

Shamshad Ali vs Saadat Ali Khan on 16 April, 1951

Equivalent citations: AIR1953ALL590, AIR 1953 ALLAHABAD 590

Author: Ghulam Hasan

Bench: Ghulam Hasan

JUDGMENT

Ghulam Hasan, J.

1. This appeal raises what I may call an unrighteous defence of limitation to an application for execution of the decree.
2. The respondent obtained a decree against the appellant for possession over a portion of a certain plot of land and the rest of the claim was dismissed. Both the parties filed appeals to the lower appellate Court and these were dismissed.
3. The plaintiff, thereupon, filed an appeal to the Chief Court but that appeal was dismissed under Order 41, Rule 11, Civil P. C. Thereafter the decree-holder applied for execution of the decree. It is common ground that the application was time-barred if time was to be reckoned, from the date of the judgment of the lower appellate Court but it was within time if time was to be reckoned from the date of the judgment of the Chief Court. The Courts below before whom the question of limitation was raised answered it against the judgment-debtor holding that the application for execution was within time under Article 182 (2), Limitation Act. This view is contested in second appeal to this Court.
4. I am of opinion that there is no substance in this contention. It is urged that the words "where there has been an appeal" in Article 182 (2) mean where there has been a competent appeal upon which a judicial order has been passed determining the rights of the parties 'inter se'. An order dismissing an appeal under Order 41, Rule 11, Civil P. C. is, it is argued, not a judicial order which determines the rights of the parties but merely holds that the appeal is not competent for some reason or another. There is no support for this contention in any of the judicial decisions. A reference to the provisions of Rule 11 of Order 41 will show that the appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader. I have not the slightest doubt that an order passed by the High Court under this Order is a judicial order which finally determines the rights of the parties 'inter se' and is a final order so far as that Court is concerned. This is quite sufficient in my opinion to dispose of the second appeal but a

reference has been made to the latest decision of the Privy Council in -- 'Husain Asghar Ali v. Ramdittamal', AIR 1933 PC 68 (A), which distinguished the two earlier decisions of the Privy Council in --'Batuk Nath v. Munni Devi', AIR 1914 PC 65 (B) and -- 'Abdul Majid v. Jawahir Lal', AIR 1914 PC 66 (C). In this case the order passed was one of abatement by the appellate Court as the appellant had died during the pendency of the appeal. Their Lordships held that the order was a judicial order finally disposing of the appeal and was final order within the meaning of Article 182 (2) giving a new starting point for the period of three years prescribed for an application to execute the decree. Their Lordships distinguished the two earlier cases referred to above on the ground that there was no judicial order passed in those cases from which limitation could be reckoned, for the appeals stood dismissed by no order of the Court but under the rules for non-prosecution. There is not the slightest doubt that an order made by a High Court under Order 41, Rule 11 is a judicial order made by an appellate Court which has the effect of finally disposing of the appeal and gives a new starting point for limitation. A similar view was taken in --'Ajodhia Prasad v. U. P. Government', 1947 All WR. 89 CD), which was also a case in which an order of abatement had been passed by the appellate Court. In that case it was held that limitation should be reckoned not from the date of the death of the particular person involving an automatic abatement of the proceedings but from the date when an order declaring the appeal to have abated was passed.

5. I am satisfied that the decision of the Courts below is correct. I dismiss the appeal under Order 41, Rule 11, Civil P. C.