

Chanda Devi Vs. Natthu Singh and ors.

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Court : Allahabad

Decided On : Dec-17-1943

Reported in : AIR1944All88

Appellant : Chanda Devi

Respondent : Natthu Singh and ors.

Judgement :

Mulla, J.

1. The two connected appeals arise out of two suits Nos. 542 of 1930 and 544 of 1930. Both the suits were filed on the basis of two mortgage deeds. Mt. Chanda Devi was the plaintiff in the former suit and Mt. Sona Devi in the latter. The defendants in both the suits were common. The suits were decreed on 8th December 1930. The decree in suit No. 542 was made final on 13th September 1931 and in suit No. 544 on 24th October 1931. In the latter suit an application for execution was made on 31st March 1932. On 19th April 1932, the Court ordered that a copy of the final decree may be produced. For reasons which will be noticed later, no further steps were taken by the decree-holder and the application for execution was accordingly dismissed. In the other suit no application for execution of the decree was made.

2. Two of the defendants instituted suit No. 90 of 1931 on 15th September 1931, praying that both the decrees may be declared null and void on the allegation that

they were impleaded in both the suits as minors although they had in fact attained majority before the institution of those suits. The suit was decreed on 30th April 1932 and the Court declared that the decrees obtained in suits Nos. 542 and 544 were null and void. The plaintiffs appealed to the High Court. In appeal the decree of the trial Court was modified on 14th May 1936, and it was held that the decrees in both suits were null and void only with respect to a portion of the mortgaged properties and as against only the plaintiffs in suit No. 90 of 1931. In other words, the decrees were operative against the other defendants who were not plaintiffs in that suit. The decree-holder in suit No. 542, then applied for the execution of the decree on 9th October 1937 and the plaintiff in the other suit on 2nd October 1937. It is manifest that unless the period between 30th April 1932, that is, the date of the decree of the trial Court in Suit No. 90 of 1931, and 14th May 1936, the date of the High Court decree, is excluded, the applications would be time-barred. The judgment-debtors unsuccessfully raised the question of limitation in the executing Court, but in appeal their objection found favour with the learned District Judge who allowed the appeal and held that the applications for the execution of both the decrees were barred by time. The decree-holders have now come to this Court in appeal.

3. Learned Counsel for the appellants has relied upon Section 15, Limitation Act, in support of his contention that the period during which the appeal in the High Court against the decree in Suit No. 90 of 1931, was pending, should be excluded. Section 15 of the Act, provides:

In computing the period of limitation prescribed for any application for the execution of a decree, the execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, shall be excluded.

In our judgment, the Court below was right in holding that this section in terms does not apply. There was no injunction or order staying the execution of decrees in suits Nos. 542 and 544 of 1930. This section, however, assumes the existence of a decree which is capable of execution. The decrees in the suits in question were declared null and void by suit No. 90 of 1931 which rendered the two decrees entirely inoperative. It is argued that it was the duty of the decree-holders

to make an application in the execution Court even though such application should have been abortive. It is manifest that if any applications were made they would have been rejected straightaway on the ground that the decree-holders had no executable decrees in their favour. The execution Court would not have passed an order staying the execution of the applications. It is inconceivable that the Legislature ever intended that in these circumstances the decree-holders would be forced to make the applications only to have them dismissed. The Law of Limitation would apply only if an operative decree were in existence. When no such decree exists the Limitation Act can have no application to it. Article 182, Limitation Act, prescribes the time from which the period for the execution of a decree begins to run. Column 3 of that article provides:

(1) The date of the decree or order, or (2)(where there has been an appeal) the date of the final decree or order of the appellate Court, or the withdrawal of the appeal....

The decree-holder is entitled to have full three years for the execution of his decree. If by the order of a competent Court the decree has been rendered a nullity, the period during which that order is in force must be excluded otherwise the period of limitation allowed to the decree-holder would be reduced to less than three years. In our opinion, there is no justification for such a reduction of time for the execution of a decree either in law or equity. In *Sameshwar Singh v. Homeshwar Singh* ('21) 8 A.I.R. 1921 P.C. 31, their Lordships of the Privy Council observed:

They are of opinion that, in order to make the provisions of the Limitation Act apply, the decree sought to be enforced must have been in such a form as to render it capable in the circumstances of being enforced. A decree so limited in its scope as that of 27th July 1906, under consideration cannot, in their opinion, be regarded as being thus capable of execution.... They are of opinion that when the Limitation Act of 1908 prescribes three years from the date of a decree or order as the period within which it must be enforced, the language, read with its context, refers only, as they have already indicated, to an order or decree made in such a form as to render it capable in the circumstances of being enforced. This

interpretation appears to them not only a reasonable one in itself, but to be in accordance with the previously expressed opinion of this board in Shaik Kamaruddin Ahmad v. Jawahur Lal ('05) 27 All. 334.

4. The observations of their Lordships apply with greater force to the facts of the present case. Here there was not only no defect in form of the decree but no decree existed at all between 30th April 1932 and 14th May 1936. Ram Ghulam Singh v. Raj Kumar Rai ('28) 15 A.I.R. 1928 Pat. 86, a more or less similar point came up for consideration before a bench of that Court. The learned Judges held:

Where a decree-holder is restrained by injunction from executing the decree or where his decree has ceased to exist having been set aside in a separate suit, the time of injunction or the period for which the decree ceased to exist should be excluded.

In arriving at that conclusion the learned Judges said:

The Limitation Act is always subject to this, in so far as it always applies to execution, that there must be some decree in existence which you can in fact execute. In the present case for the period which I have mentioned, between August 1922 and April 1925, there was no decree which could be executed at all and the only period during which execution could take place was the short period between 1st September 1921 and 17th September, in the same year and 6th April 1925 and 24th June 1925 when in fact the execution case was filed.

5. With the above remarks we respectfully agree. In Mangamma v. Narayanappa ('33) 20 A.I.R. 1933 Mad. 78, a learned Judge of that Court held:

Where a decree is declared unexecutable before the execution is otherwise barred, and that decision is reversed later and the decree is thereby rendered executable, the subsequent application for execution should be regarded as one falling under Article 181 and fresh period of limitation runs from the date when the decree is rendered executable.

In that case the learned Judge held that it would not seem an unwarrantable extension to hold that 'the date of the decree' in Article 182(1) is really and in

common sense when the bar to its executability was removed by the appellate decision; or alternatively that the petition filed after such removal is one governed by Article 181 when the right to apply to execute again accrues. We find much force in the observation that if there is any doubt about the interpretation of the expression 'the date of the decree' in Article 182(1), Article 181 of the Act may be pressed into service. We, however, find no adequate reason to hold that the period of limitation will keep on running while the decree is not even in existence having been declared null and void by a competent Court. We are aware of the general principle that once the period of limitation has begun to run against a particular right to sue, appeal or apply there is no suspension of that period except as provided by the Limitation Act itself. This principle, however, is subject to modification in special circumstances and has been recognized in *Muthu Veerappa Chetty v. Adaikappa Chetty* ('20) 7 A.I.R. 1920 Mad. 663. In that case it was held:

Where a claim is satisfied without resort to Court, and that settlement is subsequently annulled by decree of Court, the party claiming has a fresh cause of action on his original claim, limitation to enforce which commences from the date of the annulment.

In the present case, the decrees in favour of the decree-holders were annulled on 30th April 1932, by a competent Court. When that decree was modified by the High Court the decree-holders acquired a fresh cause of action and the date of the High Court decree which materially altered the previous decrees and substituted new decrees in place of those that were originally passed, may be taken to be the 'date of the decree' as mentioned in col. 3 of Article 182(I). In *Badrudin Khan v. Mahyar Khan* : AIR1939 All66 , a Bench of this Court held that the application was in time as the plaintiff's decree in respect of which he could seek restitution ceased to exist from 14th February 1931, by reason of the trial Court's order up to 6th February 1935, when the decree was revived by, the appellate Court and as limitation remained in suspension during the period between the two dates that period should be excluded in calculating the period of three years from the date of the deposit.

6. We do not consider it necessary to cite any more authorities for the view which we are inclined to take. On behalf of the respondents no case has been cited which is exactly in j point. We, however, wish to refer to some of the cases relied upon by learned Counsel for the respondents. In *Bala Tripura Sundaramma v. Abdul Khader* ('33) 20 A.I.R. 1933 Mad. 418 it was held,

Exemption not covered by the sections of the Limitation Act should not be imported by Courts to relieve a party from the bar of limitation. Equitable considerations cannot be introduced into the very clear provisions of Section 15. The injunction or order must be express in its terms and an application cannot be stayed by implication.

We have already held that Section 15 of the Act cannot be invoked in aid of the appellants' contention. In that case after a mortgage decree was passed and pending execution it, was held in another suit instituted by a stranger to the mortgage in the first Court that the mortgaged property did not belong to the mortgagor but to the stranger and it was held that the period during which the decision stood till it was set aside by the appellate Court, could not be deducted from the period of limitation for execution of the mortgage decree. There was no declaration of the Court with respect to the decree obtained by the mortgagee. The decree-holder was certainly at liberty to proceed with the decree which might have been stayed at the instance of the judgment-debtor. In the present case, however, the position was entirely different. Suit No. 90 was interpartes and the Court specifically declared that the decree was null and void. That case, therefore, is no authority for the proposition contended by the respondents. The strongest ease in favour of the respondents is *Lakhmi Chand v. Bibi Kulsum-un-Nissa* : AIR1939 All82 . The learned Judges in that case held:

Section 15, Limitation Act, does not contemplate the case of one decree being rendered impossible of execution by a subsequent decree in another suit. Section 15, so far as execution proceedings are concerned, contemplates the case only of execution proceedings being held up by an order of Court or injunction. Where there was no order 'directing in so many words that the execution of the decree passed in the suit be stayed pending the disposal of the second suit,' Section 15 of

the Act did not apply.'

Referring to the case in 1938 A. L. J. 11898 the learned Judges held: 'The Limitation Act must be strictly construed.' There is no place in the Law of Limitation in India for the general principles of suspension of limitation. It is not permissible to Court to discover in the provisions of the Limitation Act, general principles and to apply those principles to cases which are not specifically provided for by the Act itself. It would be necessary to refer briefly to the facts of the case cited above. It appears that the respondent in that case obtained a decree against the appellant. Before the decree could be executed a suit was instituted in the name of an idol on the allegation that the house in dispute with respect to which the respondent had obtained a decree was a temple. The plaintiff in the suit averred, inter alia, that the decree had been obtained by collusion and fraud. He, therefore, sought for a declaration that the pujari Nand Ram was in possession of the temple and that the plaintiff in the earlier suit, namely, the decree-holder had no right to take possession of the temple or to interfere with the worship therein. Further, a perpetual injunction was claimed restraining the defendant from interfering with the use of the temple as a place of worship, and the blowing of conches etc. The suit was decreed by the trial Court and that, decree was affirmed in first appeal. In second appeal to the High Court, the order of the lower appellate Court was recalled and the suit was dismissed. The decree-holder wanted to exclude the time during which the order of the trial Court remained operative. The order of the trial Court was in the following terms:

Suit is decreed with full costs. It is hereby declared that the plaintiff is the owner in possession of the temple and the land in suit and the defendant has no concern with it now. She is not entitled to, eject the plaintiff. She is hereby restrained from taking possession of the house and the land etc.

In that case also, it will be noticed that the suit was by a third party and not by the judgment-debtor. There was absolutely no declaration with regard to the decree which was obtained by the respondent. The decree, therefore, remained operative and could have been executed by the decree-holder. The learned Judges upon a consideration of facts came to the conclusion that Section 15 did not apply

because no order was passed for the stay of the execution of the decree. We do not find anything in that case which runs counter to the view we have taken in this case.

7. We have given our serious consideration to the authorities that have been cited before us by the parties and we have no hesitation in holding that the plea of limitation should be repelled in this case. It appears to us wholly unreasonable to hold that the right to execute the decrees became barred because the decrees were rendered incapable of execution by the subsequent decree of a competent Court. In our opinion, the appellants had a fresh cause of action from the date of the High Court decree which should be considered to be the date of the decree under col. 3, Article 182. In the alternative the modified decrees would be within time under Article 181 as the right to execute accrued after the decrees became capable of execution in virtue of the decree of the High Court.

8. For the reasons given above we allow the appeals, set aside the decrees of the Court below and restore those of the Court of first instance. We direct that the applications for execution should proceed and should be disposed of according to law. The appellants will get their costs of the entire proceedings from the respondents.