

Nanag Ram Vs. Mool Chand

Nanag Ram Vs. Mool Chand

SooperKanoon Citation : sooperkanoon.com/755240

Court : Rajasthan

Decided On : May-01-1958

Reported in : AIR1959Raj262

Judge : K.L. Bapna and; J.S. Ranawat, JJ.

Acts : Limitation Act, 1908 - Schedule - Article 182; Alwar Relgulation, 1934 - Sections 2

Appeal No. : Civil Execution Second Appeal No. 22 of 1952

Appellant : Nanag Ram

Respondent : Mool Chand

Advocate for Def. : J.P. Jain, Adv.

Advocate for Pet/Ap. : R.K. Sharma and; R.C. Vyas, Advs.

Disposition : Appeal allowed

Judgement :

Bapna, J.

1. This is a second appeal by the judgment-debtor in execution proceedings.

2. The respondent obtained a decree for recovery of money from the Court of Munsif, Behror, on 10-10-1930. His first application for execution of the decree was made on 23-7-1934, when the law of limitation was contained in a Schedule appended to the Alwar State Code of Civil Procedure, 1926. That application was disposed of on 13-4-1939. In between, on 13-10-1934, the Alwar Regulation No. IV of 1934 introducing the Indian Limitation Act with certain modifications was brought into force.

The next application for execution was submitted on 12-2-1944. Several objections were taken on behalf of the judgment-debtor, but only two of them require consideration at this stage. One objection is that the application was presented after the expiry of 12 years from the date of the decree, and, therefore, the execution was baned under Section 222 of the Code of Civil Procedure in force in the former Alwar State. The other objection is that the application was barred by limitation having been presented more than three years after the disposal of the first application.

3. As regards the first objection it is urged that the execution of decrees against agriculturists was stayed by Government orders on two occasions for a total period of 2 years and 14 days. Section 222 provides for a period of 12 years in the whole for execution of a decree, but there is a direction for exclusion of such period during which the execution was stayed by orders of the Government owing to natural causes beyond human control. The order of stay of execution by the Government was made because of scarcity conditions. If the period of two years and 14 days is excluded from the period between the date of the decree and the filing of the last application as it should be, the application is not beyond the period during which a decree can be executed.

4. In respect of the second objection, the Schedule to the Alwar Code of Civil Procedure, Appendix B, provided a period of six years for execution of a decree or order from the date of the decree or order. This is item No. 22. Section 222 of the Alwar Code had a Sub-section (3) saying that no application for execution would be entertained after a period of six years from the date of the decree or after a period of six years from the date of the disposal of the previous application.

The provision for limitation is thus split up in the Alwar Code, in respect of the execution of decrees, into two -- one in the Schedule laying down a period of six years only from the date of the decree, and the other in Section 222 permitting subsequent applications also to be filed within six years of the disposal of the previous application. The Alwar Regulation No. IV of 1934, which came into force on 13-10-1934, is as follows:

'1. Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to court; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; the Indian Limitation Act (No. IX of 1908) as amended upto date is applied to, and enforced in the whole of the Alwar State, with effect from the date of publication of this Regulation in the Alwar State Gazette, subject to the omissions and amendments hereinafter specified.

2. Sections 561-64. and Schedule II of the Alwar State Civil Procedure Code 1926 are hereby repealed.

Provided that the law of limitation hereby repealed shall apply to all suits, appeals and applications for which the period of limitation prescribed by the repealed law is longer than the period prescribed by the Indian Limitation Act and of which the cause of action arose before this Regulation comes into force'.

5. Then there are amendments and alterations, which are not relevant for the purposes of this case.

6. The clause relating to repeal and savings firstly purported to repeal expressly the schedule relating to limitation for suits, applications and appeals. It also repealed Section 561 to Section 564, which related to computation of period of limitation, the extension of limitation by acknowledgment, saving of certain rights of appeal vested at the time when the Alwar Code of Civil Procedure of 1926 came into force. Section 2 thus expressly repealed item 22 of Schedule II but laid down that in case the cause of action had already arisen before the Regulation came into force, a suit, appeal or an application could be filed within the old period of limitation. The term 'cause of action' has not been happily used. What it truly

means with reference to applications is that 'applications of which the limitation has already begun to run'.

By reference to the proviso, the repeal and saving clause means that although the old limitation provided by the schedule had been repealed, an application for execution of a decree can be presented within six years of the date of the decree according to the period of limitation provided by the Schedule to the Alwar C. P. C. That Schedule does not make any provision for a subsequent application, and the express repeal, therefore, does not touch the question of limitation applicable to a subsequent application.

The first section by bringing into force the Indian Limitation Act impliedly repealed the provision of six years' limitation for a second and subsequent application referred to in Sub-section (3) of Section 222 of the Code. Assuming that the repeal and saving clause could also be construed as applicable to Section 222 (3) of the Alwar C.P.C., the benefit would only be applicable to applications for which the period had already begun to run. In the present case, the decree-holder had made his application on 23-7-1934, and when it was pending, the Alwar Regulation No. IV of 1934 came into force. This was, therefore, not a case where limitation had already begun to run, and the decreeholder was in the necessity of filing any application for execution of his decree.

The cause of action for executing the decree had been utilised when he made an application on 23-7-1934. The subsequent cause of action arose when the application which was filed on 23-7-1934, was disposed of without receiving any satisfaction on 13-4-1939. The protection afforded by Section 2 of Regulation IV of 1934, was, therefore, not available to the decree-holder in the present case. When the Regulation came into force his application for execution was already pending, and when it was disposed of in 1939, the Indian Limitation Act was already in force.

7. Learned counsel urged that the cause of action continued to be the same viz. the obtaining of the decree against the judgment-debtor. That would only be a part of the cause of action, for if we go back, even the money which was lent was the cause of action for the recovery of money, and that cause of action merged in the

decree, and the cause of action which he had for executing the decree came to an end when he first filed his application for execution on 3-7-1934. The subsequent cause of action arose when that or other application which he might have made was not fruitful.

8. Learned counsel for the respondent urged that the Alwar High Court in several cases had taken the view that if a decree had been obtained prior to 13-10-1934, all subsequent applications continued to be governed by the old Limitation Act. He cited one such decision of the Alwar High Court, viz., Mahant Gangadas v. Mahant Purshotamdas (Civil Appeal No. 4 of 1944-45, decided on 23-3-45). That may have been the view of the Alwar High Court, but judged from the broad aspect of law, the view taken by the Alwar High Court cannot be said to be correct.

If that view be taken, the decree which was passed on 10-10-1930, would give the right to the decree-holder to by-pass the Indian Limitation Act promulgated on 13-10-1934, for all times to come. Instead of being governed by the three years' limitation, he will have the right to file an application for execution within 6 years everytime. This does not appear to have been intended. Limitation is a rule of law for restricting rights, and a reasonable period is usually allowed to people whose rights are disturbed as a result of the enforcing of the new period of limitation, although they may have a remedy open to them under the old law.

That means that the benefit can be exercised only once, so that after they have tried to enforce their right on one occasion, they are brought in line with others, for all their subsequent remedies, which they may like to pursue. The interpretation of Section 2 of the Alwar Regulation No. IV would, therefore, be that where the period of limitation prescribed in the old law is longer than the period prescribed by the Indian Limitation Act, and the period of Limitation has begun to run in respect of any suit, appeal or application, which the litigant may have the right to prosecute he can institute the suit or make the appeal or application within the period allowed by the old law. As stated earlier, in the present case the decree-holder had utilised his cause of action in executing the decree on 23-7-1934, and his application was pending on 13-10-1934; when the Alwar Regulation No. IV of 1934 came into force.

These execution proceedings were disposed of on 13-4-1939, and the cause of action for filing a fresh application arose from the unfruitfulness of the earlier application. That cause of action arose after the Alwar Regulation was in force for more than 3 years. To the subsequent application the Indian Limitation Act was fully applicable. The present execution application, which was filed on 12-2-1944, was barred by time according to Article 182 of the Limitation Act.

9. As a result, we find that the present application was barred by time, and not maintainable.

10. The appeal is allowed, the order of the lower court is set aside, and that of the first court holding the execution application barred by time is upheld. There will be no order as to costs, as the question was not free from difficulty, and the Alwar decision relied upon by the decree-holder was in his favour.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com