

Sharanappa Vs. Shrishailappa and anr.

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Court : Karnataka

Decided On : Aug-01-1974

Reported in : ILR1974KAR1492; 1975(1)KarLJ83

Judge : V.S. Malimath, J.

Acts : Indian Limitation Act, 1908 - Sections 6 and 6(1) - Schedule - Article 183;
[Code of Civil Procedure \(CPC\), 1908](#) - Sections 47, 47(1), 48, 48(1) and 48(2);
[Limitation Act, 1963](#)

Appeal No. : Second Appeal No. 253 of 1971

Appellant : Sharanappa

Respondent : Shrishailappa and anr.

Advocate for Def. : S.D. Chatre, Adv.

Advocate for Pet/Ap. : K.S. Savanur, Adv.

Judgement :

1. This second appeal is by defendant 1 against the decree passed by the Civil Judge at Bijapur, in Regular Appeal No. 41 of 1967 reversing the decree passed by the Munsiff at Bagewadi in Civil Suit No. 77 of 1964.

2. On the 15th of September, 1964, respondent 1 (plaintiff) instituted the suit for possession of the suit house and for future mesne profits and costs. The suit was

resisted by the defendants on various grounds. The court of first instance dismissed the suit of the plaintiff. On appeal, the learned Civil Judge decreed the suit. Hence, this second appeal.

3. Sri K.S. Savanur, learned counsel appearing for the appellant contended that the suit is clearly barred by Section 47 of the Civil P. C. in view of the decree passed in the previous suit viz., Civil Suit No. 25 of 1947 for possession of the same property in favour of the plaintiff-respondent

1. It is not disputed that respondent 1 obtained a decree in his favour for possession of the same suit schedule property in Civil Suit No. 25 of 1947 against the appellant and respondent

2. That decree was passed in favour of respondent 1 on 25-7-1949. The proper course for the 1st respondent was therefore to execute that decree within time and secure possession of the suit schedule property. Section 47(1) of the Civil P. C., provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. The suit of respondent 1 is therefore, clearly barred by Section 47 of the Civil P. C, as the plaintiff (respondent

1) could have secured possession in execution of the decree obtained by him in the previous suit i.e., C. S. No. 25 of 1947. It is true that the Court has power to treat the suit as an execution petition and give proper relief. The hurdle in resorting to this procedure is the bar contained in Section 48 of the Civil P. C. as was in force at the relevant point of time. Section 48(1) of the Civil P. C. provides that where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the decree shall be made upon any fresh application presented after the expiration of 12 years from the date of the decree sought to be executed or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree. Sub-section

(2) of Section 48 of the Civil P. C. provides that nothing in Section 48 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 or to limit or otherwise affect the operation of Article 183 of the First Schedule to the Indian Limitation Act, 1908. It is clear from Section 48 of the Civil P. C. that respondent 1 in this case should have filed the execution petition within 12 years from the date of the decree passed in Civil Suit No. 25 of 1947. That decree as already mentioned was made on 25-7-1949. The present suit was filed on 15-9-1964 after the expiry of more than 12 years after the date of passing of the decree in Civil Suit No. 25 of 1947. It is not the case of respondent 1 that it is on account of any fraud or force on the part of the judgment-debtor that he was prevented from executing the decree within the prescribed period of 12 years. The said period of 12 years expired long before the Limitation Act, 1963, came into force, by which Section 48 of the Civil P. C. stood deleted.

4. It was, however, contended by Sri Chhatre learned counsel appearing for respondent 1 that as respondent 1 was a minor and was, therefore, under a legal disability, he was well within time for executing the decree passed in C. S. No. 25 of 1947. According to respondent 1, he was born on the 30th of September, 1945. He has admittedly instituted the suit within three years after he attained majority. If Sri Chhatre is right in maintaining that respondent 1 can claim the benefit of Section 6 of the Limitation Act, the suit if treated as an application for execution of the decree, will not be barred by time. Section 6 of the Limitation Act, 1908 is the same as Section 6 of the Limitation Act, 1963. Sub-section (1) of Section 6 of the Limitation Act, 1908, which is material for our purpose, reads as follows:--

'Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.'

It is no doubt true that respondent 1 was a minor when the decree was passed in Civil Suit No. 25 of 1947 and the present suit was filed within three years after he attained majority. If Section 6(1) applies to the facts of the present case, the execution petition will be in time. Sri Savanur, learned counsel for the appellant maintained that Section 6 of the Limitation Act has applicability only to limitation prescribed by the Limitation Act and not to limitation prescribed by the Civil P. C. There is considerable force in this submission of Sri. Savanur. The language of Sub-section (1) of Section 6 of the Limitation Act, makes it clear that a minor, or insane or an idiot can take the benefit of the said provision only in respect of suits or applications for which the period of limitation is prescribed therefor in the third column of the first schedule to the Limitation Act. The bar of limitation pressed into service by Sri K.S. Savanur in this case is one contained in Section 48 of the Civil P. C. and not the one contained in the third column of the first schedule to the Limitation Act, 1908. Hence, I am clearly of the opinion that sub-section (1) of S. 6 of the Limitation Act, does not come to the aid of respondent 1. The suit, even if it is treated as an application for execution, is clearly barred by time under Section 48(1) of the Civil P. C.

5. For the reasons slated above, this appeal is allowed and the judgment and decree passed by the learned Civil Judge are set aside, and those of the learned Munsiff, are restored. No costs.

6. Appeal allowed.