

Ouseph Vs. Lona

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Court : Kerala

Decided On : Jul-10-1978

Reported in : AIR1979Ker14

Judge : T. Kochu Thommen, J.

Acts : [Limitation Act, 1963](#) - Schedule - Articles 136 and 182; Code of Civil Procedure (CPC) - Sections 28 and 48

Appeal No. : Ex. Second Appeal No. 98 of 1976

Appellant : Ouseph

Respondent : Lona

Advocate for Def. : K.C. John,; K.K. John and; George Varghese, Advs.

Advocate for Pet/Ap. : K. Sreedharan, Adv.

Disposition : Appeal dismissed

Judgement :

T. Kochu Thommen, J.

1. The only question which arises in this appeal is as regards the date on which the period of limitation begins to run for the execution of a decree. The decree was passed on 28-6-1961. It was subsequently amended on 24-7-1962. The execution

petition was filed on 23-2-1974. If the period began to run from the date of the original decree, the execution petition was filed out of time, that is, more than 12 years. On the other hand, if the crucial date is the date of the amendment of the decree, that is, 24-7-1962, the execution proceedings was begun within time.

2. The relevant provision of the [Limitation Act, 1963](#) (hereinafter referred to as 'the present Act') is Article 136 which reads as follows :

Description of application.

Period of limitation.

Time from which period begins to run.

'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.....'

In the instant case the decree was enforceable on the date of the passing of the decree, that is, 28-6-1961. It is however contended on behalf of the appellant that, for the purpose of limitation, the decree has to be taken to be enforceable only as from the date of its amendment. He refers to the provisions of the Limitation Act, 1908 (hereinafter referred to as the repealed Act). Article 182 of that Act provided for a different period of limitation. It stated :

Description of application.

Period of limitation.

Time from which period begins to run.

'182. For the execution of a decree or order of any Civil Court not provided for by An 183 or by S. 48 of the Code of Civil Procedure, 1908.

Three Years.

1.

2.

3.

4. Where the decree has been amended the date of amendment; or 5

6.... ..

7.

Relying upon this provision counsel submits that the period begins to run only from the date of the amendment. He says that this principle applies even under the present Act. According to him the petition filed within 12 years from the date of the amendment, notwithstanding that more than 12 years have elapsed since the date of the, original decree, is within time.

3. Article 182 of the repealed Act had to be read in conjunction with Section 48 of the Civil P. C., which was repealed by Section 28 of the present Act. Section 48 of the Civil P. C. provided for an outer limit of 12 years for the execution of a decree. This maximum period of 12 years from the date of the decree, as provided under Section 48, was the total time allowed for the execution of a decree, although the three-year period provided under Article 182 of the repealed Act ran from the date of the amendment of a decree. In other words, under the repealed Act, although the period of limitation began to run afresh with every amendment, the decree became barred upon the expiry of 12 years from the date of the original decree : See *Ganeshmal Pasmal v. Nandlal Tulsiram* (AIR 1954 Bom 104).

4. Section 48 of the Civil P. C. was found to be no longer necessary when Article 182 of the repealed Act was replaced by Article 136 of the present Act. That is why Section 48 of the Civil P. C. was repealed by Section 28 of the present Act. The principle of Section 48 C. P. C. is now embodied in Article 136 of the present Act which provides for a 12-year period of limitation for the execution of a decree. The period begins to run from the date on which the decree became enforceable and that in the present case was the date of the decree itself. Although the decree

underwent a change with its amendment on 24-7-1962, until the date of the amendment, the decree in its original form was enforceable as from the date on which it was passed, that is, 28-6-1961. It was that date which is crucial for computing the period of limitation as provided under Article 136. That being the case the execution petition filed on 23-2-1974 is out of time. It was rightly so held by the courts below. The appeal is accordingly dismissed. The parties will however bear their respective costs.

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