

Ramadhar Vs. Ram Dayal

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1886)ILR8All535

Judge : Oldfield and; Mahmood, JJ.

Appellant : Ramadhar

Respondent : Ram Dayal

Judgement :

Mahmood, J.

1. The exact effect of the Full Bench ruling was recently discussed and summarized by me in *Jokhu Ram v. Ram Din* ante p. 419. It is clear from the report of the Full Bench ruling that the application, which was under consideration in that case, was the first made under the present Code after the decree had become twelve years old, and in view of this circumstance the learned Judges constituting the majority of the Full Bench observed: 'In the execution proceedings to which this reference relates, the respondent-decree-holder's application to execute the decree of November 1870, was not only the first preferred by him under Section 230 of Act XIV of 1882, but the first he had made after the expiration of twelve years from the date of the decree, and as such was, we think, entertainable.' That this was not a mere obiter dictum, but formed a part of the ratio decidendi, is apparent from the judgment itself, and the same conclusion is

derivable from what Straight, Offg. C.J., one of the learned Judges of the majority of the Full Bench, has said in *Paraga Knar v. Bhagwan Din* ante p. 301: 'Looking at the provisions of Section 230 of the Civil Procedure Code, it would appear that, after a decree is twelve years old, there is a prohibition against its being executed more than once; that is, an application for execution should not be granted if a previous application had been allowed under the provisions of that section.' There can therefore be no doubt that, according to the opinion of the majority of the Full Bench in the case of *Musharraf Begam* I.L.R. 6 All. 189, the holder of a decree more than twelve years old was to be allowed only one opportunity to execute his decree under that section, and indeed the application with which the Full Bench was dealing was the first application after the decree had become twelve years old, and also the first under the present Code.

2. Such is not exactly the case here, for both the application of the 2nd February 1883, and that of the 10th December 1883, were made under the present Code, but on neither of those occasions was the decree more than twelve years old. The present application, which was made on the 24th November 1884, is, therefore, the third application made under the present Code, but it is the first made after the lapse of twelve years from the date of the decree. It must therefore be entertained within the principle of the ruling of the Full Bench; because the twelve years limitation provided by Section 230 of the Code of 1877 cannot, according to that ruling, be read as included in the proviso to that section. The only authority for the respondent's contention, that this decree is barred, is the ruling of Petheram, C.J., in *Tufail Ahmad v. Sadho Saran Singh* Weekly Notes 1885 p. 193; but in the case *Jokhu Ram v. Ram Din* ante p. 419 I have already stated my reasons for being unable to adopt that ruling.

3. Then again I agree in what Straight, Offg. C.J., has said in *Paraga Kuar v. Bhagwan Din* ante p. 301 as to the meaning of the word 'granted' as used in Section 230 of the Civil Procedure Code. Here the previous execution proceedings under the present Code initiated by the applications of the 2nd February 1883, and 10th December 1883, terminated in these applications being struck off, and these results cannot be construed to mean that these applications were 'granted' within the meaning of Section 230 of the Civil Procedure Code.

4. I would decree this appeal, and setting aside the orders of both the lower Courts, remand the case to the Court of First Instance for disposal according to law, with reference to the other objections raised by the judgment-debtor. Costs to abide the result.

Oldfield, J.

5. This is an appeal from an order disallowing an application to execute a decree. The decree bears date the 20th April 1872. Applications to execute the decree have been made and granted under Act X of 1877 and under the present Code of Civil Procedure, and the present application is dated the 24th November 1884. The question is, whether it is barred under the provisions of Section 230.

6. This application is made more than twelve years after the date mentioned in the section, and a previous application for execution has been made and granted under this Code: consequently it would be barred by time, unless it comes under the proviso in the last paragraph of the section, which is as follows: 'Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years of the passing of this Code unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years.'

7. Now this application is within three years of the passing of this Code, and we have to see if the period prescribed for taking proceedings to enforce the decree by the law in force immediately before the passing of this Code has expired. The decree, no doubt, has become time-barred under the provisions of Section 230, Act X of 1877; but it has been held by the majority of the Full Bench of this Court that the law referred to in the proviso is not Section 230, Act X of 1877, but the Limitation Act; and with reference alone to the Limitation Act the decree cannot be held to be time-barred.

8. I dissented from the majority of the Full Bench in the ruling referred to, but I am bound to decide this case in accordance with it. A decision of a Division Bench of this Court has been cited to the effect that 'that the proviso in Section 230 applies

to those decrees which would be barred on the date of the Code coming into force, and does not apply to those decrees, which were not barred by the twelve years' rule when the Code came into force, and which could have been executed on the Code coming into force by reason of the fact that the period of twelve years had not expired from the date mentioned in Section 230 '--Tufail Ahmad v. Sadho Saran Singh Weekly Notes 1885 p. 193.

9. According to this ruling, the decree we are dealing with would not be saved by the proviso, which would not apply to it.

10. But I am unable to concur in the interpretation of the proviso taken by the learned Judges in that case.

11. I would set aside the orders and remand the case for execution. Appellant will have costs in all Courts.

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