Khair Ullah vs B. Jai Ram Singh And Anr. on 3 March, 1952

Equivalent citations: AIR1953ALL201, AIR 1953 ALLAHABAD 201

JUDGMENT

Wali Ullah J.

1. This is an appeal by the judgment-debtor. It arises out of the dismissal of certain objections filed by the appellant.

2. It appears that a decree for Rs. 1486/-was passed on 7-10-1936, in favour of Suraj Prasad Singh, father of the respondents, against the appellant, Haji Khairullah. It was passed by the Court of the Additional Munsif. That Court appears to have been abolished soon after, namely, on 3-1-1937. It was, however, again revived after sometime and was in existence at the time when the first application for execution was made on 7-10-1939. That application was made to the Court of the Additional Munsif. Eventually, the application was dismissed for want of prosecution on 18-10-1939.

3. The next application for execution was made on 19-2-1943, which was dismissed on 30-3-1943. A third application for execution was made on 5-4-1943. It was dismissed on 25-5-1943. A fourth application for execution was made on 11-5-1946, and it was dismissed on 18-7-1946.

4. A fifth application for execution of the decree was made on 17-7-1948. It was made in the Court of the Munsif. It is this application which has given rise to the present appeal.

5. Objections were filed on behalf of the appellant to the execution of the decree. The main objection urged was that the application was barred by limitation inasmuch as the proceedings in connection with the first, second, third, and fourth applications for execution had not been validly taken. Reliance was placed on Article 182(5), Limitation Act. Under this provision, three years' period of limitation is to be reckoned from the date of the final order passed on an application made in accordance with law to the proper court for execution'.

6. The Courts below have dismissed the objection and have held that the application was made within time.

7-8. Learned counsel for the appellant has contended that the application is barred by time. His argument is that the Additional Munsif's Court which passed the decree on 7-10-1936 having been abolished and its business having been transferred to the Munsif's Court, it was the Munsif's Court alone which was competent to execute the decree. That being the position, the four previous applications for execution of the decree filed in the Court of the Additional Munsif were not in accordance with law and consequently did not save limitation,

9. In support of his contention, learned counsel has relied upon the decision in --'Maqbul Ahmad v. Pateshri Partab Narain Singh', AIR 1929 All 677 and in the case of ---'Mt. Champi Bai v. Peary Lal',

AIR 1938 All 116.

10. On the other hand, learned counsel for the respondents has relied on the case of --'Bibi Khodaijatul Kobra v. Harihar Missar', AIR 1926 Pat. 209. This is the ruling on which both the Courts below have also relied. It seems to me quite clear that in the present case, the Courts below have taken a correct view of the law.

11. Learned counsel for the appellant has invited my attention to Section 37, 38 and 150, Civil P. C. Section 37 defines the expression "the Court which passed the decree". Section 38 declares that a decree may be executed either by the Court which passed it or by the Court to which it is sent lor execution. The expression, "the Court which passed it" necessarily refers back to Section 37 where the expression has been explained. Section 37(b) deals with a case where the Court of first instance has ceased to exist or to have jurisdiction to execute the decree. In such an event, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit. In the present case, on the dates when the first four applications for execution of the decree were made, the Court of the Additional Munsif was in existence. Further that Court on that date would have jurisdiction to entertain the suit if the suit wherein the decree was passed was to be instituted on that date. It follows, therefore, that at the time of the making of the application for execution, on ail those four occasions, the Court of the Additional Munsif would be a Court which must be deemed to be a Court which passed the decree within the meaning of that expression as given in Section 37, Civil P. C.

12. It seems to me, therefore, clear that the Court of the Additional Munsif in which the first four applications for execution were made, was the proper Court to entertain the application. Each one of those applications must, therefore, be considered as an application made in accordance with law to the proper Court, within the meaning of Article 182 (5), Limitation Act.

13. Looked at from this point of view, the present application for execution made on 17-7-1948, must be held to be within time.

14. As mentioned above, learned counsel for the appellant has relied upon the case of --'Maqbul Ahmed v. Pateshri Partab Narain Singh', AIR 1929 All 677. That case is clearly distinguishable. That was a case in which a preliminary decree for sale had been passed by the Additional Subordinate Judge. Owing to certain defects of form in which the decree had been drawn up, the decree-holder endeavoured to execute his simple money decree. Objections were, however, raised by some of the judgment-debtors that the decree was merely a preliminary decree and a final decree had not yet been passed. The decree was, therefore, not capable of execution. A lot of time elapsed and eventually an application was made for the preparation of a final decree. Objection was raised that the application was barred by time. Limitation was sought to be saved by reference to the provisions of Section 4 and 14(2), Limitation Act.

15. On a consideration of the whole matter, the Division Bench of two learned Judges of this Court held that limitation was not saved in view of the provisions of Section 4 and 14(2), Limitation Act. In the course of their judgment, the learned Judges have dealt with the contention raised before them.

It was to the effect that the application for preparation of the final decree was properly filed in the Court of the Additional Subordinate Judge at Basti because the decree had been passed by the Addl. Judge and not by the Subordinate Judge. The learned Judges repelled this contention by pointing out that "the Court of the Additional Subordinate Judge which was in existence, when the decree (preliminary decree) was passed, subsequently came to be abolished and all its work was transferred to the Court of the Subordinate Judge. A new Additional Subordinate Judge was subsequently sent to Basti 'but the execution cases which were pending in the Court of the Subordinate Judge were not transferred to the Additional Subordinate Judge's Court.'"

16. It is clear that the learned Judges in that case were dealing with .a case in which only a 'preliminary' decree had been passed but the suit was still pending. Further, it is clear from the judgment that in that case, after the abolition of the Court of the Additional Subordinate Judge, all its work i.e. all pending work before it, was transferred to the Court of the Subordinate Judge.

17. The next case relied upon by learned counsel is that of -- 'Mt. Champi Bai v. Pearey Lal', AIR 1938 All 116. In this case, Allsop, J. had before him the relevant notifications.

The learned Judge construed the notifications before him in the light of the provisions of S. 13 (1), Bengal, Agra and Assam Civil Courts Act, 1887. It was then observed:

> "The question whether any particular civil business was cognizable..... would depend upon orders passed by the District Judge subject to any general or special orders passed by this Court."

18. In the present case, the relevant notifications are not on the record and learned counsel is, therefore, not in a position to refer to any of the notifications from which an inference may be drawn one way or the other with regard to the jurisdiction conferred on the Court of the Additional Munsif when it was revived. It seems to me. therefore, that the provisions of Section 13 can be of no assistance to the appellant.

19. The view which I have expressed above receives strong support from the Division Bench of the Patna High Court in the case of -- 'Bibi Khodaijatul Kobra v. Harihar Missar', AIR 1926 Pat 209. It was held in that case:

> "Where the Court which passes a decree is abolished but is subsequently re-established, it can execute the decree provided it would have jurisdiction to try the suit to which the decree relates if it were instituted at the time of the application for execution."

20. The learned Judges relied on the provisions of Section 37 and 38, C. P. C. With reference to Section 37(b), it was held:

> "Even if a Court ceases to exist, it can again, be revived and if another Court of the same designation is established within the district with the same jurisdiction it can be

said that it is the same Court."

21. In view of the provisions of Section 37(b). Civil P. C., it seems to me that the Court of the Additional Munsif which was re-established, must be held to have jurisdiction in the matter. There is nothing in the present case to show that the ordinary jurisdiction of that Court had been curtailed by any order made by the Local Government under Section 13, Bengal, Agra and Assam Civil Courts Act, 1887. Section 17, Civil Courts Act, also, to my mind, gives no assistance to the learned counsel for the appellant. In my view, after the passing of the decree for money, on 7-10-1936, the suit, pending in the Court of the Additional Munsif, terminated. Thereafter, the Court of the Additional Munsif was abolished, but before three years had elapsed from the date of the decree, it was re-established. The first application for execution was made, as already noted, on 7-10-1939. On that date, the Court of the Additional Munsif which had originally passed the decree was again in existence. An application for execution which was made on that date was made actually in the Court which had passed the decree. No proceedings in the nature of execution proceedings were pending at the time when the Court was abolished in the first instance. As a matter of fact, no such proceedings had been started till then; nor were they started during the period that that Court had ceased to exist. In view of these considerations, it seems to me that the fact that the business of the Court abolished is transferred to another Court can have no relevancy and cannot affect, in any way, the jurisdiction of the Court which, after having been abolished once, comes into existence again. In my view, Section 17, Civil Courts Act, merely relates to continuance of proceedings which are pending in one Court which is abolished and are later transferred to another Court.

22. For the reasons given above, in my judgment, there is no force in this appeal. It is accordingly dismissed with costs.

23. Learned counsel for the appellant has prayed for leave to appeal to a Division Bench of the Court. The leave prayed for is granted.