



COMPOSITE DECREE AND GUARANTEE

Nadia Khan*

ABSTRACT

A composite decree is a judgment that deals with several issues of parties all at once, which can sometimes make it difficult to figure out how it should be enforced or appealed. Most of the time, in a contract of guarantee, a person promises to take responsibility for the other person, and more importantly, the person fails to meet their legal or financial obligations. Thereafter, these two often come up together in cases involving loans, contracts or debt recovery against each other. This type of decree often arises in cases where several claims or disputes are interconnected. The importance of such a decree is that a mistake in handling it can delay justice or complicate legal rights for the parties involved in the case. This paper will take a closer look at the legal concepts of the Composite Decree and Guarantee and how they play out in a real legal dispute. The goal of the paper is to establish and simplify the need and usage of composite decrees in legal disputes.

Keywords: Composite Decree, Principle Debtor and Surety, Code of Civil Procedure (CPC) 1908, Indian Contract Act.

INTRODUCTION

A decree is a formal and authoritative decision issued by a court in civil matters. It is defined under Section 2(2) of the Code of Civil Procedure (CPC), 1908. It represents the adjudication of the court, where it determines the rights of the parties that are concerned in the matter relating to the controversy. A decree stands out differently from an order or a judgment, as it specifically relies on the resolution of the dispute with finality and being enforceable. Section 2(2) of the Code of Civil Procedure (CPC), 1908, states that- Decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties about all or any of the matters in controversy in the suit

*BA LLB, SECOND YEAR, UNIVERSITY OF LUCKNOW, LUCKNOW.

and may be either preliminary or final.¹ A decree is classified into two types: a preliminary decree and a final decree. A preliminary decree is when further proceedings are required to fully resolve the suit, and a final decree is when the suit is completely disposed of, and there are no further steps to be taken. There is no explicit mention of a composite decree in the CPC, but the concept is judicially recognised. The basic feature of a composite decree is that it covers more than one suit and has a common judgment, and if someone wants to appeal, they must appeal against the entire composite, not just a part of it.

RELEVANCE OF A COMPOSITE DECREE

A Composite Decree gives importance to the claims to be dealt with in the same suit, often done when both parties try to sue each other for the same reason and factor. Such a scenario turns into the development of the principle of res judicata when there are two suits. The Supreme Court of India held in *Narhari v. Shankar and others*, as there was only one suit and the appeals had been disposed of by the same judgment, it was not necessary to file two separate appeals and the fact that one of the appeals was time-barred did not affect the maintainability of the other appeal and the question of res judicata did not arise in the case.² Also, a composite decree is used in the repayment of debt. When a decree is passed in a contract of guarantee, against a principal debtor and the surety (guarantor), it is also called a composite decree.

LEGAL FRAMEWORK

Composite Decree- is a combination of two or more suits that result in the same order or judgment by the authoritative court. As discussed earlier, it is issued by the court in a contract of guarantee whenever there is repayment of loan debt, mostly in cases of bank guarantees. Therefore, bank guarantee comes under the Section 126 of the Indian Contract Act, defined in *Interior's India v. Balmer Lawrie*, the court defined that a bank guarantee is the common mode of securing payment of money in commercial dealings as the beneficiary, under the guarantee, is entitled to realize the whole amount under that guarantee in terms thereof irrespective of any pending dispute between the person on whose behalf the guarantee was given and the beneficiary.³

¹ Section 2 Code of Civil Procedure, 1908

² AIR 1953 SUPREME COURT 419

³ AIR 2007 Del 16

TYPES OF COMPOSITE DECREE

Partly Preliminary and Partly Final Decree- this type of composite decree is commonly seen in suits for partition and possession with mesne profits. For instance, in a partition suit, the decree obtained might declare the shares of the parties, and direct the division of property by metes and bounds after final inquiry.⁴ In a suit for possession and mesne profit, the decree might direct the delivery of possession while leaving the determination of mesne profits for a later stage.⁵ Personal and Mortgage Decree- composite decree can also be both a personal decree against the judgment debtor and a mortgage decree against the mortgage property. In such cases, the decree holder has the option to execute the decree against either the person or the property without any statutory limitation requiring them to proceed against one before the other.⁶

LANDMARK CASES

United Bank of India v. Manku Narayan: The Supreme Court of India in the above case observed that the decree in execution is a composite decree, personally against the defendants, including the respondent and also against the mortgaged property. The court stated that we do not pause to consider whether the two portions of the decree are severable or not. We are of the view that since a portion of the decreed amount is covered by the mortgage, the decree-holder Bank has to proceed against the mortgaged property first and then proceed against the guarantor.⁷

State Bank of India v. Indexport Registered and Ors: The Supreme Court observed that- if the composite decree is a decree which is both a personal decree as well as a mortgage decree, without any limitation on its execution, the decree-holder, in principle, cannot be forced to first exhaust the remedy by way of execution of the mortgage decree alone and told that only if the amount recovered is insufficient, he can be permitted to take recourse to the

⁴ P. Rahul Ambedkar, *Partition Suits: Preliminary, Final Decrees, Mesne Profits and Status of Third-Party Purchaser*, Principal Civil Judge (Junior Division), Dhone, Apr 4, 2025, 2:25 AM

⁵ Deeksha, *Supreme Court Discusses Civil Court's Jurisdiction to Try Suit Once an Application for Partition Is Entertained by Revenue Authorities*, SCC TIMES (Jan. 10, 2025), <https://www.scconline.com/blog/post/2025/01/10/civil-court-jurisdiction-to-try-suit-for-title-possession-of-property-for-partition/> (last visited Apr 6, 2025)

⁶ *If the composite decree is a decree which is both a personal decree as well as a mortgage decree, -State Bank Of India Vs. Indexport Registered And Ors -SC – IBC Laws* <<https://ibclaw.in/if-the-composite-decree-is-a-decree-which-is-both-a-personal-decree-as-well-as-a-mortgage-decree-without-any-limitation-on-its-execution-the-decree-holder-in-principle-cannot-be-forced-to-first-ex/>> (last visited Apr 6, 2025)

⁷ (1987) 2 SCC 335

execution of the personal decree. It is only when the sum realised on sale of the mortgage property is insufficient then the judgment-debtor can be proceeded with personally.⁸

PRACTICAL CHALLENGES IN EXECUTION

Executing a composite decree is often challenging for the court, as the decree is against the principal debtor or the mortgaged property, or against the principal debtor and the guarantor himself. Ambiguity in Execution Order a key challenge arises from conflicting interpretations of whether a decree holder must first exhaust remedies against mortgaged property before pursuing personal liability.⁹ Moreover, courts mandate prioritising mortgaged assets and pledged goods. However, in recent rulings, the court clarified that no legal requirement forces this order unless explicitly stated in the decree.¹⁰ Despite this, the principal debtor in a contract of guarantee frequently raises objections under the old precedents, leading to prolonged litigation over the execution priorities. Procedural Defects and Delays- execution application under Order 21 of the CPC often delays due to (i) Incomplete Documentations, where missing details about the principal debtor's assets or procedural non-compliance; (ii) Jurisdictional Issues- whenever assets lie outside the court's jurisdiction, transferring the decree to another court adds time and administration hurdles.¹¹ Assets Concealment and Fraudulent Transfers- Debtors frequently hide or transfer assets to frustrate execution. For instance, the mortgaged property might be sold at undervalued prices to third parties, forcing decree holders to initiate separate proceedings to void such transactions. Also, proving fraudulent intent requires extensive evidence, which further delays recovery.¹²

CURRENT CHALLENGES AND REFORM SUGGESTIONS

Various challenges arise during the execution of the Composite Decree during the execution of the Composite Decree. Conflicting interpretations exist to discuss whether the creditor first targets mortgaged property before pursuing personal liability or not. Furthermore, third parties that are not part of the original suit may object to execution, claiming independent rights to the property. This complicates proceedings with divergent High Court opinions on

⁸ 1992 2 SCR 1032

⁹ *Execution of Composite and Joint Decrees (Part I)*, THE LAW BLOG (Dec. 4, 2021), <https://thelawblog.in/2021/12/04/execution-of-composite-and-joint-decrees-part-i/> > (last visited Apr 6, 2025)

¹⁰ *ibid* 9

¹¹ Himanshu Gupta, *EXECUTION OF DECREES: PROCESSES AND CHALLENGES*, JUS SCRIPTUM (2024), <https://www.jusscriptumlaw.com/post/execution-of-decrees-processes-and-challenges> (last visited Apr 6, 2025)

¹² *Execution of Composite and Joint Decrees: Part-1 By: Harshit Sharma*, <https://www.latestlaws.com/articles/execution-of-composite-and-joint-decrees-part-1-by-harshit-sharma-judge-180145/> > (last visited Apr 6, 2025)

handling such objections.¹³ Also, the debtor may evade service, necessitating substituted methods like newspaper publications. Wherein, debtors often hide or transfer assets to obstruct enforcement, requiring separate legal actions to void such transactions.¹⁴ Reforming the execution process for composite decrees is for creating a fairer and efficient system that respects the rights of all parties involved. The reform comes from aiming to simplify and humanise the process. The first step towards reform includes standardising decree language. This means ensuring that every court order clearly outlines what is needed to happen next, removing confusion. By making this language uniform, we can prevent unnecessary disputes and ensure that decree holders and debtors are in a clear state. Lastly, reforms must aim to enhance transparency and accountability. This could involve creating publicly accessible databases for tracking decree enforcement, which may allow parties to see how their case is progressing further. Ultimately, these benefits are not just for decree holders but for everyone involved, a society where legal disputes are resolved with clarity, speed, and fairness.

LEGAL FOOTPRINTS

Legal Precedents are the backbone of judicial decision-making, guiding courts in resolving disputes by relying on established principles from previous cases. Precedents evolve, reflecting changes in societal norms and judicial philosophy. They provide a framework for interpreting laws and resolving disputes while ensuring predictability in legal outcomes. The court often revisits and refines precedents to address contemporary challenges, demonstrating its dynamic role in shaping justice. The following cases used the landmark cases in 3.2 as precedents in their judgments;

Aboobacker Babu Haji v. Edakodde Pathummakutty Umma: In this case the issue raised before the court was whether a suit for a composite decree for redemption of mortgage could be filed and passed under CPC? The court took a view of the precedent cases and held that “till such time Central Code is applicable, no prejudice is caused to the party by having one decree or two decrees. There is no provision in the Transfer of Property Act to have two decrees.”¹⁵

¹³ Bhumika Indulia, *Beyond the Decree Understanding Third-Party Objections against Execution by Possession*, SCC TIMES (Mar. 27, 2025), <<https://www.scconline.com/blog/post/2025/03/27/beyond-the-decree-understanding-third-party-objections-against-execution-by-possession/>> (last visited Apr 6, 2025)>

¹⁴ *ibid* 13

¹⁵ AIR 2002 Ker 313

Bansilal v. Punjab National Bank & Anr: In this case the court held that recovery of the amount from the principal debtor will make the object of the guarantee defeated if the creditor asks to postpone remedies against the surety. The guarantee is to be collateral security, usually taken by a banker liable to pay along with the principal debtor¹⁶. The court took the view of *State Bank of India v. Indexport Registered and Ors*¹⁷ and dismissed the appeal with no merit.

M S Kailash Art International v. Central Bank of India & Ors: In this case the question raised was whether the decree was composite or not. The court observed that it could not be said to be a composite decree. The decree itself does not provide that upon failure of the defendants to make the payments within the 30 days' time granted, the plaintiff can get the mortgaged properties or sufficient part thereof, sold for the realization of the decretal amount nor it provides that if the proceeds of the sale were insufficient, to pay the decretal amount and the balance of the legally recoverable amount from the defendants or against their person and property jointly and severally. Therefore, it was not a composite decree.¹⁸

Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala: In this case the issue raised was whether a decree that is framed as a composite decree as a matter of law must be executed against the mortgage property first or can a money decree be executed earlier? The court said that "There is nothing in law which provides such a composite decree to be first executed only against the principal debtor". The court also held that Liability of the guarantor and principal debtor are co-extensive and not in alternative.¹⁹

CONCLUSION

In conclusion, composite decrees and guarantees show how intimate and dynamic the legal processes are. Moreover, composite decrees aren't explicitly defined in the Code of Civil Procedure, but their role in handling claims is one of the most important criteria. They're especially necessary in disputes involving a contract of guarantee, where the legal battle is on the basis of the liability of the principal debtor and surety. Furthermore, landmark cases like *Narhari v. Shankar*²⁰ show how judicial interpretations shaped the understanding and application of decrees. These rulings highlight the need for consistency and transparency in

¹⁶ 2010 (1) MhLj 101

¹⁷ ibid 9

¹⁸ LNIND 2013 PAT 629

¹⁹ 2009 7 MLJ 129

²⁰ ibid 3

the execution of the decrees. Therefore, this research aims to shed light on the challenges discussed above. It highlights how relevant a composite decree is in civil suits, including its legal framework and its point of view taken by the Supreme Court of India in landmark cases. It also reflects the challenges in the working and implementation of a decree and includes suggestions to overcome such challenges. In all, the writings show the need and understanding of the composite decree in the contract of guarantee.

REFERENCES

1. Avatar Singh, Contract & Specific Relief (Rajesh Kapoor, 13th edn)
2. The Indian Contract Act, 1872
3. The Code of Civil Procedure, 1908
4. Salmond and Williams on Contracts, 2nd edition, 1945
5. LexisNexis, <<https://www.lexisnexis.com>>, accessed on Apr. 4, 2025
6. SCC Times, <<https://www.scconline.com>>, accessed on Apr 4, 2025, 4:49:20 PM
7. Chandrashekhar U., *Paper on Execution of Decrees- Karnataka Judicial Academy*, 2022