

(1972) 11 MAD CK 0051
In the Madras High Court

Dhanalakshmi Ammual and Others

APPELLANT

Vs

C.N. Ramaswamy Pillai

RESPONDENT

Date of Decision : 30-11-1972

Acts Referred:

Limitation Act, 1963 — Section 31

Citation : (1973) 86 LW 503 : (1973) 1 MLJ 399

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The only question that is raised in this revision is as to whether the execution petition filed by the petitioners herein is barred by limitation. There was a decree in favour of the petitioners on 4th March, 1959 in S.C. No. 263 of 1958 on the file of the Sub-Court, Cuddalore. A petition for execution of the said decree was filed, but the same was dismissed on 3rd October, 1961. The present petition for execution has been filed on 1st April, 1972. It has been dismissed by the lower Court on the ground that it is barred by time.

2. In this revision, the learned Counsel for the petitioners contends that as the execution of the decree was not barred under the provisions of the old Limitation Act, 1908, on 1st January, 1964, when the new Act, came into force, the decree-holders are entitled to the extended period of limitation contained in the new Limitation Act of 1963. The lower Court accepted the petitioners' contention that they are entitled to the benefit of the new Limitation Act in view of the inapplicability of Section 31 of the new Limitation Act to this case. But, however, it held that even applying the provisions of the new Limitation Act to the present execution petition, still it cannot be said that it is within time. I am inclined to agree with the view taken by the lower Court. The learned Counsel for the petitioners may be right when he says that when the new Limitation Act came into force on 1st January, 1964, the decree was alive and therefore he will have the benefit of the extended period of limitation under, the new Act for filing the

execution petition. But even then, it cannot be said that the present execution petition is in time. Under Article 136 of the new Act, the period of limitation for executing a decree is 12 years from the date of the decree. Admittedly, the present application for execution has been filed only on 1st April, 1972, long after the 12 year period.

3. But what the learned Counsel contends is that the 12 year period has to be calculated from 3rd October, 1961, the date of the final order passed in the last execution petition, and not from 4th March, 1950, the date of the decree. His reasoning is this : Under the old Act, a petition for execution should be filed within three years from the final order in the last execution petition. That period of 3 years has been enlarged to 12 years under Article 136 of the new Limitation Act. Hence, the time for filing the execution petition in this case should be calculated from the date of order in the last execution petition and not from the date of the decree.

4. It is not possible to accept the above contention of the petitioners. The contention is based on an improper reading and incorrect interpretation of Article 136. It will be doing violence to the clear words used in column 3 of Article 136 which states that the starting point of limitation is the date of the decree. If the interpretation suggested by the learned Counsel is accepted, there will be a further enlarged period of limitation in addition to the one contained in Section 136. What the petitioners really want is to tack on the time taken for executing the decree under the old Act to the period fixed under the new Act, thus taking advantage of the provisions both in the old Act and the new Act. Under the old Act, time is taken to run from the date of the order passed in the last execution petition for the purpose Article 182 of that Act. But under the provisions of the new Limitation Act, time begins to run only from the date of the decree, and when execution petition is not filed within 12 years therefore, it clearly gets barred. I, therefore, find that the lower Court is right in holding that the execution petition has been filed beyond 12 years from the date of the decree and that it is not permissible to tack on the time taken for prosecuting the previous execution petition. The lower Court's decision is therefore correct.

5. The Civil Revision Petition is dismissed.