
(2004) 05 MP CK 0044

In the Madhya Pradesh High Court

Case No : Civil Revision No. 1319 of 2003

Dhaulta and Others

APPELLANT

Vs

Muzammil Hussain and Others

RESPONDENT

Date of Decision : 04-05-2004

Acts Referred:

Limitation Act, 1963 — Article 136

Citation : (2004) 3 MPHT 308

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : Ravish Agrawal and Pranay Verma, for the Appellant; Sameer Seth, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Pande, J.—This revision u/s 115, CPC is directed against the order dated 5-12-03, passed by Civil Judge Class 1, Raisen in Execution Case No. 61 - A/74-94.

2. Plaintiff/respondent-decree holder instituted C.S. No. 61-A/76 against the defendant/petitioners and others seeking declaration of title, restoration of possession of suit lands and recovery of mesne profit. The suit aforesaid has been resisted. However, vide judgment dated 10-10-1977, it was decreed against defendant Nos. 8 and 9 directing them to restore possession of suit lands to the plaintiff/respondents. The suit against defendant Nos. 1 to 7 was dismissed. Being aggrieved, plaintiff/respondent preferred C.A. No. 10-A/88 before the District Judge, Bhopal. The appeal has been dismissed vide judgment dated 22-8-91. On 27-9-94, plaintiff/respondents-decree holder put the decree passed by Civil Judge in C.S. No. 61-A/76 into execution claiming possession of suit lands against defendant Nos. 8 and 9. Defendant Nos. 8 and 9 judgment debtors filed objection as to executability of decree inter alia on the grounds that, there being no decree for possession in C.S. No. 61-A/76, they could not be directed to deliver possession and execution application filed on 27-9-94 was barred by time

as has been filed beyond 12 years of the decree, as provided in Article 136 of the Limitation Act, 1963. The Executing Court vide impugned order dated 5-12-2003 held that the decree in C.S. No. 61-A/76 is not merely a declaratory decree, but directs delivery of possession by defendant Nos. 8 and 9 to the plaintiff/respondent-decree holder. The judgment-decree dated 10-10-77 passed by Civil Judge in C.S. No. 61-A/76 merged into the appellate judgment-decree dated 22-8-91, therefore, the execution filed on 27-9-94 is within time as provided in Article 136 of the Limitation Act. Accordingly, the objection as to executability of decree as has been preferred by the petitioners has been dismissed.

3. C.S. No. 61-A/76 was filed by the plaintiff/respondent for declaration and restoration of possession of suit lands and recovery of mesne profit, however, vide judgment dated 10-10-77 (Annexure A-1) it has been decreed against defendant Nos. 8 and 9 only for declaration and restoration of possession of suit land. The suit as against remaining defendants was dismissed. Plaintiff/respondent therefore, preferred C. A. No. 10-A/88 before the District Judge, Bhopal impleading defendant Nos. 8 and 9 as respondents. The appeal aforesaid was decided vide judgment dated 22-8-91 (Annexure A-2). Therefore, the judgment-decree dated 10-10-77 passed by Civil Judge merged into the judgment-decree dated 22-8-91 passed by the District Judge. It has been contended that plaintiff/respondent's regular first appeal aforesaid u/s 96 of the CPC was filed questioning the legality of the decree in relation to a part of claim dismissed by the Civil Judge vide judgment dated 10-30-77, while the decree claim against defendant Nos. 8 and 9 did not form subject-matter of appeal excluding applicability of principle of merger, this part of decree had attained finality on 10-10-77 itself. The suit of the plaintiff/respondent was for declaration, restoration of possession and recovery of mesne profit. Vide judgment dated 10-10-77, it was decreed against defendant Nos. 8 and 9 only for declaration and recovery of possession. The relief of mesne profit as claimed has been dismissed. The suit in its entirety was dismissed as against the remaining defendants. This necessitated filing of first regular appeal u/s 96 before the District Judge, wherein defendant Nos. 8 and 9 also were impleaded as respondents. On facts aforesaid, the Executing Court held that judgment-decree dated 10-10-77 (Annexure A-1) passed by Civil Judge merged into the judgment-decree dated 22-8-91 passed by District Judge in C.A. No. 10-A/88.

4. Dealing with the doctrine of merger in Kunhayammed and Others Vs. State of Kerala and Another, the Apex Court held as under :--

"The doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognized. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. The logic underlying the doctrine of merger is that there can not be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by Inferior Court, Tribunal or Authority was subjected to a, remedy available under the law before a superior forum then, though the

decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the Superior Court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the Superior Court, Tribunal or Authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Tribunal or the Authority below. However, the doctrine is not of universal or unlimited application."

5. The suit in part only for declaration and possession was decreed against defendant Nos. 8 and 9. The relief claimed for recovery of mesne profit has been rejected. The suit was dismissed in its entirety against the remaining defendants. Therefore, the plaintiff/respondent rightly preferred C.A. No. 10-A/88 before the District Judge impleading defendant Nos. 8 and 9 as respondents. The appeal aforesaid has been decided by the judgment dated 22-8-91 (Annexure A-2). Accordingly, the judgment- decree passed by Civil Judge merged into the judgment-decree passed by the District Judge. The execution being within 12 years of time has rightly been held within time prescribed under Article 136 of the Limitation Act. As such the objection preferred by the petitioners has rightly been dismissed by the Civil Judge vide impugned order dated 5-12-03.

6. The order impugned passed by the Civil Judge does not suffer from any material irregularity. Accordingly, revision fails and is dismissed.

Petitioners shall bear their cost and pay the cost of the plaintiff/respondent. Others shall bear their own cost. Counsel fee as per rule or certificate (whichever is less).