi v. Y. Vijay Lakshamma*, 1986). The legal representatives of the debtor of the dead Judgment must be called if one of the parties dies during the course of the action. At your workplace, the authors sought to study Sections 50 and 52 of the C.P.C. (Mulla, Prasad, & Mohan, 2015). After then, the document is submitted to the C.P.C.'s provisions on the execution of a decree against a legal representative. The idea of representation and the notion of legal representative are next addressed in detail in sections 50 and 52. Additionally, an attempt has been made to differentiate between these clauses. Finally, recent judgments of the Supreme Court and the High Court have been mentioned.

What is a decree?

An "Order" is a formal judgment made by the court that "defines the rights of the parties to the action on all matters and the legal repercussions of the facts uncovered, according to Section 2(2) of the Code of Civil Procedure of 1908". Depending on the stages that must be completed before reaching a determination and dismissing the claim, the sentence might be preliminary or final. (Mulla, Prasad, & Mohan, 2015). As a consequence, Sections 2(3) and 2(10) of the Code of Civil Procedure of 1908 define "Decree Holder" as any person in whose favor an enforceable decree or order has been issued, and "Debtor of the Judgment" as any person against whom an enforceable decree or order has been issued, respectively. (Mulla, Prasad, & Mohan, 2015).

Who are the legal representatives?

A "Legal Representative" is defined as "any person who lawfully represents the estate of a deceased person, and includes any person who interferes with the estate of the deceased, and where a party sues or is sued in the capacity of representative, the person in whom the inheritance falls on the death of the suing or suing party," according to Section 2(11) of the Code of Civil Procedure of 1908. A person who has the legal power to represent, supervise, and exercise the rights

of a dead person. For example, a son who inherits his father's inheritance and serves as the estate's administrator or executor. (Mulla, Prasad, & Mohan, 2015).

Meaning legal representative

Section 50(2) of the Code of Civil Procedure permits a decree holder to execute his decree against the Judgment debtor's legal representatives, with enforcement responsibility limited to the amount of the decedent's property in possession of the judgment. representative in law This is likewise the situation under Section 128 of the Property Transfer Act. (Dayanandan v. Venugopal Naidu, 1963) As a result, it is commonly accepted that "the legal representatives of a judicial debtor are accountable for their predecessors' liabilities up to the amount of the bequest obtained from their predecessors".

Section 2 (11) of the Code defines "legal representative" as "a person who at law represents the estate of a dead person," which includes "any person who interferes with the estate of a deceased person" and "the person to whom the inheritance passes on the death of the party who sues or sues." No execution may be carried out against a dead Judgment debtor unless their legal representatives are listed in the minutes. Legal representatives are solely liable for assets or property acquired after the judicial debtor's death. A judgment debtor policy holder's representative is his legal agent, and the creditor decree holder may collect his dues from money deposited in the representative's hands. A stranger who does not claim the property but is in possession of a dead debtor's property might be sued as a legal representative, according to the provision in the enforcement procedures. (Sharma, 2014)

Doctrine of representation

In the cases of (Dayaram v. Shyam Sundari, 1964) and (N.K. Mohammad Sulaiman v. N. C. Mohammad Ismail, 1965) the Supreme Court held that "a decree in a lawsuit in which one of the parties dies and not all of their legal representatives are cited in the file, or the wrong legal representative is cited in the file, is binding on the person who does not appear in the file, if the wrong legal representative was entered in the registry pursuant to the wrong legal After a good faith inquiry, if some but not all of a dead Defendant's heirs are included in the record, the Court's finding binds those who are not included in the record, as well as those who are so-called in the absence of fraud or collusion".

Execution of decree

Although the phrase "execution" is not defined in the law, it refers to carrying out, enforcing, or giving effect to a court's decision or sentence. It allows the holder of the decree to act and collect assets in accordance with the mandate of the court decree against the judgment debtor. Sections 36 to 74 of the Civil Procedure Code of 1908 and Order 21 of the procedural legislation deal with the implementation of decrees and orders. When dealing with the sections of this law, the Supreme Court said that "regarding the issue of the execution of a decree, the Code of Civil Procedure provides for broad and complete procedures to deal with it in all its aspects." The numerous regulations of Chapter XXI of the Code contemplate

various scenarios, offering efficient remedies not only to debtors of judgments and decrees, but also to claimant objectors, as the case may be.

Section 50

Section 50 authorizes the decree holder to execute the decree against the judgment debtor's legal representatives if the judgment debtor dies after the decree is issued. The Enforcement Court must be notified of the request. The legal representatives of a dead decree holder are not mentioned in the section, however if the decree holder dies after the decree is issued, his legal representatives may be regarded decree holders or assigns. (*Ram Murti Devi v. Ralla Ram Tulsi Ram*, 1985). The question of whether the holder of a decree may continue with the enforcement proceeding notwithstanding the death of the judgment debtor without consulting the dead judgment debtor's legal representatives is a fascinating one. According to one of the fundamental principles of law, justice must be given once all parties to a dispute have been heard. As a logical result, since a dead person cannot be heard, there can be no Order or decision against them. The natural result is that, although the process will not be stymied, the Court will be unable to carry out any executions until the legal submissions have been entered in the records (*Raj Lakshmi Dasi v. Banamali Sen*, 1952). As a consequence, the words "may apply" bear the sense of "must apply" in the section. (*Mubarak Begam v. Sushil Kumar*, 1956).

In Section 50, the wording "completely fulfilled" and "fully executed" were substituted with "fully executed" to contradict an Allahabad High Court finding that "once a property was taken, the order was fully executed. In that old perspective, there was a particular rationale for believing that if a judgment debtor died after garnishment, he was not compelled to list his heirs in the foreclosure case file. That single objective has been removed from the section." (*Tarangini Debi v. Raj Krishna Mondal*, 1927). The decree issued against a person who died before the case was filed or during the litigation process without his legal heirs being substituted, as described in Rule 6, Order XXII, is null and void. (*Elissa v. A. Doss*, 1991) A decision made against a dead person is null and invalid, but a decree issued in his or her favor is not null and void.

Section 52

It is commonly accepted that legal representatives of judgment debtors are accountable for their predecessors' liabilities to the amount of the inheritance obtained from their predecessors. (*Analysis of the enforcement of the decree against legal representatives*, 2020). Section 52 (1) permits a creditor to have his decree enforced against the deceased's property while it is in the custody of the legal representative. For this section to apply, a judgment must have been made against the dead person's legal representative, and it must be for the payment of money from the deceased person's assets. Section 52(2) empowers a creditor to personally pursue a judgment against a legal representative who fails to account for goods taken from a dead person. When a decree is made against a party acting as the "legal representative" of a dead person and the order demands payment from the deceased person's assets, the decree may be carried out by seizing and selling those assets. (*Mulla, Prasad, & Mohan*, 2015)

In certain ways, this clause is similar to Section 50. The main difference is that the decree in this section is against the party, and legal counsel is engaged throughout the execution procedure, while the decree in this section is against the debtor's legal agent. The legal representatives of the debtor of the dead Judgment must be called if one of the parties dies during the course of the action. Noncompliance is not fatal to the process as long as there is representation. The principle of representation is founded on the estate's effective representation and the honest belief that it is represented, with no fraud or collusion. It also applies in cases when one of the litigants dies and the inheritance is adequately represented by the others, and a decision is issued without the legal representative of the dead being noted in the records.

A decree imposed against the legal representatives of a dead person for the recovery of money from the deceased's belongings may be implemented by seizing and selling such things, according to Section 52(1) of the Code of Civil Procedure. Unless it is demonstrated that none of the legal representatives possessed any additional assets of the dead, the holder of the decree may not move personally against any of them. Before moving against the dead debtor's legal representatives, the decree holder must first ascertain which of the deceased debtor's legal representatives is retaining the deceased debtor's property intact. As a result, the person who has disposed of all of the deceased's belongings would be the last person to face charges. (Enforcement of the Decree against Deceased, 2021)

Distinction between sections 50 and 52

Section 50 authorizes the implementation of a decree against a party if the party dies before the decree is completely implemented and the decree is demanded against the legal representative. Section 52, on the other hand, pertains to the circumstance in which a decree is issued against a dead person's legal representative. In this case, the legal counsel is the sentence debtor. (Sharma, 2014). Sections 50 and 52 apply in two situations. Section 52 applies when a defendant dies while the case is underway, his legal representatives are documented, and a decree is made against him. The decree is issued against the original debtor, and execution is sought against his legal representatives. according to Section 50 As a consequence, under Section 50, the holder of the decree has the duty of establishing that the property in issue has transferred to the genuine heirs. The legal representative, on the other hand, has the burden of establishing that he did not gain the decedent's property in violation of Section 52.

Recent judicial pronouncements

The Court held in the case of (BS Ashok S/o Late B. Subbarama Setty v. The Investment Trust of India Ltd , 2009)that “the Claimant is only a legal representative, and that the claim against the legal representative is limited to the deceased's property that has not been properly disposed of, against which a claim can be enforced. Decree”. It was determined in (Smt. Shivamma v. Arogyamma , 2011)that “if a decree is made against a party as the legal representative of a dead person, and the order is for the payment of money from the deceased person's

property, the decree may be implemented by seizure and sale of any such property". The Hon'ble High Court concluded in the case of (Someswara Swamy Vari Devasthanam v. Dasam Suryanarayana, 2003) that "a decree issued against the personal property of legal representatives in violation of Section 52 C.P.C. is null and void, and hence inapplicable".

With the exception of Section 146, the Court said in the case of (Cooperative Society v. Kartiyayani Unni, 2011) that "although Sections 50 and 52 of the CPC specify the course of action to be pursued if the debtor dies, there is no other specific provision dealing with the matter. Even after the legal representatives of the decree holder have been called, the court of execution may determine on whether the decree should be executed or not. The fact that the holder of the decree died before settling the matter brought by the judicial debtors cannot be utilized to bring charges against the holder's legal representatives". There is no abatement of the request for execution if the holder of the decree dies and his legal representatives do not appear in the registry, or if the judgment debtor dies and his legal representatives do not appear in the registry, according to the Supreme Court in the landmark case of (V. Uthirapathi v. Ashrab Ali, 1997) that "If the decrease is not granted, the enforcement petition will remain pending on the Enforcement Court's record in the eyes of the law." (Executions, 2021).

Conclusion

A person's actions die with him and a dead person cannot be heard, it is difficult for a court to impose an order or decree against a deceased person, which also disadvantages the decree holder. As a result, a holder of a decree cannot sue the deceased party; however, where there is a right, there is a remedy, and there are remedies available to the holder of a decree, which are defined in Sections 50 and 52 of the Code of Civil Procedure of 1908, and allow the holder of the decree to carry out their rights and recover money from the deceased person's assets. The legal representative of the dead is accountable, according to the court, since he or she is the next person and heir to the deceased person's estate, with the 'Rule of Law' having priority in his or her decision. (Dixit, 2006)

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