

**Ramdeen and anr. Vs. Laxmi Kumar Shrinivas and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Mar-23-1959

**Reported in :** AIR1959MP396

**Judge :** Shiv Dayal Shrivastava, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 48

**Appeal No. :** Second Appeal No. 93 of 1956

**Appellant :** Ramdeen and anr.

**Respondent :** Laxmi Kumar Shrinivas and ors.

**Advocate for Def. :** K.M. Karkare, Adv. for Respondent 1 and ;R.S. Bajpai, Adv. for Respondents 2 and 3

**Advocate for Pet/Ap. :** Ram Krishan Dixit, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Shiv Dayal Shrivastava, J.**

1. This is a second appeal by two of the judgment-debtors. In Civil Suit No. 112 of 1990 Samvat, the Court of District Sub-Judge, Bhind on June 4, 1935 passed a decree for Rs. 1191/8/- in favour of the first respondent. That decree was put to

execution in the Civil Court which passed it. Later, the decree was transferred to the Suba (Collector) of Bhind for sale of Zamindari property of the judgment-debtors. The matter went on for a number of years. On October 2, 1951, by virtue of the M. B. Abolition of Zamindari Act, the Zamindaris did not continue to exist.

The Collector returned the decree as per his certificate dated April 6, 1953. The decree-holder then prayed on October 2, 1953 that the compensation of the zamindari payable to the judgment-debtors, be attached. When process was issued the Compensation Officer replied by his letter No. 840 dated October 15, 1953 that there was no amount of compensation lying with him as payable to the judgment-debtors.

Finally on January 6, 1954, the decree-holder applied for attachment and sale of other movable properties of the judgment-debtors. As the decree was dated June 4, 1935, the judgment-debtors assailed this application of the 6th January as barred by Section 48 of the Code of Civil Procedure, The objection found favour with the executing Court but the Additional District Judge, Bhind, relying on a decision of the M. B. High Court reported in Phoolchand v. Ramchandra, Madh BLJ 1955 HCR 2119: ((S) AIR 1956 Madh-B 158) and following it, held that since the application in question was made in a pending execution matter, Section 48 of the Code of Civil Procedure was not attracted.

2. In this second appeal it is argued by Shri Ram Krishan Dixit, learned counsel for the appellant that the prayer contained in the application of the 6th January was made for the first time and therefore it was a fresh application within the meaning of Section 48. After hearing Shri Karkare, learned counsel for the decree-holder, I have come to the conclusion that the contention must be accepted. Section 48 of the Code of Civil Procedure runs thus:

'48(1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years.....'

The expression 'fresh application' has been used in contradiction with an 'ancillary application' made in continuation of a previous application. It is true, that Section 48 applies to a substantive application for execution and not to an ancillary one made with the object of moving the court to proceed in the matter of a substantive application already on the file. But the question whether an application is merely ancillary or is a fresh application depends upon the circumstance of each case.

3. It has been held in a number of cases (decided by almost all the High Courts) that where the second application is against properties or persons different from those in the previous application, the second application will be deemed to be a 'fresh application'. In the Full Bench decision of the Nagpur High Court in *Shri Kisandas v. Sitaram*, reported in ILR (1952) Nag 1: (AIR 1952 Nag 126), it is laid down that a later application for attachment and sale of fresh properties was a fresh application and not a continuation of the old execution. To the same effect are the Division Bench decision in *Bhaskar Gulabrao v. Chundrabhan Marotirao*, reported in ILR (1945) Nag 555: (AIR 1945 Nag 239) and a decision of Hidayatullah J. (as he then was) in *Deorao Suryabhanji v. Ramchandra Amrutlal*, AIR 1948 Nag 272. It is unnecessary to cite other authorities.

4. The solitary decision which takes a contrary view and holds that an application made in a pending execution matter cannot be said to be a fresh application within the meaning of Section 48 of the Code of Civil Procedure is one reported in (S) AIR 1956 Madh-B 158, the decision which has been followed by the first appellate Court in the present case. With great respect I must hold that above cited decision of the M. B. High Court cannot be said to lay down good law, in view of the Nagpur decision by which this Court is bound.

5. In this case it is also not possible to exclude the period during which the proceedings were pending before the Collector, in computing the period of 12 years under Section 48. The reason is that the decree-holder not having been deprived of his remedies against other properties of the judgment-debtor during the period when the decree was being executed by the Collector, he could have proceeded against other properties of the judgment-debtor, ILR (1952) Nag 1: (AIR 1952 Nag 126) (FB).

6. For both these reasons the decree-holder's application dated January 6, 1954 was barred by Section 48 of the Code of Civil Procedure.

7. This appeal is, therefore, allowed, the judgment of the first appellate Court is set aside and the judgment and order passed by the first court on April 6, 1954 is restored. Parties shall bear their own costs in this Court and in the first appellate Court.

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