

K. Byrappa Vs. Henjari Gowda

K. Byrappa Vs. Henjari Gowda

SooperKanoon Citation : sooperkanoon.com/372891

Court : Karnataka

Decided On : Jul-17-1974

Reported in : AIR1975Kant51; ILR1974KAR1385; 1974(2)KarLJ427

Judge : V.S. Malimath, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 96 - Order 21, Rule 10; Limitation Act, 1908 - Schedule - Article 181

Appeal No. : Ex. Second Appeal No. 12 of 1974

Appellant : K. Byrappa

Respondent : Henjari Gowda

Advocate for Def. : M.S. Bhujanga Rao, Adv.

Advocate for Pet/Ap. : V.N. Sathyanarayan, Adv.

Judgement :

1. This is the decree-holder's second appeal against the order made by the Additional Civil Judge, Tumkur, in Execution Appeal No. 10 of 1973 reversing the order made by the Munsiffat Madhugiri in Execution Case No. 457 of 1972.

2. The appellant filed Original Suit No. 603 of 1964 for recovery of certain amount from the respondent. The suit was decreed on 22-1-1966 and the respondent was directed to pay the decretal amount in four annual equal instalments. That decree

was affirmed on appeal by the Civil Judge, Tumkur. The respondent challenged the said decree in Regular Second Appeal No. 362 of 1968 in this Court. This Court dismissed the said appeal on the 9th of February, 1972. Neither the first appellate court nor this Court modified the direction of the Court of first instance regarding payment of the decretal amount in four annual equal instalments.

3. The decree-holder filed execution Case No. 457 of 1972 for realising the decretal amount in the Court of the Munsiff, Madhugiri, on the ground that the judgment-debtor has not paid any amount under the decree. The judgment-debtor resisted the execution application on the ground that it is premature. His contention is that the executable decree in this case is the decree passed by the High Court in R. S. A. 362 of 1968 and that therefore, he is entitled to pay the decretal amount in four annual equal instalments from the date of the decree of the High Court i.e. 9-2-1972. As the execution application was filed even before the expiry of the first year from the date of the decree of the High Court, it was contended, that the execution application is premature. This objection was overruled by the executing Court and the execution was directed to proceed. Against the said order, the respondent preferred Execution Appeal No. 19 of 1973 in the Court of the Civil Judge, Tumkur. The learned Additional Civil Judge allowed the appeal, set aside the order of the executing Court and dismissed the execution application on the ground that it was premature. The learned civil Judge held that there is a merger of the decree in the decree of the High Court made in R. S. A. 362 of 1968 on 9-2-1972. He further held that the four annual equal instalments must be deemed to have been granted with effect from the date of the High Court's decree.

4. It is the order passed by the learned Civil Judge that is challenged by the decree-holder in this second appeal.

5. Sri V.N. Satyanarayana, learned counsel appearing for the appellant contended that the view taken by the learned Civil Judge that the respondent is entitled to four annual equal instalments from 9-2-1972, the date of the decree of the High Court, is contrary to law. He pointed out that it is only the Court of first instance that had granted four instalments, which decree has been affirmed by the learned Civil

Judge and later by the High Court in R. S. A. 362 of 1968. He also pointed out that there is no modification of the direction regarding payment of the decretal amount in four annual equal instalments. He further pointed out that there is no express direction in regard to the starting point for the purpose of payment of the first annual instalment. In these circumstances, it was contended that there is no warrant for reading something which is not expressly stated in the decree. On the other hand Sri M.S. Bhujangarao, learned counsel for the respondent maintained that it is implied in the confirmation of the decree by the High Court in R. S. A. No. 362 of 1968 that the judgment-debtor should pay the decretal amount in four annual equal instalments from the date of the decree of the High Court i.e. 9-2-1972.

6. It is a well-accepted proposition that the executing Court cannot go behind the decree. It has, undoubtedly, jurisdiction to construe the decree that is brought before it for execution. If there is any ambiguity in the decree, it is open to the executing court to ascertain the real intendment of the decree by looking into the judgment and other relevant records. The executing Court has, certainly no right to add to the decretal command. If the decree is clear and unambiguous, it becomes the plain duty of the executing Court to give full effect to the same. This is a case where the decree made by the Court of first instance stood affirmed by the first appellate Court and thereafter by the High Court without any modification whatsoever, either in regard to the decretal, amount or in regard to the manner of payment of the decretal amount in the prescribed instalments. It is no doubt true that the decree passed by the Court of first instance stood merged in the decree of the first Appellate Court, which decree in turn stood merged in the decree passed by this Court in R. S. A. No. 362 of 1968. That is the reason why the starting point for the purpose of limitation under Article 181 of the Limitation Act, would be the date of the High Court's decree viz. 9-2-1972. When instalments are granted or time is granted for payment of the decretal amount the Court will have taken into consideration all relevant factors and fixed the instalments or the date for the payment of the decretal amount. If the appellate Court finds that the circumstances justify the modification of the directions in this behalf, it cannot be disputed, that the appellate court can undoubtedly exercise its power, and either reduce the number of instalments or increase the number of instalments or modify the amount

to be paid under each instalment or grant a longer or shorter period for payment of the decretal amount. But if the appellate Court does not modify the directions in this behalf, but simply affirms the decree made by the lower Court, the clear implication is that the appellate Court did not consider it just and proper to interfere with the direction made by the lower Court. When the decree of the lower Court is affirmed by the appellate Court without any modification, the terms of the decree become part and parcel of the decree of the appellate Court itself except to the extent of the modification, if any, made by the appellate Court in the matter of costs. As the lower Court's decree itself becomes really a part and parcel of the appellate Court's decree by the process of merger, the date for payment of instalment will have to be ascertained from that decree which stands merged in the decree of the appellate Court. In this case, the decree of the Court of first instance was made on the 22nd of January, 1966 granting four annual equal instalments. Though the actual dates of payments have not been expressly specified in the decree, it is clear that the same can easily be ascertained. The last dates for payment of the four instalments as per the direction contained in the decree of the Court of first instance would be 21-4-1967, 21-1-1968, 21-1-1969 and 21-1-1970. As a result of the merger of the decree of the lower appellate Court in the decree of the High Court in R. S. A. No. 362 of 1968, it must be deemed that the decretal amount was required to be paid by the respondent in four annual equal instalments on or before the aforesaid four dates. As those dates were not altered by the decree of this Court in Regular Second Appeal No. 362 of 1968, the execution petition filed in the year 1972 cannot be dismissed as being premature.

7. The view I have taken fully accords with the consensus of judicial opinion in the country. In *Nimmala Mahankaliv. Kaliakuri Subba Rao*, AIR 1918 Mad 919, a Division Bench of the Madras High Court has held as follows:

'Where an appellate decree confirms the decree of the first Court and is silent regarding the time fixed for payment by the Court of first instance, a further period cannot be given for payment from the date of the appellate decree, and the party in default is not entitled to reckon the time from the date of such decree.'

The said principle has been reiterated by a Full Bench of the Travancore-Cochin High Court in *Joseph John v. Varkey Thomas*, AIR 1957 Trav-Co 94 (FB). A useful review of the decisions of the various High Courts on the point was made by the High Court of Rajasthan in *Dr. Ram Kumar v. Mahadeo Lal* after an exhaustive consideration of the authorities of the various High Courts taking different views in the matter. This is what the High Court of Rajasthan has laid down:

'Where time is prescribed by the decree of the trial Court for the performance of a condition precedent and the appellate Court simply confirms the decree of the lower Court, it cannot be assumed that the time for performing the condition has necessarily been enlarged. Where the judgment of the appellate Court does not enlarge the time fixed under the decree of the trial Court the time for the performance of the condition will be reckoned from the decree of the trial court even though that decree has merged in the decree of the appellate Court.'

The Rajasthan High Court has given clear and cogent reasons for dissenting from the contrary view taken by the Bombay High Court in *Satvaji v. Sakharlal*, AIR 1914 Bom 132 and the Calcutta High Court in *Raja Sashikanta v. Raja Sarat Chandra*. AIR 1921 Cal 699, which decisions were also relied upon by Sri Bhujanga Rao, learned counsel for the respondent. As I am in respectful agreement with the above view, for the reasons already stated above, it is unnecessary to deal with those decisions in any great detail.

8. For the reasons stated above this appeal is allowed, the order passed by the learned Civil Judge is set aside and that of the learned Munsiff is restored. No costs.

9. Appeal allowed.