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Court : Karnataka

Decided On : Nov-08-1951

Reported in : AIR1952Kant121; AIR1952Mys121; ILR1952KAR190;
(1953)31MysLJ148

Judge : Balakrishnayya and ;Vasudeva Murthy, JJ.

Acts : Limitation Act, 1908 - Schedule - Article 182

Appeal No. : Second Appeal No. 75 of 1950-51

Appellant : Rangamma

Respondent : Rangamma and ors.

Advocate for Def. : B. Venkata Rao and ;R.V. Srinivasaiah, Advs.

Advocate for Pet/Ap. : M.A. Gopaldaswamy Iyengar, Adv.

Judgement :

Balakrishnayya, J.

1. This is a decree-holder's appeal. She filed Execution Case No. 26 of 48-49 for enforcement of the decree for maintenance against the charged properties. Judgment-debtor 4 pleaded that the application is barred by time. Both the lower Courts have upheld his plea and dismissed the application. This appeal is filed

against the order of the first appellate Court.

2. The facts leading to the case, briefly stated, are as under. In O. S. No. 245 of 40-41, filed by the plaintiff, a decree was passed ex parte on 10-1-1942 against all the defendants for a sum of Rs. 600/- being arrears of maintenance claimed and future maintenance was awarded at Rs. 125/- per annum; the decree amount was made a charge on the plaint schedule properties. Subsequently, defendant 1 applied to the Court for setting aside the ex parte decree and the decree was set aside only as against defendant 1 leaving the decree intact as against the others. The plaintiff and defendant 1 then entered into a compromise and a decree in terms of the compromise was passed on 26-1-1943, one of the terms being that the plaintiff should be delivered Item 3 of the plaint schedule absolutely in lieu of maintenance. The said property (Item 3) was in the possession of defendant 4 as mortgages. (For the sake of convenience, the decrees will be referred to hereafter as 'the ex parte decree' and 'the compromise decree' respectively).

3. The decree-holder filed an application for execution in Execution Case No. 241 of 43-44 on 4-11-1943 which was dismissed on 27-10-1944. Again, another application Execution Case No. 394 of 45-46 was filed on 21-3-1946 and was dismissed on 10-1-1947. The present execution petition was filed on 12-1-1948. The first two applications were for enforcing the terms of the compromise decree. Judgment-debtor 4 having raised the objection that the terms of the compromise decree were not binding upon him, it was held by this Court in the final appeals in both the cases viz., 'S. As. Nos. 528 of 1944-45 and 437 of 1947-48', that defendant 4 was liable only under the ex parte decree and the terms of the compromise decree were not enforceable against him. It need hardly be stated that judgment-debtor 4, the contesting respondent here, and the other judgment-debtors were all made parties to both the applications. The application now under consideration is for the enforcement of the terms of the ex parte decree. It is contended that the application is barred by time.

4. The main point that falls for consideration is whether the earlier applications which were concerned with the execution of that portion of the decree by compromise against judgment-debtor 1 keep alive the ex parte decree against the

others. For that purpose, the nature of the decrees passed in the original suit has to be determined. The Courts below have misconceived the position and proceeded on the assumption that there are two separate and distinct decrees, distinguishing the portions of the subject-matter of the suit. We are unable to support that decision.

5. In order to constitute several and separate decrees, the subject-matter of the suit must be apportioned between the different defendants and each has to be made liable for a portion, the total of all the portions giving the whole of the relief claimed in the decree. 'Where a decree is obtained against a number of persons and the decree requires each judgment-debtor to pay his own share only of the decretal amount and costs, it must be considered that there are separate decrees against them individually' Vide 'Umrao Singh v. Hafiz Muhammad Abdullah', AIR 1935 Lab 949.

In the present case, the subject-matter of the suit is a single claim for maintenance made against all the defendants. Neither the ex parte decree' by itself, nor the subsequent compromise decree is capable of giving the plaintiff the full relief against the several defendants. Where in a single subject-matter there are two decrees, Lord Mersey observes in 'Ashfaq Husain v. Gauri Sahai', 33 All 264 that 'the latter decree supplemented and completed the former'. The facts in the case before the Judicial Committee are substantially similar to the present case. A decree was passed on 25-8-1900 against several defendants. As against one defendant, however, the decree was ex parte and it was set aside only against her on 11-3-1902. Subsequently, a decree was passed on merits against this defendant on 15-8-1902. An application for execution was filed on 21- 12-1905 against ail the defendants. An objection was taken that as the original decree was passed on 25-8-1900, the application was barred by time. Their Lordships held that the two decrees were steps in granting the plaintiff the relief to which he was entitled. The latter decree supplemented and completed the former. If there are several decrees in a suit, without assigning exclusively the respective liability of the individuals, but the directions in the decrees differ in respect of some of the several defendants in the mode of execution, 'it does not' as laid down in 'Moti Lal Agarhari v. Champalal', : AIR1929 All795 'affect the fact that all of them are jointly

liable for the decretal amount'.

Whether a decree passed in parts is joint or several has to be ascertained in the following way. If satisfaction of the decree by one of the several defendants discharges the liability as against all, the decree is necessarily a joint decree; if, on the other hand, by such satisfaction the liability of one or more only is discharged to the exclusion of others, whose liability remains, the decree should be construed as being several and distinct. In the present case, the liability is joint though the mode of satisfaction in the case of judgment-debtor 1 is limited to certain terms. The satisfaction of the decree by anyone of the several defendants to the ex parte decree discharges the liability of all; vice versa, the satisfaction of the compromise decrees by judgment-debtor 1 satisfies the ex parte decree against all others. We are, therefore, of opinion that it is a single and joint decree against the several defendants. This leads us to the consideration whether the execution proceedings in terms of the compromise decree keep alive the terms of the ex parte decree. Article 182 of the Limitation Act prescribes the time at which the period of limitation begins to run to be 'the final order passed on an application made', and the latter part of the second para of Explanation I to Article 182 states that

'where the decree has been passed jointly against more persons than one, the application if made against any one or more of them.....shall take effect against them all.'

Explanation I of Article 182 regarding the effect of joint and several decrees is in terms applicable to the applications mentioned in Clause 5 of Article 182. The principle is that if the judgment-creditor does something which keeps alive a joint decree as against one of his judgment-debtors the decree is to be regarded as alive as against all the joint judgment-debtors, & if it is alive it is, of course, capable of execution: Vide 'Abdul Khadir v. Ahammad Shaiwa Ravuthar', 38 Mad 419 (FB) at p. 422. In cases which are referred to in Article 182 there is an equity arising by the fact that the judgment-creditor has done something for the purpose of realising the fruits of his judgment. In the case of a joint decree against several persons an execution application against some of them saves limitation against all the judgment-debtors, Vide 'Ramasray Chaudhury v. Lachmi Narayan', AIR 1927

Pat 416, or even against the legal representatives of a judgment-debtor who were not parties to such an application Vide 'Kotigadu v. Subbayya' : AIR1927 Mad1103 . Again, in 'Kamal Kishore v. Birjendar Narain', AIR 1942 Pat 285, it has been held (following '103 Ind Gas 887 : AIR 1927 Pat 416') that in the case of a joint and several decree an application for execution made against any one of the Judgment-debtors is a step-in-aid of execution against all. In 'Nand Lal Saran v. Dharam Kirti Saran' : AIR1926 All440 , it is stated as follows:

'The principle appears to be that when A, B and C are jointly liable and the decree-holder is attempting to recover the decretal amount from one of them, he should not be barred from recovering it from the rest, if he fails to recover it from the particular Judgment-debtor.....in such a case it will be equitable to direct that steps taken in aid of execution against one of the judgment-debtors should save limitation as against others. It is also obvious that where a joint decree is passed the decree-holder cannot execute it at one and the same time against them all separately for the same amount.'

In a recent decision of the Madras High Court reported in 'Lakshminarasimham v. Suryanarayana', ILR (1948) Mad 624; it has been held that though a decree includes several reliefs based upon distinct causes of action, it is nevertheless one decree within the meaning of Article 182 and it is open to the decree-holder in execution executing the decree in respect of same reliefs to rely on Clause 5 of Article 182 for calculating limitation from the dates of the final orders on previous execution petitions notwithstanding that those petitions related to other and different reliefs granted under the decree. The principle deducible from the decided cases is that the criterion to save, limitation is that the decree should have been passed jointly irrespective of the fact that the reliefs granted under the decree are similar or otherwise. We have, therefore, no hesitation in holding that in the present case the decree is joint and the previous execution application keeps the decree alive against all the defendants.

6. Another contention by way of 'res judicata' was raised by the respondents. It is based on an observation in the judgment in 'S. A. No. 437 of 1947-48' of this Court to which one of us is a party. The particular passage to which our attention is

drawn is as follows:

'As already mentioned, it has been declared in the said second appeal 'S. A. No. 528 of 1944-45 that the terms of the rajinama decree are not binding on defendant 4 and therefore the previous execution application could not possibly be taken as being a step-in-aid of execution of the ex parte decree.'

The latter expression 'and therefore.....the ex parte decree' is not found in 'S. A. No. 528 of 1944-45' and if it should be construed as an inference raised in 'S. A. No. 437 of 1947-48', it is clearly an obiter for deciding the latter case, the only question which arose for decision in that case being whether the compromise decree could be executed against defendant 4 who was no party to it. The following passage occurring subsequent to the passage quoted above from 'S. A. No. 437 of 1947-48' makes the position clear which runs thus :

'The question whether the ex parte decree which is held to be binding on defendant 4 is executable against defendant 4 cannot be gone into in this appeal and the respondent may file an application seeking to enforce the terms of the ex parte decree which has to be disposed of on merits after hearing the objections that may be urged by defendant 4.'

No bar of 'res judicata' can arise in any other sense as the previous applications were different and were for separate reliefs. This contention has no substance and cannot be accepted.

7. In conclusion, we are unable to support the orders of both the lower Courts and the said orders are hereby set aside. The records are sent back to the trial Court with a direction that the execution application may be restored to file and disposed of on merits.

8. The parties will bear their own costs in this Court.

9. Order set aside.