

Anant Ram vs Basdeo Sahai And Ors. on 4 May, 1955

Equivalent citations: AIR1957ALL114, AIR 1957 ALLAHABAD 114, ILR (1956) 1 ALL 563

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. This is an execution second appeal by the judgment-debtor against the order of the court below that the execution application by the decree-holder respondent for execution of the final decree under Order 34, Rule 5, Civil P. C., was filed within time.

2. The order for the preparation of the final decree was passed on 8-7-1937. The final decree was actually prepared on 23-7-1937. The decree mentions at the end: "It is issued today the 23rd July, 1937 under my signatures and seal of the court." Below this appear the signatures of the Civil Judge with the same date, 23-7-1937 as the date of his signing this decree.

3. The first execution application was presented on 17-7-1940 within three years of the date the final decree bore, but beyond three years of the date on which the order for the preparation of the final decree was passed. These 'proceedings became infructuous though the office had reported that the execution application was filed beyond time and the decree-holder had replied that the application was within limitation on account of the provisions of the Temporary Postponement of Execution of Decrees Act, 1937 (Act X of 1937).

On 4-3-1942, the decree-holder filed the present execution application. The papers were ordered to be sent to the Collector for further proceedings on 11-8-1942 without issuing any notice of the execution application to the judgment-debtor. The judgment-debtor subsequently filed an objection under Section 47, Civil P. C., to the execution of the decree on the ground of limitation. The execution court agreed with the Judgment-debtor and held the execution to be barred by time.

On appeal by the decree-holder, the court below held that the application was within time because the decree-holder was misled by the date of the decree being mentioned as 23-7-1937 in the decree itself. He relied on two cases in support of his view. The cases are: Nalini Kanta v. Kamaraddi, AIR 1933 Cal 239 (A) and Kali Prasad v. Mt. Bibi Aziz Fatma, AIR 1938 Pat 149 (B). Against the order that the execution should proceed, the application for execution being within limitation as the first application had been filed within limitation, the Judgment-debtor preferred the present appeal.

4. The period for filing an application for execution begins to run from the date of the decree in view of the provisions of Article 182 of the 1st Schedule, of the Limitation Act. The date of decree, according to the decree, itself, is 23-7-1937 and, therefore, the first execution application filed on 17-7-1940 was within time irrespective of the question whether the decree-holder had been misled or not about the date of the decree on the supposition that the date of the decree should have been 8-7-1938 on which date the order of the preparation of the final decree was passed.

5. The contention for the appellant is that as Order 20, Rule 7, Civil P. C., provides that the decree shall bear the date on which the judgment, was pronounced the date of decree should be taken to be the date of judgment and not the date which the decree happens to bear erroneously. Order 20, Rule 7 just provides what date be given to the decree, It does not provide that if a different date is given in the decree, then that date should be ignored and the parties or court should always go to the judgment to find out what the date of the decree should be and must be held to be. If the decree bears a wrong date, that date should be the date for purposes of construing Article 182 of the First Schedule, Limitation Act.

6. It further appears to us that Order 20, Rule 7 Civil P. C., does not apply to the present case. The order for the preparation of a final decree is not a judgment. It does not adjudicate upon the rights of the parties. The rights of the decree- holder, in case the judgment-debtor makes defaults in making payments, are decided and laid down in the preliminary decree. What the court has to decide sometimes after the presentation of an application for the preparation of the final decree is the objection of the judgment-debtor, if any, about some alleged payment to the decree-holder.

That is not the decision on any question of right of the parties in the suit. It is a decision of an objection on a point not arising in the original suit itself, but arising within the terms of the preliminary decree. It is in view of some such distinction, it appears, that the forms for the preparation of the final decree for sale and some other final decrees under Order 34, Civil P. C., given in Appendix D do not start in the same way in which forms in other decrees in original suits start or even the form 7-F for the preparation of a final decree, on payment of the money starts.

7. Form No. 6 for the preparation of final decree of sale under Order 34, Rule 5 and other forms for final decree start with an expression "Upon reading the preliminary decree....." while the other forms start with the expression "This suit coming on this day for further consideration. The other forms, thus provide for noting the date of judgment in the decree, while the form for the preparation for the final decree for sale and other final decrees do not provide for it and the reason seems to be this that the previous order for the preparation of a final decree, is just an order and not a judgment passing any decree and that the actual final decree is passed when it is prepared, while in the other cases, the decree is passed when the judgment is pronounced. It is only the preparation of the decree which follows and, therefore, Order 20, Rule 7 provided that though the decree be prepared at a later date, it should bear the date on which the judgment was pronounced and it was actually passed.

8. Form 7-F of Appendix D starts with the expression "This suit coming on this .. day" and further provides: "It is hereby ordered and decreed; (i) the mortgagee do execute a deed of reconveyance of

the property in the aforesaid preliminary decree mentioned in favour of the mortgagor.....".

9. This difference in this form for final decree and the other forms for final decree seems due to the fact that such an order for reconveyance is not passed in the preliminary decree. It just provides that if required, the defendant would reconvey or retransfer the said property, it is, therefore, at a later stage that the court has to determine on these rights of the decree-holder to get the reconveyance executed or not.

Such a decision amounts to a judgment and that is why the decree following such a judgment follows the form of ordinary decrees and does mention the date of Judgment which would be the date of the decree itself. In this view of the matter, there is not even a mistake in the data mentioned in the final decree in the suit. The correct date of decree is 23-7-1937. the date on which the decree was actually prepared. In view of the above, we are of opinion that the order of the court below is correct.

10. We, therefore, dismiss the appeal with costs, The record be sent back to the court below for further proceedings forthwith.

11. Learned counsel for the respondent has filed his certificate of fees and it is admitted.