

Bashir Ahmad Vs. Menhdi Hasan

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Court : Allahabad

Decided On : Sep-15-1981

Reported in : AIR1982All321

Judge : T.S. Misra, J.

Acts : [Limitation Act, 1963](#) - Schedule - Articles 135 and 136; [Specific Relief Act, 1963](#) - Sections 37, 37(2), 38, 38(3) and 39

Appeal No. : Civil Revn. No. 598 of 1978

Appellant : Bashir Ahmad

Respondent : Menhdi Hasan

Disposition : Petition partly allowed

Judgement :

ORDER

T.S. Misra, J.

1. This revision arises in the following circumstances.

2. Bashir Ahmad, the present revisionist had filed a suit against the present opposite parties being Suit No. 228 of 1971 in the Court of Munsif Gonda. That suit was decreed by the Court of II Addl. Munsif, Gonda, on 9-12-1972. The reliefs

sought for in the plaint and allowed by the court were as follows :--

- (a) A decree for permanent injunction to restrain the defendants from closing the drain of the plaintiff shown by letters H I in the plaint and the passage shown by dotted lines in the plaint.
- (b) A decree for permanent injunction directing the defendants to remove the foundation which they had, illegally dug over land K. L. M and close the door.
- (c) A decree for permanent injunction restraining the defendants from interfering with the possession of the plaintiff over the Sahan Darwaza shown by letters AB P N.
- (d) Any other relief which the court deem fit and proper.
- (e) Costs of this suit.

The suit was decreed as prayed with ex parte costs and the defendants were ordered not to interfere with the possession of the plaintiff over the land in dispute. The decree-holder filed an application for execution of the said decree on 1-5-1976. An objection was raised by the judgment-debtors that the execution was barred by time. The court below held that by the reliefs (a) and (b) aforesaid the plaintiff had asked for and was allowed mandatory injunction against the defendants. The limitation for executing a decree for mandatory injunction being three years vide Article 131 of the Schedule to the Limitation Act, the execution was held to be barred by time. However, with regard to relief (c) it was said by the court below that it was not a relief for the grant of mandatory injunction, hence the execution for the enforcement of a decree for injunction with respect to relief (c) aforesaid was maintainable. The decree-holder being aggrieved by the order so far as it has disallowed the execution for the enforcement of the decree pertaining to reliefs (a) and (b) has preferred this revision,

3. It was submitted on behalf of the revisionist that by the reliefs (a) and (b) the plaintiff had not asked for any mandatory injunction rather he had asked for a relief for perpetual injunction and, therefore, the execution for the entire decree with respect to reliefs (a), (b) and (c) was maintainable and was not barred by time. In

order to appreciate the contention of the revisionist, it would be appropriate to reproduce here Articles 135 and 136 of the Schedule to the [Limitation Act, 1963](#):--

'135. For the enforcement of a decree granting a mandatory injunction.

Three years

The date of the decree or, where a date is fixed for performance, such date'

'136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.

Twelve years

'(When) the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought, takes place :

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.'

Article 135 prescribes a period of three years for the enforcement of a decree granting mandatory injunction. The time begins to run from the date of the decree or where a date is fixed for performance such date. However, under Article 136 a period of twelve years has been prescribed for the execution of any decree other than a decree granting a mandatory injunction or order of any civil court. The application for the enforcement or execution of a decree granting perpetual injunction is not subject to any period of limitation vide proviso to Article 136. It has now to be seen whether the reliefs (a), (b) and (c) sought for in the plaint were the reliefs for the grant of a mandatory injunction or perpetual injunction. Sub-section (2) of Section 37 of the Specific Relief Act stipulates that by perpetual injunction the defendant is perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff. Under Section 38 of the Specific Relief Act, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether

expressly or by implication. When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, the court may grant a perpetual injunction in cases enumerated in Sub-section (3) of Section 38 of the Act. Mandatory injunction is dealt with in Section 39 of the Specific Relief Act which says that when, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. Applying these principles relief (a) aforesaid claimed by the plaintiff in Suit No. 228 of 1971 was a relief for the grant of a perpetual injunction. However, relief (b) sought for by the plaintiff in the said suit pertains to mandatory injunction whereas relief (c) aforesaid relates to the grant of perpetual injunction. The court below was right in holding that relief (c) does not relate to mandatory injunction. In fact it relates to perpetual injunction. But, the court below fell in error in holding that by relief (a) aforesaid the plaintiff had asked for mandatory injunction. In fact that relief was for a perpetual injunction. In these circumstances the execution application for the enforcement of the decree for injunction granted by the court below under reliefs (a) and (c) was within time but so far as it asked the enforcement of the decree granting mandatory injunction under relief (b) it was barred by time.

4. In the result, the petition is allowed in part. The order of the court below is modified to the extent that the execution petition filed by the decree-holder for enforcing reliefs (a) and (c) only is within time. No order as to costs.

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