

Abdul Razzaq Vs. Izzat Ali

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Court : Allahabad

Decided On : May-24-1978

Reported in : AIR1979All23

Judge : U.C. Srivastava, J.

Acts : [Limitation Act, 1963](#) - Article 136

Appeal No. : Second Appeal No. 217 of 1977 (Second Ex. Decree Appeal No. 7 of 1977)

Appellant : Abdul Razzaq

Respondent : izzat Ali

Advocate for Def. : D.C. Singh, Adv.

Advocate for Pet/Ap. : Mohd. Husain, ;Mohd. Arif Khan and ;M. Naseerullah, Advs.

Disposition : Appeal dismissed

Judgement :

U.C. Srivastava, J.

1. In the present appeal decree was prepared on 25th March, 1963 and thereafter the appeal was preferred and the said appeal was dismissed on 31st July, 1963 and the application for execution was presented on 24-4-75 i.e. 12 years after the date of preparation of the decree. As the final order was that of the appellate court which is dated 31st July, 1963, as such the limitation was to be computed from that date, as the earlier decree merged in the appellate decree. The learned counsel for the appellant contended that even if the appeal was not heard and disposed of on merit, but was dismissed summarily, the execution application was within limitation. The plea taken by the appellant is untenable. The learned counsel contended that so far as the question of merger is concerned that will not apply to each and every decree, at least not in the present case. It was further contended that he relied on Article 182 and not 136 and there is some difference between the two Articles. No doubt there is some difference between the two Articles, but the said difference is not material so far as the question of limitation is concerned. In this view the contention of the learned counsel is untenable.

2. The application for execution was based on the doctrine of merger and while arriving at this conclusion the court relied on certain decision. It cannot be denied that in the present case the application for execution was presented within 12 years from the date of the appellate decree which was passed on 31st July, 1963 as the application was presented on 24th April, 1975. In Collector of Customs v. East India Commercial Co. Ltd., (AIR 1963 SC 1124) it was observed that 'the appellate order is the operative order after the appeal is disposed of, which is the basis of the rule that the decree of the lower court merges in the decree of the appellate court and on the same principle it would not be incorrect to say that the order of the original authority is merged in

the order of the appellate authority whatsoever its decision--whether of reversal or modification or mere confirmation.' Thus the original decree having been merged in the appellate decree, the limitation was to be counted from the date of the appellate decree and the execution was thus within limitation. Thus no error has been committed by the court below which has decided the question of limitation. The appeal has got no force and is dismissed with costs.

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