

Madras High Court

Vadlamanneti Damodara Rao vs The Official Receiver, Kistna And ... on 24 August, 1945

Equivalent citations: (1945) 2 MLJ 456

JUDGMENT Alfred Henry Lionel Leach, C.J.

1. The question in this appeal is whether a decree obtained by the respondent has become barred by the law of limitation.

2. On the 21st September, 1932, the respondent obtained a decree against the appellants and their father for the payment of Rs. 2,832-12-0 with interest and costs. On the 22nd January, 1935, the respondent filed an application for execution in the Court of the District Judge of Kistna. This was numbered as Execution Petition No. 26 of 1935. Another creditor of the defendants had obtained a decree against them in Original Suit No. 5 of 1931 and had already applied for execution by the attachment and sale of the properties of the judgment-debtors. This application was numbered as Execution Petition No. 172 of 1932. The object of the respondent in filing Execution Petition No. 26 of 1935 was to obtain rateable distribution of the properties already attached by the decree-holder in O.S. No. 5 of 1931. He asked for an order for attachment, but added a prayer for rateable distribution. Some of the attached properties were sold in Execution Petition No. 172 of 1932 and the respondent obtained his share of the proceeds. The attachment continued in respect of the unsold properties.

3. On the 5th November, 1936, the District Judge passed an order in both the execution petitions closing them, the order being merely the word " closed." This was obviously done in accordance with the very bad practice which then prevailed of Courts closing petitions for execution for statistical purposes. Although the petitions were " closed " the attachment continued and continued at all times material to this appeal.

4. On the 22nd December, 1942, the respondent filed another application for execution. As over six years had elapsed since the District Judge " closed " the respondent's first application, it was said that the new application was barred by limitation. The District Judge accepted this plea and dismissed the application. The respondent appealed to this Court and the appeal was heard by Chandrasekhara Aiyar, J. The learned Judge remanded the case to the District Court with the direction that there should be an inquiry as to whether the properties covered by the petition of the 22nd December, 1942, were the same as the properties covered by the previous petition. He indicated that in the event of the properties proving to be the same the execution Court should hold the later application to be within time. The appeal is from the learned Judge's judgment.

5. We have called for all the records from the lower Court and an examination of them shows that the properties which the respondent sought to embrace in his application of the 22nd December, 1942, are the properties which were referred to in the earlier petition and what he wanted was rateable distribution of the sale proceeds of the unsold properties under attachment. Unless the order of the District Judge of the 5th November, 1936, is to be read as a final order dismissing Execution Petition No. 26 of 1935, the application of the 22nd December, 1942, is in time.

6. We have already stated that the earlier petition was merely " closed " for statistical purposes. As pointed out in Sivasubramaniam Chettiar v. Murugesu Mudaliar (1940) 1 M.L.J. 537 it is well-settled law that where a fresh petition is filed as the result of a former petition having been "closed " for statistical purposes, it is not regarded in law as being a fresh application but an application to revive or continue the former application. The order of the 5th November, 1936, was not a final order and the fresh application put in by the respondent must under the authorities be regarded as merely a continuation of the previous application. By the later application all he wanted was his share in the sale proceeds of the properties which still remained to be sold.

7. The decree-holder in Original Suit No. 5 of 1931 filed an application on the 3rd August, 1943, in continuation of his Execution Petition No. 172 of 1932 and this was allowed on the 23rd December, 1944. Throughout, the respondent's petitions have come before the Court together with the petitions of the decree-holder in Original Suit No. 5 of 1931.

8. We hold that the District Judge was wrong in dismissing the respondent's later application as being barred by the law of limitation and consequently we dismiss the appeal with costs.

9. The case will be remanded to the trial Court but in view of the fact that the properties admittedly are the same as the properties covered in the former petition, no further inquiry is necessary. The execution will proceed on this basis.