

Ganapathi Vs. Balasundara and ors.

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Court : Chennai

Decided On : Mar-14-1884

Reported in : (1883)ILR7Mad540

Judge : Hutchins and ;Brandt, JJ.

Appellant : Ganapathi

Respondent : Balasundara and ors.

Judgement :

Hutchins, J.

1. This is an appeal against an order, made by the Chief Justice on the Original Side of the Court, calling in an attachment which had issued in Civil Suit 15 of 1866 against the goods of T. Saravana Mudali, defendant, No. 2, and rejecting the application of the decree-holder, T. Ganapathi Mudali, for execution as being barred under Section 230 of the Code of Civil Procedure.

2. A preliminary objection was raised by Mr. Shaw on behalf of T. Saravana Mudali (respondent No. 2) on the ground that the appeal was not sufficiently stamped. It had been received on a stamp of five rupees only, but Mr. Shaw contended that it required a stamp of fifty rupees, and the difference has been paid in by the appellant to abide by our decision upon this point. The question turns on the table of fees prescribed by the rule of Court, dated 24th July 1874. Article 5 prescribes a

fee of five rupees for 'every application to the Court or to a Judge before or after decree.' This, however, is not an original application but an appeal. The only article which deals with appeals is article 20. This prescribes certain graduated fees 'on presentation of a memorandum of appeal in suits for debt, damage or moveable property,' according to the value of such property : and 'in all other cases' the uniform fee of fifty rupees. It is not contended that this is an appeal in a suit for debt, damage or moveable property. It is, therefore, an appeal in some other sort of case, and the fee to be paid is fifty rupees. The money paid into Court will accordingly be appropriated to make up the proper stamp, but the fact that the rules prescribe no fees for appeals against orders, as distinguished from appeals against decrees, will be brought to the notice of the full Court.

3. The decree in Civil Suit 15 of 1866, which has been declared barred, bears date 23rd March 1866. In September 1875, and again in February 1876, the original plaintiff got an order, after notice to the defendants, for the attachment and sale of property. In June 1876 the defendant No. 1, T. Balasundara Mudali, became an insolvent. In 1877 and again in 1878 there were further orders for sales, but in consequence of objections raised, into which it is not now necessary to enter, the sales did not take place. In July 1879 the decree was transferred, and in 1881 and 1882 the transferee plaintiff succeeded in bringing the property to sale and realizing a portion of what was due under the decree. On 31st July 1882 the decree, or so much of it as was still unsatisfied, was assigned to the present appellant. On 19th October 1882 he got leave to execute; on 19th April 1883 he received from the Official Assignee a dividend from the insolvent defendant's estate; on 25th idem, he took out execution against the second and chief contesting defendant.

4. Now, setting aside for a moment all questions arising out of Section 230 of the Code of Civil Procedure, let us see how the matter stands under the Limitation Act. All the Limitation Acts have made a clear distinction between the decrees of ordinary Courts and those of any Court established by Royal Charter. The ordinary limitation period is three years, but Article 180* of the second schedule to Act XV of 1877, and the corresponding provisions of the earlier Acts, allow twelve years for the enforcement of a decree passed by a High Court in its original jurisdiction.

This period counts from the time when a present right to enforce the decree accrues to some person capable of releasing the right, provided that, if there has been a revivor, payment or acknowledgment, 'the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of them'. Let us apply this to the present case and see from what date the twelve years are to be computed.

5. What is a revivor? The Code nowhere speaks of a decree being revived, and it is obvious that the term is derived from the old practice of the Supreme Courts, the only Courts in 1859 which were established by Royal Charter. The whole matter has been well discussed by White, J., in *Ashootosh Dutt v. Doorga Churn Chatterjee* I.L.R. 6 Cal. 504 and he has shown that the notice to show cause, which the Code requires after one year, has precisely the same effect of reviving a judgment which the old writ of *scire facias* had. Now it is admitted that there was such a notice in 1875, and we hold that by that notice the decree was revived and a fresh point of departure for the period of twelve years established. Such was the state of the case when this Section 230 was first enacted by the Code of 1877, and the next point for consideration is whether that section can have the effect of reducing this period of twelve years from November 1875, to which the plaintiff was entitled under the special article of the Limitation Act applicable.

6. In its original form the section merely required that the decree-holder shall have used due diligence in procuring execution of the decree. It was amended by Act XII of 1879 into the shape in which it has now been re-enacted as Section 230 of the Code of 1882. It is curious, however, that the last Code has expressly re-enacted the words 'under this section,' thereby neutralizing anything which might have been done under the corresponding Section of the Code of 1877--'where an application...has been made under this section and granted, no subsequent application to execute the same decree shall be granted after...twelve years from ...the date of the decree sought to be enforced.' Then the last clause brings in the proviso that 'proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code, shall have expired before the completion of the said three years.' The Code was

passed, i.e., it received the assent of the Governor-General, 17th March 1882. It has not been, and cannot be, alleged that anything which was done under Section 230 of the Code of 1877, either before or after its amendment, would have had the effect of setting up a period which would have expired within three years from March 1882. The proceedings of 1881 cannot, therefore, affect the question, and all that has to be considered is whether the application of 19th October 1882, which alone was made under Section 230 of the Code of 1882 and granted, operates to bar the present subsequent application, which is within twelve years from the revivor of 1875, solely because the original date of the decree was more than twelve years ago.

7. It seems to us, in the first place, that the appellant is protected by the last clause of this Section 230. Three years have not even now elapsed since the passing of the Code, and, therefore, notwithstanding anything in the section before contained, proceedings may still be taken to enforce the decree. A fortiori the application of 25th April 1883 was not barred. But apart from this, it has been held by the High Court of Bombay, and we think rightly, that this Section 230 cannot operate to cut down the limitation period allowed by Article 180 of the Limitation schedule--*Mayabhai Prembhai v. Tribhuvandas Jagjivandas* I.L.R. 6 Bom. 258. Their Lordships in that case did not state their reasons at length, but they are sufficiently apparent from the authorities to which they referred. They went mainly on the well known rule as to the construction of statutes, which was thus stated by Bovi LL, C. J., in *The Queen v. Champneys* L.R. 6 C.P. 384 and in almost identical terms in a previous case reported in the same volume, *Thorpe v. Adams* L.R. 6 C.P. 125: 'a subsequent statute in general terms is not to be construed to repeal a previous particular statute unless there are express words to indicate that such was the intention, or unless such an intention appears by necessary implication.' 'The reason is,' said Lord Hatherly, that the Legislature having had its attention directed to a special subject, and observed all the circumstances of the case and provided for them, does not intend, by a general enactment afterwards, to derogate from its own act, when it makes no special mention of its intention to do so'--*Fitzgerald v. Champneys* 30 L.J. Ch. 777. Just so here, in a series of Acts--Act XIV of 1859, Act IX of 1871 and Act XV of 1877--the Legislature had been careful to preserve to decree-holders in the High Court their right to sue out execution at any time within

twelve years from the date of their decree or its revivor, and we can see nothing in Section 230 of the Code of 1877, which was passed almost simultaneously with the last of the Limitation Acts, nor in the corresponding section as afterwards amended and re-enacted, to indicate that the Legislature intended to 'derogate from its own act ,' or to render nugatory that proviso to Article 180 which it had been careful to introduce' when its attention was directed to the special subject.'

8. Article 179 [q.v. supra, 7 Mad. 81.] expressly refers both to article 180 and to Section 230 of the Code, but Article 180 is absolute and contains no reference to Section 230. Such a reference might have been expected, if this article also was intended to be in any way controlled by that section. It is of course true that Section 230 is made generally applicable to the High Court by Sections 631, 632, and 638; it is just this fact that creates the difficulty: but we do not think that the wholesale application of a large number of sections of a general Code to the High Court can fairly be construed as indicating beyond reasonable doubt an intention to repeal the previous particular enactment made in favour of the High Court's decrees.

9. The result is that we must set aside the learned Chief Justice's order and remand the application for execution to be proceeded with in due course. The respondents must pay the costs of this appeal.