

Thimmiah Vs. Rangiah

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Court : Karnataka

Decided On : Aug-31-1951

Reported in : AIR1952Kant67; AIR1952Mys67; ILR1952KAR167

Judge : Venkataramaiya and ;Balakrishnaiya, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 48 and 48(2)

Appeal No. : Second Appeal No. 150 of 1950-51

Appellant : Thimmiah

Respondent : Rangiah

Advocate for Def. : S. Srikantaraja, Adv.

Advocate for Pet/Ap. : Nittoor Srinivasa Rao, Adv.

Judgement :

Venkataramaiya, J.

1. This case presents a striking illustration of the dilatory tactics practised by the Judgment-Debtor to successfully delay and, if possible, also defeat the realisation of the fruits of the decree.

1a. The decree execution of which is sought was passed so long back as 6-6-1934. The original Decree-holder, after one or two infructuous attempts to recover

the money passed away. Apparently, his legal representatives having found it difficult to realise the amounts due under the decree assigned it in favour of the appellant. The appellant thereon applied for execution and in the course of the proceedings in Execution Case No. 521 of 41-42 on 26-3-1943 the assignment was recognised. Execution Case No. 238 of 44-45, which was subsequently filed was disposed of on 1-3-1946 in these words:

'Steps not taken. Decree-holder absent. No witnesses. The objections of the judgment-debtors are left open to be agitated later. Execution petition dismissed.'

1-b. Finally. Execution Case No. 134 of 47-48 was filed on 23-1-1948 seeking attachment of moveables and sale of immoveables. Several objections were raised by the first Judgment-debtor, respondent in this appeal. These are, firstly that he is an agriculturist, secondly that there was discharge of the decree by payment to the original decree-holder prior to the assignment and thirdly that the assignment in favour of the appellant is not true or valid. He also contended that he was not liable to be arrested and that in any case the application is barred by limitation. If the date of the decree alone is taken into account the application filed, on 23-1-1948 is obviously barred under Section 48, C.P.C., as there is an interval of more than 12 years between the two dates. To get over the bar it is alleged in the execution petition that a series of frivolous and untenable objections have been repeated time and again notwithstanding the orders previously passed for negating the same. Only the decree-holder and the first judgment-debtor were examined. Considering the evidence of these and the previous proceedings from the inception, the learned Munsiff held that the application is saved from the operation of the bar as the circumstances are such as to bring the case within the scope of CL (2) of Section 48. Section 48(2) reads as follows :

'Nothing in this section shall be deemed to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.'

The learned Subordinate Judge on appeal dismissed the application as time barred. The assignee decree holder appeals.

2. The question whether the obstructive tactics and frustrating devices employed by the judgment-debtor to thwart the decree-holder are within the purview of Clause (2) of the section has been discussed in some cases. In 'Y. VENKANNA v. B. KOTAYYA', AIR (33) 1946 Mad 172, Bell, J., quoting the observation in 'LALTA PBASAD v. SURAJ KUMAR'. AIR (9) 1922 All 145, that:

'Judges ought to take a broad view of conduct deliberately adopted by judgment-debtors with a view to defeating & delaying the first payment of their debts by frivolous and futile objections which are dishonest on the face of them.'

Held that the time-limit laid down by Section 48 should not prevail when the conduct of the judgment-debtor was such as to have prevented the execution of the decree within twelve years from the date of the decree.

3. 'LALTA PBASAD v. SURAJ KUMAR', AIR (9) 1922 All 145 is a decision of a Division Bench to the effect that where the execution of the decree has been obstructed by frivolous objections on the part of the judgment-debtors the decree-holders are entitled to the advantage of Section 48, Civil P.C. In 'GOBARDHAN DAS v. DAU DAYAL', AIR (19) 1932 All 213 Full Bench, Sulaiman, J. observed:

'The proposition that any action of the Judgment-debtors which puts off the decree-holder from executing his decree at once must be taken as fraud if the result thereof is to bar the execution of the decree under the 12 years' rule is much too broadly stated.'

'BISHWANATH PKASAD v. LACHMI NARAIN', AIR (22) 1935 Pat 380 is another case in which the view expressed in the earlier Allahabad case is dissented from. In 'TULSI RAM v. E D. SAS-SOON & CO., LTD., BOMBAY'. AIR (23) 1936 Lah 843, Coldstream, J., observed that putting forward objections to prolong execution proceedings beyond the period of limitation is not necessarily fraud. The latest case on the point is 'YESHWANT DEORAO v. WALCHAND RAMCHAND' : [1950]1SCR852 ; which, states that if the judgment-debtor prevented the

execution of the decree within twelve years by fraudulent concealment of ownership of the property, the twelve years bar of limitation does not apply. It is thus seen that there is a volume of authority to hold that if the judgment-debtor conceals properties liable to be proceeded against or otherwise wantonly advances frivolously and manifestly untenable objections With a view to needlessly prolong the proceedings, the bar on account of the lapse of twelve years from the date of decree is taken away.

3-a. There is little doubt that the conduct of the first judgment-debtor has throughout been systematically fraudulent. The records establish that most of the objections now advanced are by no means fresh but have been reiterated at every stage ignoring the orders by which these were negated. The plea that he is an agriculturist was rejected so far back as 4-3-1938 by an order, Exhibit C. The assignment was recognised in March 1943 and all the objections were rejected by a subsequent order. In his evidence the judgment-debtor has admitted his income to be Rs. 2,000/- a year. In spite of all this how the judgment-debtor could press the same objections once again cannot be explained and the learned Counsel appearing for him was not able to justify the course adopted by him in this behalf.

3-b. Though the applicability of Section 48, Civil Procedure Code, may be open to argument the application may well be treated as a continuation of the previous one which was obviously filed within twelve years. The prior application was disposed of with the statement that the objections are left open to be agitated later implying pendency and not termination of the case. The objections were such as had to be made out by the judgment-debtor and the presence of the decree-holder was not required for consideration of the objections. There is abundant authority to hold that in such circumstances, the later application has to be construed as revival or continuation of the previous one. In 'MADHAB MONI DAS v. PAMELA LAMBERT', 37 Cal 798 at page 804 it is stated that:

'an application for execution of a decree may be treated as in continuation or revival of a previous application similar in scope and character, the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless.'

In 'SARADA SUNDARI v. JABBAB ALT, AIR '(26) 1939 Cal 331, relying on the report of the Nazir that the decree-holder was absent on the date, of sale, the application for execution was dismissed; for the purpose of a later application for execution it was considered to be a continuation of the previous one as the decree-holder's absence was deemed to be inconsequential. (See also 'YAKUB ALI v. DURGA PRASAD'. 37 All 518 and 41 Mys H C R 150). We are therefore of opinion that the present application Ex. Case No. 134 of 47-48, is only a continuation of the previous one, Execution Case No. 238 of 44-45 and since the present application is filed before three years from the date of disposal of the former one, there is no bar of limitation.

4. The order of the learned Subordinate Judge, is therefore, reversed and that of the learned Munsiff restored, with costs throughout.

5. Order accordingly.

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