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Court : Allahabad

Decided On : Nov-28-1933

Reported in : AIR1934All294

Appellant : Mt. Nabban Begam and ors.

Respondent : Mt. Moti Begam

Judgement :

Rachhpal Singh, J.

1. These are two connected appeals arising out of the same order. The facts which have given rise to these two appeals are these : Inayat Khan obtained a decree on 31st January 1922 against Mt. Nabban Begum, Mt. Kulsum Begum, Mt. Barkat Begum and Mt. Bismillah Begum. It was a simple money decree. On 8th February 1922 Inayat Khan made an application for execution and asked for the attachment of village Kuiyan. On 12th February 1922 the village was attached. On 17th March 1922 one Mt. Ilahi Begum instituted a suit against the decree-holder and the four judgment-debtors to recover a sum of money alleged to be due to her on account of her dower. In this case which Mt. Ilahi Begum had instituted, she made an application that an injunction should be issued restraining the decree-holder, Inayat Khan, from proceeding with his application for execution. This was done. The Court in which the execution proceedings were pending passed an order on 24th April 1922 to the following effect:

The execution will be struck off for the present but the attachment will be maintained.

2. On 12th November 1923 the suit instituted by Mt. Ilahi Begum for dower was dismissed by the Subordinate Judge. There was an appeal by Mt. Ilahi Begum against the decision of the Subordinate Judge to this Court. But it is important to remember that no application was made by the appellant asking for the stay of execution. This Court eventually dismissed the appeal on 28th March 1927. The decree-holder made an application for continuing the execution proceedings on 28th March 1930. The prayer related to two items of property, the village mentioned above and about one house. So far as the house was concerned, the learned Subordinate Judge came to the conclusion that the application of the decree-holder was not within limitation and he dismissed it. As regards village Kuiyan, the learned Subordinate Judge came to the conclusion that the application was within limitation and he directed that proceedings in execution be taken. He dismissed the objections of the judgment-debtors to the effect that the prayer of the decree-holder in respect of this village mentioned above was also not within limitation. The judgment-debtors have preferred these two appeals. One has been preferred by Mt. Bismillah Begum and the other by the remaining three judgment-debtors. The question which we have to consider in this case is as to whether or no the view taken by the learned Subordinate Judge on the question of limitation is correct. There cannot be the least doubt that the effect of the order which the learned Subordinate Judge passed on 24th April 1922 was to postpone the attachment proceedings indefinitely. There was no final disposal of the execution application. When a Court suspends proceedings in any pending execution case for some reason, then it cannot be said the application has been judicially disposed of. It would appear that when the Court received an injunction order from the other Court which was trying the suit for the recovery of dower, it thought that the best thing would be to postpone the execution proceedings indefinitely till the dispute between the parties was decided and then, if necessary, the execution proceedings would continue. Under these circumstances it was open to the decree-holder to have applied for the continuation of the execution proceedings. The question for consideration is when he should have done so. The contention raised by the decree-holder in the Court below was that it was open to him to

make an application for the continuation of the proceedings already pending at any time he liked. This argument is based on this reason that where an application for execution is already pending and undisposed of, there can be no question of making a fresh application and consequently the question of limitation does not arise. This view appears to have found favour with the learned Subordinate Judge. In our opinion, the matter is concluded by a Full Bench ruling of this Court, *Chhattar Singh v. Kamal Singh* : AIR1927 All16 . There it was held that where the execution of a decree has been suspended through no act or default of the decree-holder, he has a right to ask the Court to revive and carry through the execution proceedings which have been suspended, and this right can be exercised by means of a proper application to that effect made within three years of the date on which the right to make it accrued as such application would be one for which no period of limitation has been expressly provided and would therefore fall under Article 181 of the schedule of the Indian Limitation Act. One of the questions which had to be decided in that case was whether Article 181 or Article 182 governs such application. The Full Bench took the view that the case was governed by Article 181, Limitation Act At. pp. 207 and 208 (of 25 A.L.J.) the learned Judge delivering judgment of the Full Bench observed:

The only other question then is as to the period within which the right of the decree-holder to so apply must be exercised. As to this we think that the law is laid down correctly in a further passage of the judgment of Piggott, J., in the above case which reads as follows : He (i.e., the decree-holder) can however only do this by means of a proper application to that effect.... The application in question would be one for which no period of limitation, is expressly provided by the Schedule to the Limitation Act and would therefore fall under Article 181 of the schedule requiring to be made within three years of the date on which the right to make it accrued.

3. Further the learned Judge observed:

Obviously the right would accrue upon the date on which the obstacle to the progress of the execution proceedings was withdrawn.

4. In the, case before us it is clear that the obstacle to the further progress of the execution was the injunction issued in the suit of Mt. Ilahi Begum which she had instituted for the recovery of her dower. As soon as that suit was dismissed by the Subordinate Judge, the obstacle was withdrawn automatically. The decree-holder immediately got a right to proceed with the execution proceedings. He could have gone to the Court and said that as the obstacle created by the injunction had disappeared, he should be allowed to proceed with his application for execution. But he did not do so. In our opinion, according to the view taken in the Full Bench ruling, the application should have been made within a period of three years from the date on which the injunction became ineffective and that would be the date on which the suit of Mt. Ilahi Begum was dismissed. As we have already mentioned, the argument of the learned Counsel for the respondent is based on certain expressions on the judgment of one of the learned Judges of this Court in a case, Prem Narain v. Ganga Ram : AIR1931 All458 . It may be stated that the view expressed by the learned Judge certainly supports the contention raised by the learned Counsel for the decree-holder. But it will be seen that for the purposes of the case before the two learned Judges who decided it, it was not necessary to decide this point and so we would be justified in saying that the observation relied on were obiter dicta. This Court has consistently taken the view that in a case like this an application has to be made and that too within a period of three years. We may point out the following rulings in which this view was taken: Kamaruddin v. Jawahirlal (1905) 27 All. 334, Yakub Ali v. Durga Prasad A.I.R. 1915 All. 410, Balwant Singh v. Bodh Singh A.I.R. 1920 All. 174, Madho Prasad v. Drowpadi Bibi A.I.R. 1921 All. 99 and : AIR1926 All409 . In Balwant Singh v. Bodh Singh A.I.R. 1920 All. 174, and Madho Prasad v. Drowpadi Bibi A.I.R. 1921 All. 99 it was laid down in very clear terms that in cases of this kind an application for continuation should be made within a, period of three years. We are not justified in presuming, as contended by the learned Counsel for the respondent, that this point, that no application was necessary, was not argued before the learned Judges who decided that case. For the reasons given above, we are of opinion that an application should have been made within a period of three years from the date on which the injunction order become ineffective.

5. We accordingly allow these appeals, set aside the order of the Court below regarding village Kuiyan and dismiss the application for execution with costs to appellants in both Courts.

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