

(1953) 09 KL CK 0019
In the High Court Of Kerala
Case No : Second Appeal No.552 of 1951

Abubaker Abdul Kadir

APPELLANT

Vs

Muhammad Kunju Abdul Kadir

RESPONDENT

Date of Decision : 29-09-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 9, 48
Limitation Act, 1908 — Article 150, 150 , 151, 152, 153
Provincial Small Cause Courts Act, 1887 — Section 25
Travancore Limitation Act, 1908 — Article 153, 166

Citation : (1953) 09 KL CK 0019

Hon'ble Judges : Kumara Pillai, J

Bench : Single Bench

Advocate : T.K. Kurien, for the Appellant; N.K. Narayana Pillai, for the Respondent

Final Decision : Dismissed

Judgement

Kumara Pillai, J.—The question for decision in this second appeal is whether execution of the decree is barred by limitation or not. The decree was one for money and was passed by the trial Court on 11-11-1112. An appeal filed against the trial Court's decree was disposed of by the District Court on 19-6-1120; and against the appellate decree Defendant 3 filed a civil revision petition in the High Court as C.R.P. 877 of 1121. The High Court admitted the revision petition and ordered notice thereon to the decree-holder. But on 19-1-1123 it disposed of the revision petition holding that the petition was incompetent as Defendant 3 had the right to file a second appeal and allowing three weeks" time to him to pay the necessary Court-fee and get the revision petition converted into a second appeal.

In the order of 19-1-1123 it was also said that if Defendant 3 failed to pay the necessary Court-fee and get the revision petition converted into a second appeal on or before 9-2-1123 the revision petition would stand dismissed with costs. Defendant 3 did not, however, pay the Court-fee and get the revision petition

converted into a second appeal in pursuance of the order of 19-1-1123; and so the present position is that the revision petition, C.R.P. No. 877 of 1121, has been disposed of on 19-1-1123 on the ground that it was incompetent and no revision lay.

Subsequently, on 28-3-1124, the decree-holder applied for execution of the decree. Defendant 3 objected to the application for execution on the ground that execution was barred by limitation. His contention was that, as the application was made beyond three years from the date of the appellate decree which was passed on 19-6-1120, it was barred by limitation under Clause (2) of Article 166, Travancore Limitation Act, 6 of 1100, corresponding to Clause (2) of Article 182, Indian Limitation Act.

The decree-holder contended that under Clause (2) of Article 182, Indian Limitation Act the starting point of limitation was the date of the disposal of the civil revision petition, viz., 19-1-1123, and that the execution application made on 28-3-1124 was, therefore, not barred by limitation as it was within three years from the date of the disposal of the revision petition. The first Court overruled the Defendant's objections and held that the execution application was not barred by limitation. On appeal, the District Judge of Alleppey held that the starting point of limitation, under Clause (2) of Article 166, Travancore Limitation Act was the date of the appellate decree and could not be the date of the order of the High Court disposing of the revision petition and that the execution petition of 28-3-1124 was therefore barred by limitation as it was beyond three years from the date of the appellate decree. The decreed holder has hence filed this second appeal.

2. The relevant portion of Article 182, Indian Limitation Act which corresponds to Article 166 Travancore Limitation Act, 6 of 1100, and Article 153, Travancore Limitation Regulation, 2 of 1062, reads as follows:

182. For the execution Three years ** ** of a decree or order 2. (Where there has of any civil Court been an appeal) not provided for by the date of the Article 183 or by Section 48 final decree or of the Code of Civil order of the Ap-Procedure, 1908(5 appellate Court on of 1908). the withdrawal of the appeal, ** **

There is high authority for holding that the words "appeal" and "appellate Court" in Clause (2) of Article 182 include also "revision" and "revisional Court". In - AIR 1932 165 (Privy Council) it was observed by their Lordships of the Privy Council:

There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court is an appeal within the ordinary acceptance of the term, and that it is no less an appeal because it is irregular or incompetent.

In an earlier case, -Subramania Pillai v. Seethai Ammal 36 Mad 135 (B), the Madras High Court had held that an order of the High Court passed in the exercise of its revisional powers is not an order on an "appeal" within the meaning of Article 182, Sub-clause (2), so as to create a fresh starting point for the calculation of limitation. The learned Judges who decided that case said therein:

If a High Court interferes on revision either there is a decree passed by the High Court which may be executed under the first Sub-clause of Article 182 or the case is sent down with a direction to the lower Court to amend its decree. The latter appears to be the regular course and in such event there is no room to employ any Sub-clause other than Sub-clause (1) or the new Sub-clause (4). Where revision petition is simply dismissed, as was the case here, with the revision petition presented u/s 25, Provincial Small Cause Courts Act, no fresh starting point of limitation arises.

As the authority of this decision and the observations made therein were dwindled by the observations in the Privy Council case referred to above, Anr. Division Bench of the Madras High Court referred the question to a Full Bench.

The Full Bench case, - P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar (deceased) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others, . The earlier Madras case, 36 Mad 135 (B) has been followed by the Travancore High Court in 9 Trav LJ 278 (D). That case was decided by a single Judge of the Travancore High Court, and that learned Judge mainly relied therein on 36 Mad 135 (B), and the reasoning adopted therein. All the grounds relied on in the 36 Mad 135 (B) case are set out in the Order of Reference in - Chidambara v. Rama(C)"; and they are considered and met in the opinion delivered by the Full Bench. After referring to the observations of the Privy Council in AIR 1932 165 (Privy Council) and stating that it was reasonably plain from the CPC that a distinction was drawn by the Code between a revision petition and an appeal, the learned Judges who referred the case to the Full Bench stated in the Order of Reference in P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar (deceased) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others,

... It is further in our opinion a matter to be borne in mind that the clauses in the Limitation Act relating to applications do not apply to revisions according to the wording of Article 182: see - Muthu Chettiar v. Narayanan Chettiar AIR 1928 Mad 528 (E). One is faced with the further difficulty: If a revision petition is not an appeal for purposes of Article 182(2) the following position arises: The period of limitation is entirely different accordingly as the revision petition succeeds or fails. If it succeeds the result would be that there would be a review of judgment or the decree would be amended and where that is the case Article 182(3) or (4) would presumably apply. If it fails we think there is a "casus omissus" because the revision petition could not be construed as an application within the meaning of Article 182, and Clause 3 and 4 will not apply. Clause 2 will not apply because

it is not an appeal. This seems to be a very unfortunate state of affairs which would leave the party affected in complete uncertainty until the revision petition is disposed of. In these circumstances as the matter is one of some general importance and as 36 Mad 135 (B) has decided a case absolutely on all fours with the present case and as the Bench is one for which we have the greatest respect, we think it would be better to have this matter set at rest by a Full Bench rather than have conflicting decisions. The question referred is: "Whether Article 182(2), Limitation Act, applies to civil revision petitions as well or only to appeals in the narrower sense of that term as used in the Civil Procedure Code.

In the opinion delivered by the Full Bench was said:

True, much importance cannot be attached to the word "revise" in this passage, as their Lordships were not advertent to what is technically known as a revision petition; but the view that there is no essential difference between a remedy by way of appeal and by way of revision, is considerably re-inforced by the passage in question and its value becomes all the greater when we bear in mind that their Lordships made these observations in construing the very provision with which we are now concerned. The only serious objection urged against the view is that in one and the same Act the same word ought not to be construed in two different senses and that as the word "appeal" has a narrower meaning in Articles 150 to 157, it would be wrong to give it an extended sense in Article 182. But as a canon of construction, though ordinarily the same meaning should be given to the same words occurring in different parts of the same Act, it is recognised that if sufficient reasons exist, a word can be construed in one, part of an Act in a different sense from that it bears in Anr. part: Craies's Statute Law, Edn. 4, p. 153. We think we have shown that cogent reasons exist in the present case and what is more, the word "appeal" within the ordinary acceptation of that term bears not the narrower but the extended meaning. Our answer to the question referred is therefore in the affirmative.

Thus, 36 Mad 135 (B), has been expressly overruled by the Full Bench of the Madras High Court; and all the arguments that found favour with the learned Judge who decided the case in 9 Trav LJ 278 (D) have been noticed and dealt with in the opinion delivered by the Full Bench in P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar (deceased) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others,

In the light of the decisions in AIR 1932 165 (Privy Council) and P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar (deceased) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others, and the observations in those cases the view taken in 9 Trav LJ 278 (D) does not commend itself to me. I hold that the words "appeal" and "Appellate Court" in Clause (2) of Article 166, Travancore Limitation Act, 6 of 1100, corresponding to Clause (2) of Article 182, Indian Limitation Act, would include also "revision" and "revisional Court" and that, where there has been a revision against a decree, there would be a fresh starting point of limitation under the above clause of the

Limitation Act from the date of the order finally disposing of the revision petition.

3. The learned Counsel for the Respondent made an attempt to support the order of the District Judge on the ground that to give a fresh starting point of limitation from the date of disposal of the civil revision petition it is necessary that the revision petition itself must be one which the Court that disposed of it had jurisdiction to entertain and that, as the revision petition in this case was dismissed on the ground that it was incompetent since the revision Petitioner had the right to file a second appeal, the dismissal of that revision petition would not afford a fresh starting point of limitation to the decree-holder.

Although there is no direct authority on this point, there are a number of cases in which the dismissals of incompetent appeals and improperly constituted appeals have been held to give fresh starting points of limitation under Clause (2) of Article 182, Indian Limitation Act. In AIR 1932 165 (Privy Council) , itself, it has been observed that any application by a party to an appellate Court asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, "and that it is no less an appeal because it is irregular or incompetent."

Dealing with the question, whether the dismissal of an appeal in a case in which was no right of appeal would constitute a fresh starting point of limitation, the Calcutta High Court has observed in - Wazir Mahton v. Lulit Sing 9 Cal 100 (F):

It is contended that, under Article 179, the application being filed more than three years from the date of the decree of 19-12-1871, is barred. We do not think that this contention is correct, because the 2nd para of Article 179 says, "where there has been an appeal, the date of the final decree or order of the Appellate Court", that is to say, where there v has been an appeal, three years are to be counted from the date of the final decree or order of the appellate Court. There is no question that in this case there was an appeal although both the appellate Courts held that no appeal would lie. The case, therefore, comes within these words of Article 179 viz., "where there has been an appeal."

The next question is whether there is any decree or order of the appellate Court. There were orders no doubt of the Courts to which the appeals were preferred rejecting the appeals on the ground that no appeal would lie. The words "appellate Court", in our opinion, here mean the Court or Courts to which the appeals mentioned in the Section have been Preferred. The meaning of this clause, therefore, in our opinion, is, that where there has been an appeal, the period is to run from the date when the Court to which that appeal has been preferred passes an order disposing of the appeal. That being so, it is quite clear that the present application is within time.

In a similar case, - Thandavaroya Gramani Vs. Arumugha Mudali and Another, the Madras High Court has held that under Article 182(2) the only essentials were that there must be an appeal and an order of the appellate Court and that even if the appeal was incompetent on the ground that no appeal lay an order

passed in that appeal would give a fresh starting point of limitation. In the present case, although the revision petition was incompetent, the High Court admitted the same and ordered notice thereon; and it was only at the final hearing of the revisits petition that it was ordered to be dismissed on the ground that no revision lay.

Nothing is said in Clause (2) of Article 182, Indian Limitation Act about the competency or otherwise of the appeal the disposal of which is sought to be relied upon as giving a fresh starting point of limitation; and it was observed by their Lordships in AIR 1932 165 (Privy Council) :

There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say.

At page 167 of the report in - "Nagendra Nath v. Suresh (A)", their Lordships of the Privy Council have observed:

The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provision equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide. 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.

As the High Court had admitted the revision petition and ordered notice thereon to the decree-holder it cannot but be admitted in the present case that the question of the maintainability of the decree was "sub judice" between the parties until the High Court disposed of the revision petition on 19-1-1123.

In this connection reference to a recent decision of this High Court, - Kochukoshy v. Narayanan Kunju Pillai AIR 1952 Trav-C 493 (H), is also very helpful. It was held in that case that irrespective of the question as to whether Court-fee due on the memorandum of appeal had been levied or not, such memorandum would become an appeal when the same was admitted and registered as contemplated by Order 41, Rule 9, that there was nothing in the expression "where there has been an appeal" in Article 182 to suggest that the appeal contemplated is only an appeal in which full Court-fee due on it had been levied, and that where there was an appeal the starting point of limitation for execution of the decree would be the date of the final order of the appellate Court as specified in Clause (2) of Article 182.

Following the principle accepted in these decisions, I hold that when the High Court has admitted the revision petition and ordered notice thereon to the

decree-holder, the dismissal of that revision petition would give a fresh starting point of limitation even though the revision petition was finally dismissed on the ground that it was incompetent and no revision lay.

4. Before concluding, two cases referred to by the learned District Judge in his order, viz., - *Pylo Devasya v. Kochu Kunju* 22 Trav LJ 316 (I) and - *Mahomed Abdul Kadir v. Samipandia Tevar* AIR 1920 Mad 592 (J), have also to be noticed. In both these cases, an appeal which was wrongly presented to a Court that had no jurisdiction to hear it was ordered to be returned for presentation to the proper Court, and it was held that the order for return of the appeal for presentation to the proper Court was not the final decree or order of the appellate Court and would not furnish a fresh starting point of limitation.

These decisions are no authority for holding that the dismissal of an incompetent or in properly constituted appeal would not give a fresh starting point of limitation under Clause (2) of Article 182, Indian Limitation Act. All that they have decided is that the order for return of an appeal by a Court, which had no jurisdiction to entertain the appeal, for presentation to the proper Court was not the final decree or order of the appellate Court. The appeal itself would not be finally disposed of by such an order, and would be finally disposed of only by the Court to which it was presented again after the return by the first Court.

In the present case, the incompetent civil revision petition was finally disposed of by the High Court. The order on the revision petition was that it would stand dismissed if the Petitioner failed to pay the necessary, Court-fee and get it converted into an appeal. There was a such order in 22 Trav LJ 316 (I) and AIR (sic)20 Mad 592 (J).

In these cases the Court in which the incompetent appeal was filed had not dismissed the appeal on the ground that no appeal lay to it out merely ordered the return of the appeal for presentation to the proper Court. There was thus no final decree or order in those cases. It may also be stated here that 22 Trav LJ 316 (I) mainly follows AIR 1920 Mad 592 (J) and that AIR 1920 Mad 592 (J) was before the Privy Council decision reported in AIR 1932 165 (Privy Council) and the Madras Full Bench case *P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar (deceased) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others*, In the latter decision AIR 1920 Mad 592 (J) was also referred to.

5. In the result, I hold that the execution the decree in this case is not barred by limitation, and allow this, second appeal with costs throughout. The order of the District Judge is reversed and that of the first Court is restored.