

## Brij Lal vs Mahadeo on 9 October, 1952

**Equivalent citations: AIR1954ALL19**

ORDER

Kaul, J.

1. As these cases relate to the same order, it will be convenient to dispose of them together and by one common judgment.
2. Mr. S. B. Bajpai who appeared for the respondent in the appeal and the opposite-party in the revision application stated that he had no instructions. Accordingly the two cases have been heard ex parte.
3. It is desirable that the facts which have given rise to this appeal and the revision application should be stated at some length.
4. On 3-10-1936, Gur Prasad sold a house in Mohalla Dugawan in the city of Lucknow to Brij Lal. Brij Lal could not obtain possession. Accordingly Brij Lal brought a suit for possession. His claim was decreed and possession was actually delivered to him in the year 1937. Objections were preferred against delivery of possession of the house to Brij Lal by one Mahadeo who claimed to be a sharer in the house purchased by Brij Lal from Gur Prasad. His objections were allowed and possession was given back to Mahadeo in 1938. In 1939 Brij Lal again managed to get into possession. Thereupon Mahadeo instituted a suit under Section 9, Specific Relief Act. His claim was decreed on 15-5-1940.
5. He applied for execution of his decree on 31-5-1940. Before this application for execution could be given effect to, Brij Lal instituted a suit for a declaration that he was the owner of the house and succeeded in obtaining a temporary injunction directing the stay of execution proceedings. The order staying the execution proceedings was communicated to the Munsif in whose Court the execution of decree application was pending on 21-8-1940.
6. The claim brought by Brij Lal which was for a declaration that he was the owner of the house and in the alternative for possession was decreed as follows:

"The plaintiff's suit for declaration be decreed against all the defendants. The plaintiff is declared to be the exclusive owner of the house in dispute and defendant 1 has no title or interest in it. Costs payable by defendant 1 alone....."

With the determination of the suit brought by Brij Lal, the stay order obtained by him was vacated. By a 'rubkar' dated 12-9-1941, which was communicated to the Munsif North Lucknow on 16-9-1941,

the latter was informed that the stay order dated 14-8-1940 had been withdrawn.

7. The execution application of Mahadeo which was pending in the Court of Munsif North, Lucknow, was however dismissed at the request of Mahadeo's counsel. Mahadeo filed an appeal against the decree passed in favour of Brij Lal in his declaratory suit. He was unsuccessful in the Court of first appeal. He pursued the matter further and filed a second appeal in the Avadh Chief Court. In this second appeal, which was successful, it was held that though Mahadeo was not a brother of Gur Prasad and as such had no right, title or interest in the house sold by Gur Prasad to Brij Lal, yet inasmuch as Brij Lal did not institute a declaratory suit as contemplated by Order 21, Rule 103, C. P. C., within one year of the objections preferred by Mahadeo under Order 21, Rule 100, C. P. C., the order allowing his objections had become final.

The additional Civil Judge communicated the result of the second appeal to the Munsif North, Lucknow, on 30-1-1947. It was further suggested by the Additional Civil Judge that in view of dismissal of Brij Lal's suit, possession might be delivered to Mahadeo. The learned Munsif North called for an office report and when he found that the application for execution of decree filed by Mahadeo had been dismissed at the request of his own counsel on 16-9-1941 and no application for execution of decree was pending in his court, he did not take any steps to deliver possession of the house to Mahadeo.

8. On 31-1-1947, an application for delivery of possession of the house was made by Mahadeo under Section 151, C. P. C. This request appears to have been refused. On 11-2-1947 Mahadeo who was a minor put in another application through his next friend that the possession of the house be delivered to him. He pressed that the application be treated as an application for revival of the original application for execution of 31-5-1940 or that it might be treated as a fresh application and the decree executed, by excluding in computing the period of limitation the time spent in contesting the declaratory suit under Section 15, Limitation Act. On 20-3-1947 Mahadeo personally made an application stating that he had come of age and be permitted to act without the intervention of next friend or guardian. On 25-7-1947, he put in a fresh application for execution. The application made on 11-2-1947 by Mahadeo through his next friend was consigned to records on 30-8-1947.

9. Brij Lal filed objections under Section 47, C. P. C., against the application made by Mahadeo for execution of decree on 26-7-1947. The learned Munsif before whom the application came up for consideration held that it could not be treated as an application for revival of the original application for execution dated 31-5-1940. He was further of opinion that Section 15, Limitation Act, did not in terms apply to the case before him. He was, however, of opinion that "the decree-holder could invoke to his aid the general principles of suspension of limitation". Relying on the decision in -- 'Chanda Devi v. Nathu Singh', AIR 1944 All 88 (A), he took the view that the law of limitation would apply only if an operative decree were in existence and where such a decree did not exist, the Limitation Act could have no application.

He was further of opinion that if by an order of a competent Court a decree passed in favour of a party has been rendered nugatory the period during which that order was in force must be excluded, otherwise the period of three years' limitation allowed to a decree-holder for making an application

for execution of his decree would be reduced to less than three years. He found further support for the view taken by him in -- 'Murlidhar v. Ram Saran Das', AIR 1947 All 256 (B) Having taken that view of the law he allowed Mahadeo's application for execution of the decree obtained by him in the suit under Section 9, Specific Relief Act, on 15-9-1940.

10. Dissatisfied with this order Brij Lal preferred an appeal which came up for consideration before the Civil and Sessions Judge, Lucknow. The learned Judge was of opinion that in view of the prohibition contained in Section 9, Specific Relief Act, that no appeal shall lie from an order or decree passed in a suit instituted under that section, the appeal preferred before him was incompetent. The appeal was accordingly dismissed. Brij Lal has thereupon preferred a second appeal (Ex. D. A. No. 8 of 48) against the order of the learned Civil and Sessions Judge and also a revision under Section 115, C. P. C. (Section 115 Appln. No. 2 of 1948) against the order of the Munsif. I am clear that the view taken by the learned Civil and Sessions Judge as to the competency of the appeal filed before him is correct.

This view was taken in -- 'Zakar Ali v. Israr Hussain', AIR 1947 Nag 53 (C), -- 'Tota Ram v. Shibban Lal', AIR 1932 Lah 416 (D), and -- 'Kanai Lal Ghose v. Jatindra Nath Chandra', AIR 1918 Cal 925 (E). Apart from the above authorities, the language of the section appears to be clear and the matter does not admit of any doubt. This second appeal like the first appeal disposed of by the learned Civil and Sessions Judge must be held to be incompetent. It is dismissed accordingly.

11. The question raised, however, can be considered in the revision application. It will be seen from what has been stated above that the learned Munsif was of opinion that the application for execution of decree made on 26-7-1947 by Mahadeo could not be treated as an application for revival of the original application for execution of decree made on 31-5-1940. He further took the view that the period of limitation could not be excluded under Section 15, Limitation Act, as that section did not in terms apply to the facts of the case before him. He, however, allowed the execution to proceed on what he called "general principles of suspension of limitation". He observed : "Their Lordships of the Allahabad High Court in another case reported in -- 'AIR 1947 All 256 (B), after discussing a number of rulings have held that law courts do recognise "general principles of suspension of limitation or right of action" in cases where a party is prevented under certain circumstances from taking action in pursuance of his rights.

In the present case, when Brij Lal, J. Dr. obtained a declaratory decree on 20-11-1940 to the effect that he was owner of the house in question, the decree of Mahadeo, D. Hr. dated 15-5-1940 for possession of the same house, became incapable of execution as the two contradictory decrees could not be executed simultaneously. Brij Lal's decree of 20-11-1940 no doubt does not expressly declare Mahadeo's decree of 15-5-1940 null and void, but it had the effect that Mahadeo D. Hr. could not execute his decree for when Brij Lal was declared to be the owner of the house in question Mahadeo could not be put in possession of the same house in pursuance of his decree obtained under Section 9, Specific Relief Act.

Further, when Brij Lal's decree was confirmed in appeal on 23-7-1941, it became quite apparent to Mahadeo, present D. Hr., that he could not execute his decree. In the circumstances the explanation

of D. Hr.'s counsel that he prayed for consignment of his execution application to records on 16-9-1941, as he thought that he could not execute the decree, is quite reasonable. Had the D. Holder continued with his execution application or had he applied again for execution after the passing of Brij Lal's declaratory decree, it would have been rejected forthwith on the ground that the D. Hr. had no executable decree in his favour. In my opinion it would be very unreasonable to hold that the D. Hr's present execution application is time barred, because his decree was rendered incapable of execution by the subsequent decree of competent court (i.e., decree in favour of Brij Lal, J. Dr.). It was only when Mahadeo present D. Hr., succeeded in his second appeal in Hon'ble Chief Court of Avadh and Brij Lal's declaratory suit was dismissed and decree in his favour set aside on 20-11-1946 that Mahadeo's decree dated 15-5-1940 again became capable of execution".

12. I have considered the matter carefully and am of opinion that the view taken by the learned Munsif is erroneous. In the case before him Mahadeo had obtained a decree for possession in a suit under Section 9, Specific Relief Act, on 15-5-1940. He applied for execution of that decree on 31-5-1940. His judgment-debtor, that is, Brij Lal instituted a suit for a declaration that he was the owner of the house and that defendant 1 (Mahadeo) had no right of interest in the same on 16-7-1940. He obtained an order for stay of execution proceedings initiated by Mahadeo's application of 31-5-1940 on 14-8-1940. The stay order was communicated to the Munsif before whom the execution proceedings were pending on 21-8-1940. This order was vacated automatically when Brij Lal's declaratory suit was decreed. I have given above the relevant portion of this decree. It was "that the plaintiff's suit for declaration be decreed against all the defendants. The plaintiff is declared to be the exclusive owner of the house in dispute and defendant 1 has no title or interest in it. Costs payable by defendant 1 alone....."

It will be seen that the property for possession contained in Brij Lal's plaint was refused nor is there any reference in the relevant portion of the decree passed in favour of Brij Lal which directly affected Mahadeo's decree for possession obtained in the suit under Section 9, Specific Relief Act. It cannot, therefore, be said that the result of the decree passed in the suit brought by Brij Lal was to render the decree passed in the suit under Section 9, Specific Relief Act ineffective or inoperative. It is true that a declaration had been given in favour of Brij Lal that he was the owner of the house and that defendant 1 had no interest or title in it. This did not, however, affect his right to obtain possession of the house under the decree passed in his favour in his suit under Section 9, Specific Relief Act. It is, therefore, incorrect to say that "the decree of Mahadeo decree-holder dated 15-5-1940 for possession of the house became incapable of execution as two contradictory decrees could not be executed simultaneously".

There is no warrant for holding as the learned Munsif did that the decree given in Brij Lal's favour "had the effect that Mahadeo decree-holder could not execute his decree". All that was decided by that decree was that Brij Lal was the owner of the house. It was further decided that Mahadeo did not have any title or interest in that house. No decision was, however, given with regard to his right to possession of the house which was the subject-matter of the suit brought under Section 9, Specific Relief Act. I am clear that the decree obtained by Mahadeo under Section 9, Specific Relief Act, did not become inoperative as a result of the decree passed in favour of Brij Lal in his declaratory suit.

13. In this view of the matter the cases on which the learned Munsif relied did not apply to the facts of the present case. The result, therefore, is that the revision application is allowed. The order of the Munsif, North Lucknow, dismissing the objections filed by Brij Lai is set aside. Mahadeo's application for execution of his decree having been filed more than 3 years after the last application for execution was consigned to records must be held to be barred by law of limitation. The application for execution of decree made by Mahadeo on 20-7-1947 shall stand dismissed as time barred. The applicant shall get his costs of this revision application and such costs as may have been incurred by him in the objections preferred in the court of Munsif, North Lucknow, under Section 47, C. P. C., from Mahadeo.