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Court : Chennai

Decided On : Oct-01-1924

Reported in : AIR1925Mad279

Appellant : Ramaswami Nathan and ors.

Respondent : M.P.M. Muthiah Chetti

Judgement :

Ramesam, J.

1. The facts of this appeal may be briefly stated:

2. The plaintiff, the first defendant's father and two others carried on a partnership business at Zanzibar. O.S. No. 143 of 1909 was filed in the Subordinate Court of Madura East for its dissolution. In that, suit, the present plaintiff was the 5th plaintiff and the father of the present 1st defendant was the 1st defendant. A preliminary decree was passed on 27th October, 1909, and a Commissioner was appointed. The Temporary Subordinate Court of Ramnad, to whose file the suit was then transferred, confirmed the report of the Commissioner. Paragraph 6 of the order confirming the report runs as follows:

It is therefore ordered that the 1st defendant do forthwith pay into Court the sum of Rs. 2.611-6-3 being the amount found due to the partnership by him, that, in default of such payment, the 5th plaintiff is appointed Receiver to realise and

collect the said amount with power to bring and defend suits in his own name, etc. (see Ex. D).

3. The final decree (Ex. E.) of the Subordinate Court was passed on 14th October, 1911. It says,

that out of the amount collected by the 5th plaintiff as Receiver in realising the only item of assets of Rs. 2,611-6-3 due from the 1st defendant ho (the 5th plaintiff) do take, etc.

4. There was an appeal to the District Court and the High Court and the Subordinate Court's decree wag finally confirmed by the High Court on 5th' February, 1917. Meanwhile there was an attempt to execute the decree of the Subordinate Court in E.P. No. 309 of 1914. The Subordinate Court of Ramtiad held that the decree was unexecutable and that it contemplated that the 5th plaintiff as Receiver should sue the 1st defendant to recover the amounts (Exhibit G. dated 26th October, 1914). There was no appeal against this order and the order is now binding on all the parties. The result is that the decree must be construed, in the light of that order, to be a decree declaring or creating rights which are unenforceable in execution and can be enforced only by suit.

5. The present suit is presented on 4th February, 1920, for recovering the said amount. The plaintiff obtained a decree and defendant appeals.

6. He contends that the suit is not maintainable and is barred by limitation. It is true, as he points out, that a claim to recover a sum of money due from one of the partners must form part of the inquiry in the action for winding up the partnership and no suit will lie after a suit for an account is barred by limitation. *Gopala Chetty v. Vijayaraghavachariar* A.I.R. 1922 P.C. 115. But the respondent contends that the judgment (as construed by the order of 26th October 1914, Exhibit G) creates fresh rights in the place of the older rights and this suit is an action on the judgment. This is obvious, and, provided there is no obstacle in India to a suit on a judgment, when there is no other remedy to enforce the right, the contention ought to prevail.

7. At common Law, actions on judgment lie whether the remedy by execution is available or not. [Sea Williams v. Jone 13 M. & W. 628; Hutohinson v. Gillespie (1856) 11 Ex. 798; Martbeilla Iron Ore Co. v. Allen 47 L.J.C.P. 601: and Black on Judgments, Vol. II, Section 958. This is admitted by the appellant. In India it is settled that no action lies on an executable judgment, the only remedy being execution, the principle being embodied in Section 47, Civil Procedure Code. (Section 244 of the Code of 1882). An exception was at one time recognised by which suits were permitted to be brought in the High Court on judgments of a Court of Small Causes in order to obtain execution against immoveable property, Bhavani-shankar Shevakram v. Purusairi Kalidas (1882) 6 Bom. 292 on the ground that 'where an action on the judgment will give a higher or better remedy, the case is different' see Mancharam Kalliandas v. Bakshe Saheb (1869) 6 B.H.C. 231. The exception is now obsolete. (Section 94 of Act XV of 1882). But Couch, C.J. also says in the case last cited 'There are cases in which an action may be the only mode of enforcing a judgment or decree.' The present case is such a case. In Mahommed Ghouse Coorooshee v. Mustan Ally (1869) 4 Mad. Jur. 127 Scotland, C. J., and Bittleaon J., recognised that such a suit would lie and proceeded to discuss the question of limitation. The further remarks in Bhavanishanhar Shevakram v. Purusadri Kalidas (1882) 6 Bom. 292 were intended to apply only to executable judgments. The decision in Merwanji Nowroji v. Ashabai (1883) 8 Bom. 1 is also based on the policy of the Civil Procedure Code and applies only to judgments capable of execution. So also are the remarks in Peria swami Mudaliar v. Seetherama Chettiar (1903) 27 Mad. 243. As against the judgment-debtor himself or against the legal representatives it has long been held that under the Indian Processual Law, the remedy is only by way of execution of the decree and that no suit could be brought upon the judgment. The decision in Annoda Prasad Bansrjee v. Nobi Kishore Boy (1905) 33 Cal. 560 shows a suit is maintainable on a judgment where no mode of execution (other than proceedings in contempt) is available. Sale, J., says that that was the practice of the Court, referring to Attermony Dossee v. Hurry Doss Dutt (1881) 7 Cal. 74. The case in Kali Qharan Nath v. Sukhoda Sundari Debi 20 C.W.N. 58 these cited in it [Prosunno Ohunder Bhattacharjee v. Kristo Chytunno Pal (1878) 4 Cal. 342 and Ashi Bhusan Dasi v. Pelaram Mandal (1913) 18 C.L.J. 362 are not strictly relevant

as they are cases where execution against the judgment-debtor on record was useless and it was sought to obtain on a judgment against another person for substantially for same relief. The remarks in *Ramanand v. Jai Ram* A.I.R. 1921 All. 369 apply only where there is another mode of enforcing the judgment.

8. In our opinion, there is nothing in all the Indian authorities cited before us against the maintainability of the suit. Such a case can occur only very rarely. Ordinarily the Indian Courts pass judgments which are to be enforced in execution and even when they create new relation involving fresh rights and obligations they provide for working out the rights in execution. Rarely do they create a new obligation without providing for its execution and indicating a suit as the only method of enforcing it. But when they do, as in the case, the suit is maintainable.

9. We accordingly hold that the suit A maintainable. If so the only period of limitation that is applicable to it is Article 122. There was no old cause of action on which such a suit would be maintained nor does it subsist if it ever existed. The judgments created a new obligation in lieu of the old. The suit is therefore within time.

10. The appeal fails and is dismissed with costs.