

Ballabh Das And Anr. vs Shiva Prasad on 7 December, 1950

Equivalent citations: AIR1951ALL245, AIR 1951 ALLAHABAD 245

Author: Ghulam Hasan

Bench: Ghulam Hasan

JUDGMENT

Ghulam Hasan, J.

1. This appeal originally came up for hearing before V. Bhargava J., who refed. it to a Bench of two Judges for decision. The Bench in its turn refd. it to a F. B. in view of the importance of the question arising in the appeal.

2. Sheo Prasad and Ors executed a mtge. in favour of Ballabh Das & Madan Murari. A preliminary decree for sale on foot of this mtge. was passed in favour of the mtgees. on 21-12-1929, for Rs. 9,418-11-5. This decree was made final on 11-2-1938. Several unsuccessful applns. for execution were made from time to time by the D. Hs., but we are concerned only with the last two applns. One of such applns. was made on 7-7-1943, for recovery of Rs. 2,245-11-5 the share of Sheo Prasad only. The following day the office reported that the appln. was in conformity with the provisions of Order XXI Rule. 11, Civil P. C. In consequence of this report the order passed on 13th July was to register the appln. & to issue notice to the J. Ds. for 14th August. On this date, the J. Ds. appld. for time to file the objections. These objections were filed on 11th September, Under section 47, Civil P. C. They were ordered to be put up on 23rd October but the case was adjourned & ultimately the issues were framed on 11-12-1943. The case was fixed for disposal on 15-1-1944 but was adjourned to 19th February, when the attention of the Ct. was drawn to the fact that the appln. was signed by the mukhtar of the D. Hs. but was not verified by him. Thereupon the execution was consigned to record by agreement of parties.

3. On 15-8-1944, the J. Ds. appld. for amendment of the decree Under Section 151 & 152, Civil P. C. in respect of the amount. The amendment was granted on 21.12-1944, by reducing the decree to Rs. 8,183/13/6. The last appln. for execution on the basis of the amended decree was made on 3-2-1945,, for the proportionate sum of Rs. 843/7 due from Sheo Prasad. On 24th February Sheo Prasad filed the objection that the decree was time-barred.

4. The Ct. allowed the objection & dismissed the execution appln. Against this order the present, appeal was preferred by the D. Hs. In the words of the referring Bench two points of law involving the question of limitation arise for consideration. They have put the matter thus:

"One of these points is whether an appln. made for execution of a decree which is not signed or verified but upon which notice is issued & proceedings are taken, is sufficient to extend limitation & can be treated as step-in-aid of execution. The second point is whether the amendment of a decree made after a period of limitation has expired gives a fresh starting point for limitation."

5. V. Bhargava J. took the view that a defective appln. could not be treated as a step-in-aid of the execution but as regards the second point he held that the amended decree can be executed within three years of the date of amendment & noticed a number of authorities in support of that view. In view of the conflict of opinion on the latter question the Bench refd. the matter to the F.B. In the view I take on the second question, it is unnecessary to express an opinion on the first.

6. The first question of limitation thus raised can best be answered by reference to Art. 182, Limitation Act. That article prescribes a period of three years & the time from which this period begins to run is variously stated in the third column of the first schedule. The para, material to the present appln. is para. 4. which stands thus : "4. (where the decree has been amended) the date of amendment" A plain & reasonable construction of this para, can but lead to one inference, namely, that the period of three years is to be computed from the date of the amended decree & not from any earlier date. This para, did not exist in the Limitation Act of 1877 & was introduced only in 1908 in the present Limitation Act. Under Article 179, Limitation Act of 1877 the question, whether the limitation would run from the date of the amended decree was controversial & it would be reasonable to infer that this controversy was intended by the Legislature to be put to an end to by the introduction of para. 4 in the present Limitation Act.

7. Two cases of the Allahabad H. G. deserve notice. In the first case, Bahal Singh v. Mt. Chameli, A. I. R. (22) 1935 ALL. 606 : (155 I. C. 495) the Bench held that where the final decree is amended by the Ct. the only decree capable of execution is the amended final decree & limitation for execution of the final decree runs only from the date of the amendment. The second case, which is more relevant & deals exhaustively with the point in dispute, is Ghafoor Darzi v. Ram Nath, A. I. R. (37) 1950 ALL. 655 : (1950 A. L. J. 676). It was held in this case that Article 182 (4) gives a fresh start of limitation from the date of amendment even if the decree has already become time barred at the date of amendment, & an appln. for execution of the amended decree filed within three years from the date of the amendment would be within time, even if a former appln. for execution of the unamended decree has been dismissed as barred by limitation. The dismissal of the former appln. has no bearing on the decision of the latter appln. Reference was made in support of this view to the decision of the P. C. in Nagendra Nath v. Suresh Chandra, 60 Cal. 1 : (A.I.R. (19) 1932 P. C. 165), where their Lordships had held that in construing the Limitation Act equitable considerations are out of place & the strict grammatical meaning of the words is the only safe guide. Cases which departed from this principle before the pronouncement of their Lordships of the P. C. possess no legal efficacy after that decision & were rightly so regarded in the above case. The learned Judges followed two cases *Imamdin v. Peoples Instalment & Savings Bank Ltd. Lahore*, A.I.R. (28) 1941 Lah. 131:(I.L.R. 1941) Lah. 659) and *Thiagaraja v. Sambasiva*, A.I.R. (21) 1934 Mad. 283 : (57 Mad. 795) which had taken full note of the P. C. case & held that where an appln. for execution is filed within three years from the date of the amendment of the decree, it is not open to the executing Ct. to refuse to execute the

decree on any ground of invalidity of the amendment or that the decree had become time-barred when it was amended. They also held that it was not open to the J. D. to raise any objection to the execution of the decree on the ground that it had already become time-barred when it was amended specially in a case when the decree had been scaled down under the Debt Redemption Act at the instance of the J. D. This was supported by reference to a large number of decisions, viz., *Manohur Chandra v. Kali Priya*, 41 C. W. N. 1330, *Durga Prasad v. Kedarnath*, A. I. R. (16) 1929 Cal. 650 : (125 I. C. 292), *Magan Lal v. Sitaram Panna Lal*, A. I. R. (24) 1937 Pat. 316 : (16 Pat. 290), *Bameshwar Narain v. Raghunandan*, A. I. R. (25) 1938 Pat. 57 : (16 Pat 453), *Lakshmikanta Rao v. Ramayya*, A. I. R. (22) 1935 Mad. 97 : (58 Mad. 743), *Basawa Chambasawraj v. Somashekararaj*, A. I. R. (35) 1948 Bom. 49 : (49 Bom. L. E. 557), *Narottam Dass v. Atul Chandra*, A.I.E. (21) 1934 Oudh 289: (150 I. C. 947). [8] I am of opinion that this view, apart from being in full accord with the letter & spirit of Article 182 (4), is the only reasonable & just view to take.

9. As against this plethora of authorities, there is a decision of the Avadh Chief Court in *Haidri Khanam v. Bhawani Shankar*, A. I. R. (21) 1984 Oudh 48:(147 I. C. 815) (Srivastava and Smith JJ.), which takes a contrary view. There it was held that Clause (4) of Article 182 presupposes that at the time of the amendment the decree is alive. This view was based on *Rabiuddin v. Bamkanai*, A.I.R. (7) 1920 Cal. 769: (59 I. C.186) and *Jhamma Lal v. Daulat Ram*, A.I.R. (11) 1924 Lah, 329:(78 I.C. 461). These cases, as has been pointed out above, were decided before the pronouncement of the P. C. Both of them have been overruled, the former impliedly by the subsequent decisions of the same H. Cs. (vide *Durga Prasad v. Kedarnath*, A.I.R. (16) 1929 cal. 650 : (125 I. C 292) and *Imam Din v. Peoples Instalment & Savings Bank Ltd. Lahore*, A. I. R. (28) 1941 Lah. 131 : (I. L. R. (1941) Lah. 659).

10. Accordingly I hold that limitation in the case of the amended decree runs from the date of amendment under Article 182 (4) even though the decree had become time-barred on that date.

11. I allow this appeal, set aside the order of the execution Ct. & hold that execution of the decree is not time-barred. The case will go back to the execution Ct. which will proceed to execute the decree according to law. The applts. will get their costs in this Ct.

Kidwai, J.

12. I agree & have nothing to add.

Misra, J.

13. I concur & have nothing to add to the principles enunciated by *Rachhpal Singh J.*, in *Narottam Dass v. Atul Chandra*, A. I. R. (21) 1934 Oudh 289 : (150 I. C. 947) and by *Mushtaq Ahmad and Desai JJ.* in *Ghafoor Darzi v. Ram Nath*, A. I. R. (87) 1950 ALL. 655 : (1950 A. L. J. 676) with which I respectfully agree.