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Court : Himachal Pradesh

Decided On : Oct-14-1980

Reported in : AIR1981HP27

Judge : V.D. Misra, C.J.

Acts : Limitation Act, 1908 - Articles 181 and 182; ;Code of Civil Procedure (CPC) - Section 48

Appeal No. : E.S.A. Nos. 1 and 2 of 1975

Appellant : Shiv Nath

Respondent : Basanta and ors.

Advocate for Def. : S.S. Ahuja, Adv.

Advocate for Pet/Ap. : Pratima Malhotra and; H.K. Bhardwaj, Advs.

Disposition : Appeal dismissed

Judgement :

V.D. Misra, C.J.

1. This judgment will dis-pore of execution second appeals Nos. 1 and 2 of 1975 since common questions of law and fact have to be decided.

2. The relevant facts are these. On 18th January, 1960, final decree for possession of the agricultural land in question was passed in favour of Shiv Nath The decree holder made an application for execution of the decree on 3rd March. 1965. Tt was dismissed on 21st August. 1905, as being barred by time Second application was made on 26th August, 1965. It met the same fate. The third application for execution was made on 29th January, 1966. The decree holder claims that he got possession of the suit land on 18th June, 1966. The judgment-debtorwho does not admit this fact, made an application on 30th November, 1970. He denied possession having been delivered to the decree holder. The executing court accepted the objection application holding that the application for execution was time barred and that the judgment-debtor was never dispossessed from the suit land. The decree holder appealed to the District Judge who dismissed the appeal.

3. Mrs. Malhotra, learned counsel for the decree-holder appellant contends that Section 31 of the Indian Limitation Act, 1963 is not applicable and, therefore, the application for execution could not bo dismissed as barred by time. At this stage Section 31 may be noticed. It reads thus :

'Nothing in this Act shall,--

(a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908, expired before the commencement of this Act: or

b) affect any suit, appeal or application instituted, preferred or made before, and pending at such commencement.'

4. It is plain that if the period of limitation prescribed by the Indian Limitation Act, 1908 for execution of the deere' in question had expired, it could not be revived. But Mrs. Malhotra's contention is that the execution was governed be Section 48 of the Civil Procedure Code and not by the Indian Limitation Ad 1908.

5. Section 48 of the Civil Procedure Code, which has since been repealed by the Indian Limitation Act, 1963, was in the following terms:

'48. (1) Where an application to execute a decree not being a decree grant ing an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from-

(a) the date of the decree sought to be executed, or,

(b) where the decree or any subsequent order directs any payment of money or the delivery of any properly In be made at a certain date or at recurring periods the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed-

(a) to preclude the Court from order-ing the execution of a decree upon an application presented after the expiration of the said term of twelve years, inhere the judgment debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application; or

(b) to limit or otherwise affect the operation of Article 183 of the First Schedule to the Indian Limitation Act, 1908.'

6. Article 182 of the Indian Limitation Act, 1908, on which the argument of the learned counsel for the appellant is based, may also be noticed. It was in the following terms:

'For the execution of a decree or order of any Civil Court not provided for by Article 183 or by Section 48 of the Code of Civil Procedure, 1908. --Three years; or, where a certified copy of the decree or order has been registered, six years.

(1) The date of the decree or order, or

(2) (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or

(3) (where there has been a review of judgment) the date of the decision passed on the review, or

(4) (where the decree has been amended) the date of amendment, or

(5) (where the application next hereinafter mentioned has been made) the data of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree or order, or

(6) (in respect of any amount, recovered by execution of the decree or order, which the decree-holder has been directed to refund by a decree passed in a suit for such refund) the date of such !ast mentioned decree or, in the case of an appeal therefrom, the date of the final decree of the Appellate Court or of the withdrawal of the appeal, or

(7) (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.'

7. Section 48 does not say when the first application for execution should be made. It, however, prescribes an outside limit of 12 years after which no fresh application for execution could be made or entertained unless the case fell under Sub-section (2). Thus this section does not help us to find out the period of limitation for filing the first application for execution. It is Article 182 of the Indian Limitation Act, 1908, which prescribes the period of limitation for the first applies-tion for execution. It says that the first application must be moved within three years of the passing of the decree. In other words, if the first application is not made within that period, the application becomes barred by time and has to be dismissed as such. This proposition is not in doubt. The Supreme Court in Prem Lata Agarwal v. Lakshman Prasad Gupta, AIR 1970 SC 1525, observed thus:

'.....the effect of Section 48 of theCode of Civil Procedure is not to supersede the law of limitation with regard to execution of decrees. The Limitation Act prescribes a period of. limitation for execution of decrees. Section 48 of the Code of Civil Procedure dealt with the maximum limit of time provided for execution, but it did not prescribe the period within which each application for execution was to be made. An application for execution was to be made within three years from any of the dates mentioned in the third column of Article 182 of the Limitation Act, 1908.

An application for execution of a decree would first have to satisfy Article 182 and it would also have to be found out as to whether Section 48 of the Code of Civil Procedure operated as a further bar.'

It may be noticed that this case related to a money decree.

8. Mrs. Malhotra relies on the following observations of the Supreme Court In Lalji Raja and Sons v. Firm Hansraj Nathu Ram, (1971) 1 SCC 721 : (AIR 1971 SC 974):

'The argument advanced on behalf of the judgment-debtors is that Section 48 is a self-contained Code and the period prescribed therein is a bar and not a period of limitation and hence the decree-holders cannot take the benefit of Section 14 (2). In support, of this argument reliance is placed on Sub-section (2) (a) of Section 48 of the Code. That Sub-section undoubtedly lends some support to the contention of the judgment-debtors. It indicates as to when the period prescribed under Section 48 (1) can be extended. By implication it can be urged that the period prescribed under S. 48 (1J of the Code can only be extended under the circumstances mentioned in that clause and not. otherwise'. But in assessing the correctness of that contention we have to take into consideration Clause (b) of Sub-section (2) of Section 48 of 'the Code' as well as Articles 181 and 182 of the Limitation Act, 1908. These provisions clearly go to indicate that the period prescribed under Section 48 (1) of 'the Code' is a period of limitation. This conclusion of ours is strengthened by the subsequent history of the legislation. By the Limitation Act, 1963, Section 48 of 'the Code' is deleted- Its place has now been taken by Article 136 of the Limitation Act of 1963.'

9. I am afraid, it has no relevance to the question before me. Section 14 (2) extends the period of limitation and the operation of this section is not restricted to the period of limitation prescribed under the Indian Limitation Act. It is in this context that. Section 48 of the Code came to be considered and it was held that it does prescribe a period of limitation. Indeed there is no dispute about the fact that Section 48 does provide a period of limitation. But then this period of limitation lays down the outside limit. The observations of the Supreme Court show that while considering the effect of Section 48, the effects of Articles 181 and 182 of the

Indian Limitation Act, 1908, had to be taken into consideration.

10. Another contention of Mrs. Mal-holra may also be noticed at this stage. She contends that subsequent applications for execution could not be held as barred by time in view of Article 136 of the Indian Limitation Act, 1963. I do not find any force in this contention. I have already dealt with Section 31. Article 136 cannot be used to revive the application which had become barred by time under the old Limitation Act.

11. The Courts below, therefore, were justified in holding that the application for execution made by the decree-holder had become barred by time and the new Article 136 of the Indian Limitation Act, 1963 was of no help to the decree-holder, The appeals are, therefore, dismissed with costs.

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