

Harnarain Vs. Gordhandas

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Court : Rajasthan

Decided On : Nov-28-1960

Reported in : AIR1961Raj271

Judge : I.N. Modi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 48, 48(2), 100 and 101;
Limitation Act, 1908 - Sections 15

Appeal No. : Civil Misc. Second Appeal No. 21 of 1959

Appellant : Harnarain

Respondent : Gordhandas

Advocate for Def. : B.N. Chanda, Adv.

Advocate for Pet/Ap. : R.L. Purohit, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

Dated Jodhpur the 23rd August 1939,

Special Famine measures in the Judicial Department.

No. 12378 : In view of the prevailing famine the following directions are issued for the guidance of all the courts in Marwar which will remain in force from the 23rd August, 1939, until further orders :

1. All the civil litigation in which one or both of the parties depend for their livelihood on cattle breeding or agriculture will be altogether suspended.
2. Execution work of all kinds (except of decrees for maintenance, other similar allowances and injunctions) will be suspended.
3. No sales will be made in the Insolvency Court.
4. Adjournments should be freely granted in civil cases by all the courts wherever it appears that by reason of the famine, it is difficult for either party to procure evidence or a non-adjournment would in any other way involve hardship on either party.
5. The period of the famine (termination of which will be notified later) will not be reckoned towards the limitation of any suit or appeal by agriculturists or cattle breeders and towards applications for execution the limitation for which would expire during this period.
6. As regards Thikana Courts no special rules are laid down, but the above lines whenever equitably necessary and the above rule of limitation should be applied.

Kanwar Sain,

Minister for Justice and

Reforms,

Government of Jodhpur.'

'GOVERNMENT OF JODHPUR.

CIRCULAR

Dated Jodhpur the 7th September, 1940. No. 1562/8 : In view of the fact that there has been widespread rainfall all over Marwar and normal conditions are restored the Famine Relief operations will be deemed to have been finally closed with effect from 15th September, 1940. All circulars issued regarding civil litigation, suspension of execution of decrees against agriculturists and sales through Insolvency Courts will be deemed to have been cancelled with effect from 15th September.

Similarly all concessions allowed in grazing fees, cattle pounds, customs duty on cattle rents on fodder crops etc., in connection with Famine Relief will also cease to operate from that date.

D. M. FIELD,

Lt. Col.,

Chief Minister,

Government of Jodhpur.'

7. Now the contention referred to above is in my opinion baseless for Clause (2) of the notification of 1939 is general and contains no words of limitation and applies to agriculturists as well as to non-agriculturists. Learned counsel submits that the notification of 1940 makes no reference to non-agriculturists. But this argument is fallacious because the second notification cannot cut anything out of the full content of the first.

All that may be said is that the language of the second notification is not as precise as it should have been; but that is an entirely different matter. It was next contended in this connection that even the first notification applies to only those cases where the period of limitation should have expired within the period delimited by the two notifications read together, and reliance is placed in support of this contention on the fifth Clause of the first notification. I regret, I am unable to accede to this submission. For this clause does not over-ride the other clauses of the notification.

It may be accepted that this particular clause would have no application to the present case; but the notification contains a number of other clauses and due meaning has to be assigned to each one of them according to well-established canons of interpretation. Thus interpreting both notifications as a whole and in harmony with each other, I have no hesitation in arriving at the conclusion that the execution of the decree in this case stood suspended from the date of the first notification i.e., 23rd August, 1939, to 15th September, 1940, being the date of cessation of all concessions specified by the second notification. I hold accordingly.

8. This brings me to the question of the true impact of Section 15 of the Limitation Act on Section 48 of the Code of Civil Procedure. Section 15 of the Limitation Act reads as under :

'15(1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn shall be excluded.

2. In computing the period of limitation prescribed for any suit of which the notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.'

Now it is conceded before me that there is no decision of our Court governing the point whether the period of 12 years' limitation prescribed by Section 48, C. P. C. is controlled by section 15 of the Limitation Act. Untrammelled therefore by the force of any authority of our Court or by the decisions of other High Courts, I feel no hesitation in saying that the language of Section 15 is quite wide and extensive and should be held to control the twelve years' period laid down by Section 48 of the Code of Civil Procedure.

The only question which really arises for consideration in this connection is whether the aforesaid period of 12 years can be said to be a period prescribed for limitation for making an application for the execution of a decree. The proper

answer to this question must be in the affirmative. Section 48 undoubtedly lays down an overall limit for the filing of an execution application. This is nothing if not a rule of limitation. Again, it cannot be gainsaid that this is a period 'prescribed' for the purpose of limitation.

The expression 'prescribed' does not and cannot necessarily mean something prescribed in the relevant schedule of the Limitation Act itself. On the other hand it clearly seems to me that where any law lays down or fixes a period of time within which a person must initiate action if he desires to assert his right or failing to do that his right becomes unenforceable in a court of law, then such a law does prescribe a period of limitation.

I have, therefore, no hesitation in holding that Section 48 is a provision which prescribes a Period of limitation and in fact with all respect it might very well have been incorporated in the Limitation Act itself rather than in the Code of Civil Procedure. It only remains for me to point out that both these laws are general & in pari materia & the provisions of the one do not over-ride those of the other, and, therefore, both must be read in harmony with and as supplemental to each other. In this state of affairs, I have felt strongly persuaded to hold the view that Section 15 controls the period of limitation prescribed under Section 48 of the Code of Civil Procedure.

9. Now turning to decisions of the various High Courts in our country, there does appear to be a divergence of judicial opinion. The Madras High Court in *Manickam v. Ramaswami*, AIR 1945 Mad 70 in line with the earlier cases of that court has taken the view that Section 15 has no application to the 12 years' period laid down in Section 48 C. P. C. The Patna High Court and the Oudh Chief Court have also taken the same view in *Kirtyanand v. Pirthichand*, AIR 1929 Pat 597 and *Ganeshi Lal v. Imtiaz Ali*, AIR 1931 Oudh 351 respectively.

On the other hand, a full bench of the Allahabad High Court in *Durga Pal Singh v. Pancham Singh*, AIR 1939 AH 403 and the Bombay High Court in *Firm Ramgopal Bhutada v. Sidram Aunayya* AIR 1943 Bom 164 and the Nagpur High Court in *Deorao Suryabhanji v. Ramchandra Amrutlal*, AIR 1948 Nag 272 & the East Punjab High Court in *Firm Daulat Ram Vidya Pargash v. Sodhi Gurbaksh Singh*,

AIR 1949 EP 213 have, broadly speaking, expressed themselves in favour of the view which I have felt persuaded to accept above. With respect I think that this is the better view and should be accepted as correct.

10. The resultant position, therefore, boils down to this. The execution of decrees was suspended in the former State of Jodhpur from which part of Rajasthan this case comes from 23rd August 1939, to the 15th September, 1940, that is for a period of about 12 months. The decision of the appellate court was made on the 16th April, 1940, and the application for execution out of which this entire controversy has arisen was made by the decree-holder on the 26th July, 1952. If the period during which the execution of decrees remained so suspended is allowed to the decree-holder under Section 15 of the Limitation Act, the application was certainly within time. I hold accordingly.

11. In the result this appeal fails and I hereby dismiss it with costs.

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