

Radha Krishna Vs. Krishna and ors.

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Court : Allahabad

Decided On : Jul-30-1962

Reported in : AIR1964All325

Judge : Mithan Lal, J.

Acts : Limitation Act, 1908 - Schedule - Articles 182 and 183; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 10

Appeal No. : Exen. First Appeal No. 159 of 1956

Appellant : Radha Krishna

Respondent : Krishna and ors.

Advocate for Def. : A. Banerji and ;K.C. Agarwala, Advs.

Advocate for Pet/Ap. : Gopal Behari, Adv.

Judgement :

Mithan Lal, J.

1. This execution first appeal filed by the decree-holder arises out of the following circumstances.

2. The decree-holder filed a suit against respondent No. 1 claiming certain property as an adopted son of Shanker Lal. The respondent claimed the property

as a reversioner. The plaintiff's suit was decreed by the trial court but the decree of the trial court was reversed by the High Court and then the decree of the High Court was reversed by the Privy Council. The plaintiff was also awarded costs against the defendant, who is respondent No. 1. The judgment of the Privy Council is dated 6th/23rd November 1944.

3. The decree-holder made the first execution application for recovery of costs in 1948 but it was dismissed. Thereafter another execution application was made on 16th May 1952 and it was alleged that this application was within time because of certain payments made by the judgment-debtor i.e. Rs. 1100/- on 3rd February 1948, Rs. 1000/- on 3rd April 1950 and Rs. 1000/- on 6th July 1950. Another ground why the execution was said to be within time was the acknowledgment of the decretal amount by the judgment-debtor in a sort of a family settlement which took place on 4th February 1950.

4. The judgment-debtor raised a number of objections and the objections which prevailed with the lower court related to the decree being barred by time. The lower Court held that there was no payment of the decree nor there was any acknowledgment, so the execution was beyond time. The whole judgment of the trial court is based on Article 182 of the Limitation Act. It seems it was not argued in that court that for the enforcement of a decree of the Privy Council Article 183 of the Limitation Act applied and the limitation was 12 years.

5. Another matter to which attention may be devoted at this stage is that the decree-holder had made an application for impleading respondents Nos. 2 to 4, who were sons of the judgment-debtor, as party to the execution application. This application of the decree-holder was dismissed by the Court below. In this appeal the decree-holder has again impleaded the sons of the judgment-debtor as respondents.

6. Two contentions have been put forward in this appeal by Sri Gopal Behari, learned advocate for the appellant. The first is that the court below went wrong in holding that the execution of the decree was beyond time because it being a decree for costs of the Privy Council and the execution application being for the enforcement of that decree the limitation was 12 years from the date of the reviver

of the trial court judgment under Article 183 of the Limitation Act. He has given up the plea that there was any payment or acknowledgment. His second contention is that when a dispute took place between the father and his sons with respect to the family property the matter was referred to arbitration and the Arbitrator while giving the award made the father and the sons liable for payment of costs of the Privy Council and consequently the sons of the judgment-debtor should have been made a party and that is the ground why they have been impleaded as respondents in this case.

7. Learned counsel for the respondents, Sri. A. Banerji, has on the other hand contended that the sons of the judgment-debtor could not be made parties to this appeal or to the execution because the suit was between the appellant and respondent No. 1 and secondly because the application of the decree-holder made in the lower court was dismissed and so respondents Nos. 2 to 4 could not be made parties and were in no way liable. It was also his contention that the award does not create any liability against respondents Nos. 2 to 4 because firstly the matter was not referred to arbitration and secondly because the award was not made a rule of the court. On the point of limitation his contention is that it being a matter of execution and not enforcement of a decree the proper Article which would apply would be Article 182. Another contention which he has raised is that the plea that Article 183 of the Limitation Act would apply was taken for the first time in this Court and not in the trial court and so this should not be allowed.

8. I have heard learned counsel for the parties. So far as respondents Nos. 2 to 4 go, they were obviously wrongly impleaded as respondents in this case firstly because they were not parties to the suit in which the costs were awarded by the Privy Council; secondly because the agreement to refer the dispute to arbitration did not contain anything about the liability for payment of the decree of costs passed by the Privy Council; and thirdly because there is nothing on record to show that the award which was given without the intervention of the court had ever been made a rule of the court. For all these reasons respondents Nos. 2 to 4 have been wrongly impleaded and the present appeal must be dismissed against them with costs.

9. As regards respondent No. 1, it is no doubt true that the argument relating to Article 183 of the Limitation Act has been, for the first time, raised in this Court, but it is equally true that that Article is the proper Article which will apply to the execution of a decree for costs of the Privy Council, Article 182 applies only to those executions of decrees and orders of a civil court which are not provided for by Article 183 while Article 183 applies to enforce a judgment or decree or order of the Privy Council. Since the decree for costs was passed by the Privy Council while reversing the decree of the High Court such a decree can be enforced within 12 years of the date of the order of the Privy Council. In all cases where the Privy Council confirms or reverses a decree of the court below the paramount decision in the case is that of the Privy Council and the application to enforce it would be entertainable within 12 years of the date of the order under Article 183 of the Limitation Act. The cases of *Narasinga Das v. Narain Das*, ILR 2 All 753, *Luchmun Persad Singh v. Kishun Persad Singh*, ILR 8 Cal 218 (FB) and *Ram Krishna Murarji v. Ratan Chand*, AIR 1956 All 32 all support this view. The decree for costs of the Privy Council could, therefore, be executed within 12 years and as this execution was within 12 years, under Article 183 of the limitation Act the execution application was not barred by time and the learned Judge was wrong in holding it to be beyond time.

10. The appeal is allowed with costs against respondent No. 1. The order of the First Civil Judge, Meerut is set aside. The decree for costs can be executed against respondent No. 1 and the execution against him shall proceed according to law. The execution against respondents Nos. 2 to 4 cannot be taken out. The appeal against those respondents is dismissed with costs. The objection of respondents Nos. 2 to 4 is allowed.

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