

## **Dr. Chiranji Lal (D) By Lrs vs Hari Das (D) By Lrs on 13 May, 2005**

**Equivalent citations: AIR 2005 SUPREME COURT 2564, 2005 (10) SCC 746, 2005 AIR SCW 2860, 2005 AIR - JHAR. H. C. R. 1789, 2005 (5) SCALE 247, 2005 (6) SRJ 450, (2005) 2 KHCACJ 458 (SC), (2005) 3 ALLMR 770 (SC), (2005) 2 CLR 22 (SC), (2005) 5 JT 329 (SC), 2005 (4) SLT 536, (2005) 30 ALLINDCAS 36 (SC), 2005 (30) ALLINDCAS 36, 2005 (5) JT 329, 2005 (2) UJ (SC) 907, (2005) 4 SUPREME 136, (2005) 3 RECCIVR 272, (2005) 60 ALL LR 166, (2005) 3 BLJ 575, (2005) 4 CAL HN 72, (2005) 2 CURCC 240, (2005) 3 MAD LW 640, (2005) 99 REVDEC 272, (2005) 4 SCJ 544, (2005) 3 ICC 834, (2005) 5 SCALE 247, (2005) 3 UC 1770, (2006) 1 CAL LJ 56, (2005) 3 CIVLJ 711, (2005) 2 CIVILCOURTC 574, (2005) 2 KER LT 1018, (2005) 2 WLC(SC)CVL 93, (2005) 120 DLT 83, (2005) 2 ALL WC 1793**

**Bench: R.C.Lahoti, G.P.Mathur**

CASE NO.:

Appeal (civil) 3745 of 2002

PETITIONER:

Dr. Chiranji Lal (D) By LRs.

RESPONDENT:

Hari Das (D) By LRs.

DATE OF JUDGMENT: 13/05/2005

BENCH:

CJI R.C.Lahoti, Y.K.Sabharwal & G.P.Mathur

JUDGMENT:

**J U D G M E N T** Y.K. Sabharwal, J.

Article 136 of the Limitation Act, 1963 (for short 'the Act') prescribes a period of twelve years for the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court. It provides that the period would commence when the decree or order becomes enforceable.

The question that arises for determination in this matter is when would the period of limitation for execution of a decree passed in a suit for partition commence. In other words, question is when such a decree becomes enforceable - from the date when the decree is made or when the decree is engrossed on the stamp paper. Which, out of these two, would be the starting point of limitation?

The facts are brief and undisputed. In a suit for partition filed against the predecessor-in-interest of the appellants, final decree was passed on 7th August, 1981 in favour of the predecessor-in-interest of the respondents. The stamp papers required for engrossing the decree were furnished by respondents on 25th May, 1982 and the decree was engrossed thereafter. There was no order of the Court directing the parties to furnish stamp papers for the purposes of engrossing the decree. The execution application was filed on 21st March, 1994 in the High Court. The appellant raised objection that the execution application was barred by limitation in view of Article 136 of the Act. The execution court rejected the objection. The order was also upheld by the Division Bench in the appeal. The Division Bench by the impugned judgment held that unless and until the decree is engrossed on the stamp paper it is merely a judgment of the Court and there is no decree available for execution. Therefore, it held that the starting point of limitation in case of execution of a decree in partition suit is the date when the decree is engrossed on the requisite stamp papers as that would be the date when decree becomes enforceable. A two-Judge Bench of this Court found that there was obvious conflict among the three two-Judge Bench decisions i.e. (i) Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande & Anr. [(1995) 3 SCC 413] (ii) W.B. Essential Commodities Supply Corporation v. Swadesh Agro Farming & Storage Pvt. Ltd. & Anr. [(1999) 8 SCC 315] and (iii) Hameed Joharan & Ors. v. Abdul Salam & Ors. [(2001) 7 SCC 573] and was of the view that it would be appropriate that the case be placed before a three-Judge Bench to resolve the conflict in these decisions.

The contention urged on behalf of the appellants is that the date of engrossment of decree on stamp paper cannot be the starting point of limitation for the purposes of Article 136 of the Act.

Learned counsel for the appellants contends that there is no conflict in the decisions. The submission is that the case of W.B. Essential Commodities Supply Corporation was that of a money decree and, therefore, any discussion therein on the issue of enforcement of decree on stamp paper and starting point of limitation on that basis would be merely obiter dicta. Likewise, the point in issue, in fact, did arise in Lokhande's case and only passing observations have been made therein which are purely obiter. The said observations were not necessary to decide the issue which was germane to the matter. Placing strong reliance on the decision in Hameed Joharan's case (supra), it is contended by learned counsel that the legal propositions correctly laid down therein squarely cover the issue arising in the present matter.

On the other hand, the learned counsel appearing for the respondents supporting the impugned judgment strongly relies on the decisions in Lokhande and W.B. Essential Commodities Supply Corporation cases in support of the contention that a final decree of partition becomes enforceable only when it is engrossed on the stamp paper.

In Lokhande's case, a preliminary decree was passed on 2nd August, 1955 in a suit for partition declaring the share of each of the parties to the suit. The Court by its order dated 19th April 1958 directed preparation of final decree on the supply of the stamp papers. On 19th December, 1960 one among the several parties to the suit whose shares had been declared in the preliminary decree, supplied the stamp paper for engrossing the final decree to the extent of his share declared in the preliminary decree and accordingly on 11th January, 1961 a final decree was engrossed on the stamp

paper to the extent of his share. Other parties to the suit whose shares were declared in the preliminary decree did not supply the stamp papers, hence no final decree was made qua them. However, they filed application for execution of the preliminary decree, which was dismissed as barred by limitation. The High Court while dismissing the appeal held that in view of the fact that no final decree was drawn on stamp paper there was no decree in existence for its execution. In this background it was found that no executable final decree has been drawn working out the rights of the parties dividing the properties in terms of the shares declared in the preliminary decree. Since the final decree had not been drawn, the observations regarding furnishing of stamp paper and engrossment of the final decree thereupon were not germane to the issue involved in the said case. Thus, the said observations are clearly obiter dicta.

Therefore, Lokhande's case cannot be said to have laid down the proposition that the period of limitation would commence only on engrossment of final decree of partition on stamp paper. In W.B.Essential Commodities Supply Corporation's case, the High Court decreed the suit filed for recovery of money on 8th March, 1982. However, the decree was actually drawn up and signed by the judge on 9th August, 1983. Application for execution of decree was filed by the decree holder on 5th June, 1995. The executing court ordered execution of the decree. But, on appeal, the Division Bench of the High Court set aside the order and held that the execution petition was barred by limitation under Article 136 of the Act. The question before this Court was whether the period of limitation begins to run from the date the suit is decreed or from the date when the decree is actually drawn up and signed by the judge. The Court held that a decree is said to be enforceable when it is executable. For a decree to be executable, it must be in existence. A decree would be deemed to come into existence immediately on the pronouncement of the judgment and the decree becomes enforceable the moment the judgment is delivered and merely because there will be delay in drawing up of the decree, it cannot be said that the decree is not enforceable till it is prepared because an enforceable decree in one form or the other is available to a decree holder from the date of the judgment till the expiry of the period of limitation under Article 136 of the Act. In arriving at the abovenoted conclusion, the Court placed reliance on Order 20 Rule 6A of Civil Procedure Code which provided that the last paragraph of the judgment should state in precise terms the relief which has been granted by such judgment. It fixed the outer time limit of 15 days from the date of the pronouncement of the judgment within which the decree must be drawn up. In the event of the decree not so drawn up, clause (a) of sub-rule (2) of Rule 6-A enabled a party to make an appeal under Rule 1 of Order 41 CPC without filing a copy of the decree appealed against and for that purpose the last paragraph of the judgment shall be treated as a decree. For the purpose of execution also, provision is made in clause (b) of the said sub-rule which says that so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be a decree. Clause (b) has thus enabled the party interested in executing the decree before it is drawn up to apply for a copy of the last paragraph only, without being required to apply for a copy of the whole of the judgment. After holding that decree becomes enforceable the moment the judgment is delivered, which ultimately decided the question that arose for consideration in the case, the Court went further and observed that there may, however, be situations in which a decree may not be enforceable on the date it is passed. The Court gave three situations by way of illustrations to demonstrate when a decree may not be enforceable on the date it is passed. The third illustration is more pertinent to the present discussion, which is as follows:

"Thirdly, in a suit for partition of immovable properties after passing of preliminary decree when, in final decree proceedings, an order is passed by the court declaring the rights of the parties in the suit properties, it is not executable till final decree is engrossed on non-judicial stamp paper supplied by the parties within the time specified by the court and the same is signed by the Judge and sealed. It is in this context that the observations of this Court in Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande [(1995) 3 SCC 413] have to be understood. These observations do not apply to a money decree and, therefore, the appellant can derive no benefit from them."

This illustration according to the Court was necessitated because of the observations in Lokhande's case. Since these observations have already been held to be obiter, this illustration is not of much significance in deciding the present matter and it cannot be said to be exposition of law. In addition to this, the decree involved in the case was a decree passed in a suit for recovery of money and not a decree passed in a suit for partition, hence the question of engrossing of the decree on stamp paper does not arise.

In Hameed Joharan's case, a preliminary decree for partition was passed on 8th June, 1969 and a final decree was passed on 20th November, 1970. On 28th February, 1972, the Court issued notice to the parties to furnish stamp papers and granted time till 17th March, 1972 for the same. The decree holder did not furnish any stamp paper, hence no decree was finalized. An execution application was presented on 21st May, 1984. The execution petition was dismissed as barred by limitation as the same was filed beyond twelve years stipulated in Article 136 of the Act. Subsequently, a revision petition was filed against the said order and the High Court set aside the order and directed the executing court to consider the question of limitation afresh. The executing court after fresh consideration of the matter held that the execution petition is not barred by limitation. As against this, a revision petition was filed before the High Court and the Learned Single Judge of the High Court allowed the revision petition and set aside the order of the executing court. Consequently, the execution petition also stood dismissed. The question before the Court was whether the limitation period begins to run from the date when the decree is made or from the date on which the stamp paper for engrossing the decree is to be furnished as per the direction of the court and the decree is engrossed on such stamp papers.

This Court in its detailed and elaborate judgment held that the direction given by the Court for furnishing of stamp papers within a specified date by itself will not take the decree out of the purview of Article 136 of the Act as regards the enforceability of the decree. It was held that furnishing of stamp paper was an act entirely within the domain and control of the party required to furnish and any delay in the matter of furnishing of the same cannot possibly be said to be putting a stop to the period of limitation being run. The Court observed that:-

"Needless to record that engrossment of stamped paper would undoubtedly render the decree executable but that does not mean and imply, however, that the enforceability of the decree would remain suspended until furnishing of the stamped paper - this is opposed to the fundamental principle on which the statutes of

limitation are founded".

The Court has further observed that:-

"Be it noted that the legislature cannot be subservient to any personal whim or caprice. In any event, furnishing of engrossed stamp paper for the drawing up of the decree cannot but be ascribed to be a ministerial act, which cannot possibly put under suspension a legislative mandate. Since no conditions are attached to the decree and the same has been passed declaring the shares of the parties finally, the Court is not required to deal with the matter any further - what has to be done - has been done. The test thus should be - has the Court left out something for being adjudicated at a later point of time or is the decree contingent upon the happening of an event - i.e. to say the Court by its own order postpones the enforceability of the order - in the event of there being no postponement by a specific order of the Court, there being a suspension of the decree being unenforceable would not arise".

Thus, even if there is direction by the Court for furnishing of stamp papers by a particular date for the purposes of engrossing of the decree, the period of limitation begins to run from the date when the decree is passed and not from the date when the decree is engrossed on the stamp papers supplied by the parties.

The Court also held that the period of limitation prescribed in Article 136 of the Act cannot be obliterated by an enactment wholly unconnected therewith, like the Indian Stamp Act. Legislative mandate as sanctioned under Article 136 of the Act cannot be kept in abeyance unless the selfsame legislation makes a provision therefor. The Indian Stamp Act, 1899 has been engrafted in the statute book to consolidate and amend the law relating to stamps. Its applicability thus stands restricted to the scheme of the Indian Stamp Act.

As regards the bar under Section 35 of the Indian Stamp Act, it was held in Hameed Joharan's case that the prescribed period shall not be allowed to remain suspended until the stamp paper is furnished and the partition decree is drawn thereon and subsequently signed by the judge. Enforceability of the decree cannot be the subject-matter of Section 35, neither can the limitation be said to be under suspension. The Court differentiated between "executability" and "enforceability" of the decree. The phrase 'execution' was held to mean the process for enforcing or giving effect to the judgment of the court and it is completed when the decree holder gets the money or other thing awarded to him by the judgment. It was held that though the decree may not be received in evidence or be acted upon but the period of limitation cannot be said to remain under suspension at the volition and mercy of the litigant. The period of limitation starts by reason of the statutory provisions as prescribed in the statute. Time does not stop running at the instance of any individual unless, of course, the same has a statutory sanction being conditional.

The reference order mentions that the decision of a two Judge Bench of this Court in Renu Devi v. Mahendra Singh & Ors. [AIR 2003 SC 1608] would have some bearing. In that case in a suit for partition a compromise decree was made on 13th February, 1978 declaring the share of the parties

in the suit property. The final decree was engrossed on the stamp paper on 24th May, 1979. Two parties to the decree gifted the property that fell into their share by a gift deed. Title to these gifted properties was challenged in the title suit. The Trial Court dismissed the suit. On appeal, the First Appellate Court allowed the appeal. On further appeal, the High Court while allowing the appeal held that donors acquired their separate title in the joint property only after the final decree was engrossed on the stamp paper i.e. on 24th May, 1979 and, therefore, they were legally incompetent to gift their property so as to transfer the title to the donees inasmuch as before the decree was engrossed on the stamp paper they did not have any title in the property.

This Court while allowing the appeal against the decision of the High Court held that the compromise decree dated 13th February, 1978 being a decree effecting partition by metes and bounds ought to have been engrossed on requisite stamp papers. The deficiency stood supplied by the same being engrossed on stamp papers on 24th May, 1978. The engrossing of the decree on stamp paper validated the compromise decree dated 13th February, 1978 and it became effective and binding with effect from 13th February, 1978 itself. Thus, the Court has categorically held that even if the decree is engrossed on the stamp paper on a subsequent date, the decree would be legally effective from the date when the decree is actually passed.

Learned counsel for the respondents contends that Section 35 of the Indian Stamp Act, 1899 provides that an instrument not duly stamped cannot be 'acted upon'. Therefore, a decree passed in a suit for partition cannot be acted upon which means it cannot be enforced until engrossed on stamp paper. It is further contended that Article 136 of the Act presupposes two conditions for the execution of the decree. Firstly, the judgment has to be converted into a decree and secondly, the decree should be enforceable. It is further submitted that a decree becomes enforceable only when the decree is engrossed on the stamp paper. Therefore, the period of limitation begins to run from the date when the decree becomes enforceable i.e. when the decree is engrossed on the stamp paper.

Such an interpretation is not permissible having regard to the object and scheme of the Indian Stamp Act, 1899. The Stamp Act is a fiscal measure enacted with an object to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of initial defect in the instrument {Hindustan Steel Limited v. Messrs Dilip Construction Company [(1969) 1 SCC 597]}. Section 2(14) of the Indian Stamp Act defines an 'instrument' as including every document by which any right or liability is, or purported to be created, transferred, limited, extended, extinguished or recorded. Section 2(15) defines 'instrument of partition' as any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing partition. Section 3 provides a list of instruments which shall be chargeable with duty of the amount indicated in Schedule I of the Indian Stamp Act. Article 45 of Schedule I prescribes the proper stamp duty payable in case of an instrument of partition. Section 33 provides for the impounding of the instrument not duly stamped and for examination of the instrument for ascertaining whether the instrument is duly stamped or not. Section 35 provides that no instrument chargeable with duty

shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped. Section 40 (b) provides for payment of the proper duty, if the instrument impounded is not duly stamped. Section 42 (1) provides for certifying that proper duty has been paid on the impounded instrument. Sub-section (2) provides that after such certification the instrument shall be admissible in evidence, and may be registered, acted upon and authenticated as if it had been duly stamped. A decree in a suit for partition declares the rights of the parties in the immovable properties and divides the shares by metes and bounds. Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act. The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon.

The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. No rule has been shown to us requiring the court to call upon or give any time for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong. The proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereupon and only thereafter the period of twelve years will begin to run would lead to absurdity. In *Yeshwant Deorao Deshmukh v. Walchand Ramchand Kothari* [1950 SCR 852] it was said that the payment of court fee on the amount found due was entirely in the power of the decree holder and there was nothing to prevent him from paying it then and there; it was a decree capable of execution from the very date it was passed.

Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. As above noted, there is no statutory provision prescribing a time limit for furnishing of the stamp paper for engrossing the decree or time limit for engrossment of the decree on stamp paper and there is no statutory obligation on the Court passing the decree to direct the parties to furnish the stamp paper for engrossing the decree. In the present case the Court has not passed an order directing the parties to furnish the stamp papers for the purpose of engrossing the decree. Merely because there is no direction by the Court to furnish the stamp papers for engrossing of the decree or there is no time limit fixed by law, does not mean that the party can furnish stamp papers at its sweet will and claim that the period of limitation provided under Article 136 of the Act would start only thereafter as and when the decree is engrossed thereupon. The starting of period of limitation for execution of a partition decree cannot be made contingent upon the engrossment of the decree on the stamp paper. The engrossment of the decree on stamp paper would relate back to the date of the decree, namely, 7th August, 1981, in the present case. In this view the execution application filed on 21st March, 1994 was time barred having been filed beyond the period of twelve years prescribed under Article 136 of the Act. The High Court committed illegality in coming to the

conclusion that it was not barred by limitation.

In view of the above, the impugned judgment is set aside and the appeal is allowed. Parties shall bear their own costs.