Bankey Lal vs Babu And Ors. on 29 April, 1953

Equivalent citations: AIR1953ALL747, AIR 1953 ALLAHABAD 747

JUDGMENT

Randhir Singh, J.

1. These two applications in revision have been heard together as they arise out of execution proceedings in respect of the same decree. Application No. 5 of 1949, came up for hearing before a learned Judge of this Court who found that the question involved was of some importance and doubted the soundness of the decision of a Division Bench in -- 'Durga Baksh Singh v. Umanath Baksh Singh', AIR 1944 Oudh 90 (A). He, therefore, directed that the application may be placed before a Full Bench for hearing. The other application for revision, No. 180 of 1951, was also subsequently ordered to be put up along with revision application No. 5 of 1949.

2. One Mulhay obtained a decree under Section 183 of the U. P. Tenancy Act against Mathura and others on 11-9-1946. As Mathura was in doubt as to whether an appeal lay to the Commissioner or to the District Judge he instituted two appeals -- one in the Court of the Commissioner and another in the Court of the District Judge.

3. Both these were dismissed. The appeal to the Commissioner was dismissed on 14-4-1947, on the ground that no appeal lay to him while the appeal instituted in the Court of the District Judge was dismissed on merits. An appeal against this appellate order of the District Judge is now pending in this Court.

4. An application for execution of the decree was made by the decree-holder on 28-4-1947. In this application it was mentioned that there had been an appeal to the Court of the Commissioner which had been dismissed. Execution was, however, stayed by the District Judge in view of the appeal pending before him, and it appears that this application was subsequently consigned to the record room and there was an end of it.

5. The second application for execution was made on 19-4-1948, in the Revenue Court. The Revenue Court ordered execution to issue on 2-6-1948, holding, that, since the judgment-debtor's appeal had been decided by the District Judge on 9-8-1947, the decree had become final. Apparently he was not aware that a further appeal had been filed in the Chief Court which is still pending. Dissatisfied with this order the judgment-debtor went in appeal to the District Judge. The appeal was transferred to the Civil Judge, Sitapur, before whom it was agreed that a second appeal was pending in this Court. He felt, therefore, that the question whether the application for execution was premature required determination. He accordingly set aside the order of the Revenue Court and remanded the case with the direction that an issue should be framed to try that question and the Revenue Court should then proceed to determine it according to law.

6. The Revenue Court passed an order on 30-3-1950, staying execution on the ground that the execution was premature. An appeal was then instituted in the Court of the District Judge and was heard by a Civil Judge. The learned Civil Judge dismissed the appeal and held that the order of the Assistant Collector holding that the application was premature was correct. The decree-holder has now come up in revision and his revision is No. 180 of 1951.

7. A third application for execution was made by the decree-holder on 9-6-1943. He seems to have ignored the earlier application for execution made by him on 19-4-1948. It was mentioned in this application that the appeal to the Commissioner had been dismissed and the decree-holder was therefore entitled to put his decree into execution. Objection was taken to the execution by the judgment-debtor on the ground that the application for execution was premature and this objection was decided by the Assistant Collector on 31-12-1948. He held that possession could not be given as the decree was in appeal. The order of the Assistant Collector is very briefly worded and all that can be inferred from it is that he held that the execution of the decree at that stage was premature in view of the fact that it was still then in appeal. An appeal was then instituted against this order of the Assistant Collector to the District Judge and was transferred to the Civil Judge for disposal. The Civil Judge allowed the appeal on 1-12-1949, and directed the Assistant Collector to proceed with the execution.

8. There were thus two conflicting orders passed by the Court of the District Judge in the two appeals. In one of the appeals it was held that the execution application was premature, while in the other appeal the learned Judge held that the execution should be proceeded with. The decree-holder dissatisfied, with the order in appeal, in which it was held that the execution was premature, has come up in revision, while the judgment-debtor has come up in revision against the order passed in appeal on 1-12-1949, directing the Assistant Collector to proceed with the execution.

9. In me order passed by the Assistant Collector, dated 30-9-1950, and in the appeal decided on 2-6-1951, reliance has been placed on a Division Bench ruling of this Court in which it was held that an application for execution would be premature unless the decree had become final either by reason of the fact that limitation for filing an appeal had expired or because appeals up to the final Court of appeal had been dismissed; vide --'AIR 1944 Oudh 90 (A)'.

10. Limitation for suits and applications has been prescribed in the U. P. Tenancy Act, and the Limitation Act does not apply to suite and proceedings under this Act unless a particular section has been made specifically applicable. Limitation for the execution of any decree, other than money decrees, is provided in the Fourth Schedule, Group F, item No. 7. The period of limitation is one year, and the time from which the period of limitation would begin to run is the date of the final decree in the case.

11. The question of the interpretation of the words "final decree" came up before a Division Bench of this Court in the case referred to above and it was held that these words mean a decree which has become final; that is, so long as a decree is open to appeal, or so long as an appeal pending against the decree would not be deemed to be a "final decree"; & further that no application for execution could be made unless the decree became final in the matter expressed above. The learned Judge

before whom the application for revision came up for hearing seems to have entertained a doubt about the correctness of this decision and therefore thought it fit that the point be decided by a Full Bench.

12. Rules of limitation ere, 'prima facie', rules of procedure and do not create any rights in favour of any person nor do they define or create causes of action but simply prescribe that the remedy could be exercised only up to a certain period and not subsequently. In -- 'Ranglal Agarwalla v. Shyamlal Tamuli', AIR 1946 Cal 500 at p. 505 (F. B.) (B) a similar question came up for decision and it was observed by Chakravartti, J. that substantive rights of parties, under a bond or a decree could not be derived from or sought for in the Limitation Act. The Limitation Act does not, therefore, confer any rights upon a decree-holder. The right has to be looked for somewhere else, and it is found in the decree passed in his favour.

13. The provisions of the Code of Civil Procedure have been made applicable to proceedings under the U. P. Tenancy Act by Section 243 of the Tenancy Act. The whole of Schedule I of the Cods of Civil Procedure is applicable to suits and proceedings under the Tenancy Act. Order 41 Rule 5 (i), Civil P. C. lays down that "an appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree".

This clearly indicates that the institution of an appeal against a decree does not operate as a stay of execution and a decree-holder is entitled to put his decree into execution unless the execution is stayed by the appellate Court. The words "the date of the final decree in the case" in column 5 against serial No. 7 of Schedule IV, Group F., U. P. Tenancy Act, only indicate the date after the expiry of which no application for execution would lie and cannot be read as forbidding an earlier application for execution from proceeding. All that they mean is that an application for execution will not be barred by time till after the expiry of one year from the date of the decree finally passed in the case. The entry is not indicative of the fact that the decree-holder shall or shall not be entitled to put his decree into execution, nor is it the purpose of the Limitation Act to indicate such rights. It only prescribes the time after which a suit or proceedings could not be taken in a Court of law.

A similar provision exists in the Limitation Act, Article 182, where in column 3 it is provided that the limitation for the execution of a decree would commence from the date of the decree or order, and where there has been appeal, the date of the final decree or order of the appellate Court. The words "the date of the decree or order" which are to be found in the provisions of Article 182 of the Limitation Act, no doubt, do not appear in the analogous provisions of the Tenancy Act, Schedule IV, Group F; but it cannot be inferred that it was the intention of the Legislature to deprive the decree-holder of his lawful rights to execute his decree after it was passed. I, therefore, find myself unable, with great respect, to endorse the view taken by the Division Bench in the case referred to above -- 'AIR 1944 Oudh 90 (A)'. The words "the date of the final decree" would mean the date of the decree which has become final. If no appeal has been instituted the decree would become final after the period of limitation prescribed for an appeal has expired, but will continue to bear the date on which it was passed. If, however, there is an appeal or revision, the original decree would merge in the appellate or revisional decree and the date of the final decree would be the date of the decree

passed in appeal or revision. An application for execution, however, would not be premature if it is made before the decree becomes final in the sense which has been indicated earlier.

14. In the view taken by me above it appears to me that the decree-holder in this case was entitled to put his decree into execution even though an appeal was pending against the decree I would, therefore, allow the application for revision No. 180 of 1951 and set aside the order of the learned Assistant Collector dated 30-9-1950, and of the Civil Judge, dated 2-6-1951, and dismiss application No. 5 of 1949.

15. Before taking leave of this case I would however, like to point out that the learned Civil Judge who decided the case to which revision application No. 5 of 1949 relates should have followed the decision of the Bench of the Chief Court of Avadh even though he did not agree with its correctness.

Kidwai, J.

16. I agree.

Chaturvedi, J.

17.I agree.