Ramesh Chandra vs Seth Ghanshiam Dass on 24 March, 1955

Equivalent citations: AIR1955ALL552, AIR 1955 ALLAHABAD 552

JUDGMENT

Agarwala, J.

1. This is a judgment-debtor's appeal arising out of execution proceedings. A preliminary decree for partition of certain joint family property was passed on 18-5-1933 against the appellant and his father. They filed an appeal to the High Court which was dismissed on 30-3-1939. They went up to the Privy Council in appeal. The appeal was, however, dismissed with costs on 6-4-1948. During the pendency of the appeal to the Privy Council the trial court passed the final decree on 28-4-1945. This decree was against the appellant alone as his father Basdeo Sahai had died during the pendency of the appeal in the Privy Council.

The decree directed a partition of the immoveable property in suit, and also awarded to the plaintiff a certain amount to be paid by the appellant. An execution application to execute the final decree was made on 8-9-1949 as against the appellant and the prayer was to realise the amount decree by attachment and sale of the personal property of the appellant. The execution application was obviously within three years of the decision of the appeal from the preliminary decree by the Privy Council, but beyond three years of the date of the final decree.

Ramesh Chandra objected to the execution of the decree on several grounds out of which we are concerned only with two in the present appeal, namely that the execution application was barred by time as it was made more than three years after the date of the final decree and that the decree could not be executed against the personal property of Ramesh Chandra, judgment-debtor. These objections were dismissed by the court below and the judgment-debtor has now come up in appeal to this Court.

2. So far as the objection regarding the execution pf the decree against the personal property of Ramesh Chandra is concerned, the execution Court is bound by the terms of the decree and cannot go behind them. The decree as passed was against the appellant personally. It has, therefore, to be executed against him as such.

3. As regards the objection that the execution application was barred by time, the point to be decided is whether the starting point of time for computing the peripd of limitation for execution of a final decree in a suit can be the date of the order of the appellate court in an appeal not from the final decree itself but from the preliminary decree. There appears to be a conflict of authority in India on the point. The matter is governed by the provisions of Article 182, Clause (2), Limitation Act. Article 182 runs as follows :

> "For the execution of a decree or order of any Civil Court not provided for by Art 183 or by S. 48 of the Code of Civil Procedure, 1908 (V of 1908)-
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> Three years; or, where a certified copy of the decree or order has been regis tered, six years, (1) The date of the (2) (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal."

The normal starting point for the period of limitation for the execution of a decree or order is the date of the decree or order, but the starting point in a case in which there has been an appeal, is the "date of the final decree or order of the appellate Court."

4. In clause (2), the words used are simply "where there has been an appeal", and it is not indicated as to whether the appeal is to be from the decree or order sought to be executed or from some other decree or order. No doubt the appeal obviously has to be in the very suit or proceeding in which the decree or order sought to be executed was passed and an appeal wholly unconnected with the order or decree sought to be executed cannot obviously have been intended.

The language of Article 182(2) is word for word the same as it was under the Limitation Act 15 of 1877 and under that Act in -- 'Narsingh Sewak Singh v. Madho Das', 4 All 274 (A) a Division Bench of this Court expressed the opinion that the words "where there has been an appeal" in Clause (2) of Article 179 of the Act XV of 1877, did not contemplate only an appeal from the decree or order from which execution was sought, but included, where there had been a review of judgment on which such decree was based, an appeal from the decree passed on such review. It was observed that an appeal contemplated in that clause was an appeal in the suit and not necessarily an appeal from the decree which was sought to be executed.

5. The Limitation Act 1877, was replaced by Act 9 of 1908. Several amendments were made in Article 182, e.g. Clauses (4) and (6) were newly added, clause (4) of the old Act which is now Clause (5) of the new Act appears in a modified form, and clause (5) of the Act of 1877 has been omitted, but no change whatsoever has been made in Clauses (1), (2) and (3). They are word for word the same.

6. The Legislature is deemed to know the interpretation put upon its Acts by the Courts. The meaning put upon the phrase "where there has been an appeal" in Clause (2) by a Division Bench of this Court must be deemed to have been known to the Legislature and the fact that it did not amend the clause shows that the Legislature accepted the interpretation put upon it by this Court. In --'Somar Singh v. Deonandan Prasad Singh', AIR 1927 Pat 215 (B) the facts were similar to the facts of the present case.

There also an execution application was made within three years of the date of dismissal of an appeal from a preliminary decree, though beyond three years of the date of the final decree. It was held that the application for execution of the final decree was within time. The learned Judges observed that "where there has been an appeal" in Clause (2) of Article 182 do not mean that the appeal must be against the decree sought to be executed, but imply that if there has been an appeal

which in any way imperils the decree sought to be executed then the date of the final disposal of the appeal should be the date from which the period of limitation ought to be computed."

This view was followed by a single Judge of the Madras High Court in -- 'Koyakutti v. A. Veerankutti', AIR 1937 Mad 421 (C) which was affirmed in Letters Patent Appeal by a Division Bench of that Court, vide -- 'Veeran Kutti v. Koya Kutti', AIR 1939 Mad 735 (D). These cases were followed by a learned single Judge of this Court in -- Mst. Bugian v. Chhotey Lal', 1943 All LW 40 (E).

7. In -- "Nagendra Nath v. Suresh Chandra', AIR 1932 PC 165 (F). The Privy Council, in dealing with the phrase "where there has been an appeal" observed;

> "There is no warrant for reading into the words quoted any qualification either as to the character of the appeal pr as to the parties to it; the words mean just what they say. The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide.
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> It is at least an intelligible rule that so long as there is any question sub-judice between any of the parties, those affected shall not be compelled to pursue the so often thorny path of execution which, if the final result is against them, may lead to no advantage. Nor in such a case as this is the judgment-debtor prejudiced. He may indeed obtain the boon of delay, which is so dear to debtors and if he is virtuously inclined there is nothing to prevent his paying what he owes into Court."

8. In the case before the Privy Council, there was an appeal from a portion of the decree which was sought to be executed and, in the result of which the judgment-debtors were not interested, as it was a dispute between two decree-holders. Yet both these grounds were held by the Privy Council not to affect the starting point of limitation for an application for the execution of the decree. No doubt the Privy Council case is not exactly on all fours with the present case because in that case the appeal was against the very decree which was sought to be executed. But the reasoning upon which the judgment was based, applies with full force to the facts of the present case.

9. A different view, however, has been taken by the Bombay and the Calcutta High Courts. In

-- 'Mahadeo Bhimashankar v. Fatumiya Huseinbhai', AIR 1948 Bom 337 (G) where the learned Judges relying upon some earlier decisions of that Court held on facts similar to those in the present case that the starting point of limitation for an execution application was the date of the final decree and not of the final order passed in the appeal against the preliminary decree.

The reasoning of the learned Judges is simply this that the appeal referred to in Clause (2) must have reference to the decree or order mentioned in Col. 1. In -- 'Fakir Chand v. Daiba Charan', AIR 1927 Cal 904 (H), the facts were that there was an application to set aside an ex parte decree which

was sought to be executed. This application was dismissed and the appeal from the dismissal of the application was also dismissed. It was held that the period of limitation started not from the dismissal of the appeal, but from the date of the ex parte decree. It was observed that "An application to set aside a decree does not 'keep the decree open', and is not to be regarded as an appeal from the decree itself."

It was further observed that the words "where there has been an appeal" mean "where there has been an appeal from the decree which is sought to be executed." These words have to be taken in the context in which they were used, namely in connection with an appeal from the dismissal of an application to set aside the decree which was sought to be executed. An appeal from the dismissal of an application to set aside a decree is clearly a collateral proceeding and the question in such a proceeding is not whether the decision which resulted in the decree which was sought to be executed was sound or unsound. It can, therefore, be properly said that the decision of the Calcutta High Court is distinguishable.

10. It has recently been held by the Supreme Court in -- 'Bhawanipore Banking Corporation Ltd. v. Gouri Shankar', AIR 1950 SC 5 (I) that the expression "where there has been an appeal" must be read with the words in col. 1, Art, 182, viz., for the execution of a decree or order of any civil Court, and that, however broadly we may construe it, it cannot be held to cover an appeal from an order which is passed in a collateral proceeding or which has no direct or immediate connection with the decree under execution."

The case before the Supreme Court was one in which it was attempted to compute the period of limitation for an application for execution of a decree from the date of the dismissal of an application for the restoration of an appeal against an order refusing to restore a suit dismissed in de-

fault. That was also therefore, a ease of a collateral proceeding and is distinguishable from the present case.

11. It appears to us that the true view as to _ the effect of clause (2), Article 182 may be stated as follows :

> (1) that the words "where there has been an appeal" must be read with the words in col. 1 of Article 182, viz. "for the execution of a decree at order of any civil Court .." that is to say, that the appeal mentioned in col. 2 must have a direct and immediate connection with the decree or order which is sought to be executed and (2) that the appeal need not necessarily be from the very decree or order which is sought to be executed. It may be from an earlier decree or order which has merged in the decree which is sought to be executed.

12.. A decree is defined in Section 2(2), Civil P. C. as "the formal expression of an adjudications which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit." This may be cither preliminary or

final or partly preliminary or partly final. A decree is preliminary when further proceedings have to be taken when the suit can completely be disposed of.

It is final when such adjudication completely disposes of the suit. The final decree, therefore, merely carries into fulfilment the preliminary decree passed in the suit. If an appeal from the preliminary decree succeeds, the final decree automatically falls to the ground for the reason that it is based upon the preliminary decree and is merely a superstructure upon it which must fall when the base is taken away. We think that the phrase "where there has been an appeal" must include an appeal from a preliminary decree, though the execution application relates to the final decree.

13. It would indeed be futile to hold that the starting point of limitation for an application for the execution of a final decree should not be taken fiom the date of the decision of an appeal from the preliminary decree, because the decree-holder could very well apply for the preparation of a fresh final decree in which case undoubtedly the starting point of limitation would be the date of the fresh final decree and the execution application would not be time barred.

14. For all these reasons, therefore, the view taken by the Bombay High Court does not with respect, appeal to us.

15. We, therefore, hold that the execution application in the present case was not barred by limitation. In the result, this appeal is dismissed with costs.