

Suraj Prasad vs Ramesh Chander And Ors. on 20 March, 1952

Equivalent citations: AIR1952ALL851, AIR 1952 ALLAHABAD 851

JUDGMENT

Mushtaq Ahmad, J.

1. Both these are appeals by the judgment-debtor against different orders in the same execution proceedings.

2. One Bharat Indu died in November 1928 and his estate was taken over by the Court of Wards on behalf of his heirs and legal representatives. On 23-5-1932, the Collector, as Manager of the Court of Wards obtained a decree against the appellant. On 20-7-1934, the first application for execution was dismissed, followed by a second application dated 16-7-1937, which also was dismissed on 23-8-1937. Then a third application for execution was made on 21-8-1940, which in its turn was dismissed on 30-9-1940. More than three years after this date, a fourth application for execution was made by the Collector on 4-5-1944. On 23-12-1944, the Estate was released pending this application. The appellant then filed an objection to the application on the ground that it was barred by time. This was met by the answer that one of the decree-holders being still a minor and the other having become a major only so recently as 1-10-1944, the application was maintainable under the provisions of Section 6, Limitation Act. On 20-3-1946, the Court below disallowed the objection relying on a decision of a learned Judge of this Court in Dina Nath v. Collector of Farrukhabad, 1935 ALL. L. J. 1336 (same as A. I. R. 1936 ALL. 63, referred to in the judgment under appeal). This order is the subject of the appeal No. 257 of 1946.

3. On 24-3-1945, respondents 1 to 3 in appeal No. 172 applied for substitution of their names in place of the Collector. This was allowed by an order of 3-12-1945. This order is the subject of the other appeal No. 172 of 1946.

4. A common question arises in these two appeals, namely, whether the fourth application for execution of 4-5-1944, could be treated as within time under Section 6, Limitation Act, although it was, on the face of it, beyond time, being more than 3 years after the date of the order on the previous application for execution, that date being, as already stated, 30-9-1940. The section just mentioned provides in Sub-section (1) :

"Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed therefor in the third column of Schedule 1."

5 . If this section is to be applied without any qualification, and surely there is none mentioned in the section itself, the application for execution dated 4th May 1944, would no doubt be within time, as neither of the heirs of the decree-holder had attained majority more than three years prior to the date thereof. On the other hand, if the section is read subject to any other contingency, the respondents cannot invoke it to bring their application for execution within time. Learned counsel for the appellant has strenuously argued that the section must be read subject to the effect of the provisions contained in Section 55, Court of Wards Act. That section enacts :

"No ward shall sue or be sued, nor shall any proceedings be taken in the Civil Court otherwise than by and in the name of the Collector in charge of his property or such other person as the Court of Wards may appoint in this behalf."

6. The contention of the learned counsel for the appellant is that the Collector being allowed under this section to sue or to apply in his own name and he having actually applied for execution in the present case, the result of the application must be determined on the assumption that it was an application on behalf of the minor ward and therefore subject to all the rules of limitation. In other words, he urged that the Collector having already filed an application for execution on behalf and for the benefit of his minor ward, the Court had to reject the application if it was in fact time-barred, even though the minor himself could apply for execution of the decree within the time permitted by Section 6, Limitation Act, if his estate had not been under the control of the Court of Wards. We have already indicated that Section 6, Limitation Act is worded in the most general terms and is wholly unfettered by any clause providing an exception to the rule contained therein. Apart from this answer to the arguments, we consider that the matter can be decided on the principle of stare decisis in view of the various cases in which the same view has been taken by this Court.

7 . For the appellant, apart from Section 55, Court of Wards Act, reliance was placed on the decision of a Bench in Balwant Singh v. Collector of Saharanpur, 1930 ALL. L. J. 807. That was a case in which the only point considered was of the form in which a suit should be brought when the estate of the minor plaintiff or defendant is under the supervision of the Court of Wards. Sulaiman J. delivering the judgment of the Bench pointed out that, under Section 55, Court of Wards Act, the Collector himself had to be the plaintiff or the defendant, as the case was, and not the minor ward represented through the Collector, unlike the position under the Bengal Court of Wards Act which did permit a minor to sue or be sued, though through the guardianship of the Collector. No point under Section 6, Limitation Act, where the estate of the plaintiff or the defendant was under the Court of Wards, came in for consideration in that case at all. This was the only case cited by the learned counsel for the appellant.

8. On behalf of the respondents three decisions of this Court were cited in support of the order of the Court below. The first case was that of Musi Imran v. Collector of Bijnore, 1934 ALL. L. J. 803 in which also the judgment of the Bench was delivered by Sulaiman C. J., as he then was. His Lordship remarked :

"Under Section 12, Court of Wards Act, the Court of Wards merely assumes superintendence of the property of any proprietor, the estate does not vest in the

Court of Wards. No doubt Section 55 of the Act provides that the Collector in charge of the property should sue and be sued, but that is a mere matter of procedure and does not affect the law of limitation."

There was some suggestion that there was a conflict between the two judgments by the same learned Judge, one relied upon by the appellant and the other by the respondents. We do not think that there was any such conflict whatsoever. There was, as we have already said, no question of limitation in the earlier case, whereas the latter specifically dealt with such a question and held that the same was not affected by the provisions contained in Section 55, Court of Wards Act.

9 . The second case relied upon for the respondents was the one referred to in the judgment of the Court below. That is the case in *Dina Nath v. Collector of Farrukhabad*, 1935 ALL. L. J. 1336 already referred to *Ganga Nath J.* there held that the minor ward being the real decree-holder, where the decree had been obtained by the Collector under Section 55, Court of Wards Act, he (the minor) was entitled to the benefit of Section 6, Limitation Act.

10. Last of all reliance was placed by the respondents' counsel on the case in *Ramesh Chandra v. Firm Kashi Bam Bhajan Lal*, 1936 ALL. L. J. 59, where also in circumstances like those in this case it was held that the minor could maintain his suit under Section 6, Limitation Act.

11. The principle which actually would govern a decision on the point raised in these appeals seems to be that Section 55 should not present any obstacle in the way of the minor applying for execution under the extended period of limitation allowed by Section 6, Limitation Act, because under the former section the Collector is a party either in a suit or in an application in his own name and by his own right. It is true that he is a party in the interest and for the benefit of the minor, the section itself saying that "no ward shall sue or be sued . . . otherwise than by and in the name of the Collector. . ." On the other hand in an application made by the minor after the Court of Wards has released the estate, in which he seeks a right to relief after the lapse of the normal period of limitation, the minor himself is a party and not at all represented through an agent and his case would clearly come within the bare phraseology of Section 6, Limitation Act, which, as we have already said is not controlled by any extraneous exigency mentioned therein. This being the position and as already held in this Court in the various cases we have noted, we are definitely of opinion that the view taken by the Court below was right. The application for execution of 4th May 1944, was within time under Section 6, Limitation Act, and the respondents-decree-holders were entitled to apply for substitution of their names in place of the Collector in the said application.

12 . We, accordingly, dismiss both these appeals with costs.