
(2010) 02 MAD CK 0232
In the Madras High Court
Case No : C.R.P. (NPD) No. 251 of 2004

Bagiyam	Vs	APPELLANT
Rangasamy and Others		RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Limitation Act, 1908 — Article 136, 182(4)

Citation : (2010) 5 MLJ 414

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—The revision has been filed by the petitioner who is the judgment debtor in O.S. No. 1294 of 1986 seeking to dismiss the application filed by the respondents in E.P. No. 84 of 2001 to execute the decree in O.S. No. 1294 of 1986 dated 24.11.1994.

2. The brief facts of the facts are as follows:

2.1. The respondents herein filed a suit in O.S. No. 1294 of 1986 on the file of Additional District Munsif Court, Namakkal against the petitioner and others seeking a decree for declaration and mandatory injunction. The said suit was decreed after contest on 24.11.1994. Thereafter the respondents herein filed an execution petition in E.P. No. 353 of 1995. Thereafter the respondents not pressed the executive petition filed in E.P. No. 350 of 1995 on the ground that an amended application will have to be filed to amend the decree in so far as the Survey No is concerned. Therefore an application in I.A. No. 928 of 1998 was filed to amend the decree. Accordingly by the order dated 05.07.2000 the decree was amended as prayed for.

2.2. After getting the decree amended the respondents filed an application in E.P. No. 84 of 2001 seeking to execute the decree. The said application was opposed

by the petitioner stating that it is barred by limitation since it has been filed beyond the period of three years from the date of the decree. However the Trial Court has dismissed the application by holding that inasmuch as in I.A. No. 928 of 1998 was allowed only on 05.07.2000 and therefore it cannot be construed that the application is barred by limitation, since the three year period would start only from 05.07.2000 alone. Challenging the said order the present revision is filed.

3. Mr. N. Manoharan, learned Counsel appearing for the petitioner submitted that under Article 136 of the Limitation Act the period of limitation for the executive of a decree for mandatory injunction is only 3 years. The said period having fixed under the act, the same cannot be extended by the orders of the Court. The learned Counsel also relied upon the judgments of the Apex Court reported in West Bengal Essential Commodities Supply Corporation Vs. Swadesh Agro Farming and Storage Pvt. Ltd. and Another, ; 2001 (4) CTC 495 Antonysami v. Arulanandam Pillai (D) by Lrs and Anr.; Manohar Nale and Others Vs. Jaipalsing Rajput and Others, in support of his contention that period of limitation and the limitation as provided in the Limitation Act will have to be strictly construed and the relative inconvenience or equity cannot be a ground to extend the limitation period. The learned Counsel has also relied upon the judgment of this Hon''ble Court reported in 2005 2 L.W. 696 D. Balakumar and 3 Ors. v. Vedachalam and Anr. for the above said preposition of law. Therefore the learned Counsel sought for the revision to be allowed.

4. Heard Mr. N. Manokaran, learned Counsel appearing for the petitioner and none appearing for the respondents.

5. In the present case on hand, there is no dispute that E.P. No. 350 of 1995 was filed by the respondents within the period of limitation as provided under Article 136 of the Limitation Act. The said application was not pressed by the respondents only on the ground that they would seek for the amendment of the decree in so far as the survey number is concerned. Thereafter they filed another application in I.A. No. 928 of 1998 seeking to amend the decree. The said application after contest was ordered on 05.07.2000. If at all the petitioner is aggrieved the petitioner should have challenged the order passed in I.A. No. 928 of 1998 dated 05.07.2000. The respondents have rightly filed the application in E.P. No. 84 of 2001 after the application for amendment was ordered by amending the decree. It cannot be said that inspite of the said order passed on 05.07.2000 earlier application filed in E.P. No. 350 of 1995 will have to be pursued. In view of the amendment of the decree the earlier application in E.P. No. 350 of 1995 had no relevancy even assuming the same is pending. The right to file the execution petition would arise for the respondents only after the order amending the decree.

6. In the judgment reported in Manohar Nale and Others Vs. Jaipalsing Rajput and Others, the Hon''ble Supreme Court was considering the computation of the period of limitation in a case where a review petition was filed against the decree

and the same was dismissed. Therefore under those circumstances, the Hon''ble Supreme Court was pleased to hold that when a review filed by a party was dismissed and the operation of the earlier decree having become final and not stayed pending the review application the period of limitation would start from the date of decree. Therefore the Hon''ble Supreme Court was pleased to hold that it is not open to a party to contend that the period of limitation would start from the date of the dismissal of the review petition but in fact it would start from the date of the original decree. In the judgments reported in (2006) 3 M.L.J. 67 Ram Bachan Rai and Ors. v. Ram Udar Rai and Ors.; 2001 (4) CTC 495 Antonysami v. Arulanandam Pillai (D) by Lrs and Anr. and West Bengal Essential Commodities Supply Corporation Vs. Swadesh Agro Farming and Storage Pvt. Ltd. and Another, . the Hon''ble Supreme Court was dealing with the situation about the starting point of the limitation while executing a decree.

7. In the above said judgments the Hon''ble Supreme Court was pleased to hold that notwithstanding the fact that the decree was made ready subsequently the starting point of the limitation would start from the date of which the judgment was delivered. Therefore the Hon''ble Supreme Court was pleased to hold that the date that was mentioned in the judgment would alone be a starting point of limitation. Under such situation, the Hon''ble Supreme Court was pleased to observe that the Courts do not have the power to extend the period of limitation and the relative inconvenience and hardship to a party based upon equity cannot be a ground to extend the period of limitation. Therefore this Court is of the considered opinion that the said judgments relied upon by the learned Counsel are not applicable to the present case on hand. In fact the judgment reported in (2006) 3 M.L.J. 67 Ram Bachan Rai and Ors. v. Ram Udar Rai and Ors., the Hon''ble Supreme Court was dealing with the case where the decree was challenged in appeal and revision in which there was no stay of the operation of the decree. Therefore it was held that in the absence of any stay by the higher forums it cannot be said that the limitation would start after the disposal of the revision. In the judgment reported in 2005 2 L.W. 696 D. Balakumar and 3 Ors. v. Vedachalam and Anr. the facts involved are totally different. In the said case a decree for mandatory injunction was granted on 18.06.1996 and execution petition was filed after 4 years and 7 months. Therefore admittedly the execution petition was filed beyond the period of limitation as provided under Article 136 of the Limitation Act. Hence under those circumstances, the Hon''ble Court has held that an application filed for execution beyond the period of limitation cannot be entertained.

8. In the judgment reported in 1972-2-L.W.-275, this Hon''ble Court has observed as follows:

Limitation Act, 1908 Article 182(4) Amendment of Decree-Period of limitation-Starting point-scope. The Limitation Act states that where a decree had been amended the date of amendment would be the starting point of limitation for calculating the period of 3 years available for executing the decree.

9. Similarly in the judgment reported in AIR 1958 9, it is observed as follows:

...therefore when the decree holder was under a disability at the date of the decree. It would not begin to run till the disability ceased, the date of the decree could not obviously be given as the starting point of limitation.

10. The above said two judgments are applicable to the present case on hand, since the respondents have filed the application for execution within a period of three years from the date of order amending the decree.

11. Therefore on a consideration of the above said legal position and also on a consideration of the facts narrated above, this Court is of the opinion that the revision petition deserves to be dismissed and accordingly, the same is dismissed. There is no order as to costs.