

(1985) 04 AP CK 0031
In the Andhra Pradesh High Court
Case No : A.A.A.O. No. 26 of 1977

Fatimunnisa Begum

APPELLANT

Vs

Mohammed Zainulabuddin Saheb (deceased by Lrs) and
Others

RESPONDENT

Date of Decision : 24-04-1985

Acts Referred:

Limitation Act, 1963 — Article 136

Citation : AIR 1986 AP 355

Hon'ble Judges : Amareswari, J

Bench : Single Bench

Advocate : N. Rajeshwar Rao, for the Appellant; P.V.R. Sarma, for the Respondent

Judgement

1. This Civil Misc. Second Appeal arises out of execution proceedings. The question pertains to limitation. Both the Courts have held that the Execution Petition is time barred. The decree-holder is the petitioner.

2. A few dates are relevant. The decree is dated 2-8-58. The Execution Petition is filed on 7-7-72. The contention of the decree-holder was that the decree was executable only on production of succession certificate and since the succession certificate was produced on 20-7-1980 (sic) limitation starts from that date as the decree became executable on that and not from 28-8-1958 when the judgment was delivered and decree was passed. The trial Court rejected this contention and the same was affirmed by the Appellate Court. The second point argued on behalf of the decree-holder was that since the decree dt. 28-8-1958 was amended on 6-1-1961, limitation starts from 6-1-61 and not from the date of the decree. The contention was also rejected by both the Courts.

3. Mr. N. Rajeswara Rao, the learned counsel for the appellant reiterated the same contentions before me. As can be seen from the facts, the decree was passed on 28-1-1958 and the Execution Petition was filed on 7-7-1972. Calculated from the date of the decree, the Execution Petition is beyond 12

years. Under Art. 136 of the Limitation Act, time begins to run when the decree or order becomes enforceable and the period of limitation is 12 years. It is no doubt true that the decree-holder was entitled to execute the decree only on production of succession certificate. But that does not mean that the decree itself was enforceable. The decree was passed by a Court of competent jurisdiction and it was enforceable from the very day when it was passed. The inability of the decree-holder to execute the decree due to some lapse on his part does not render the decree unenforceable. If the succession certificate was in the hands of the decree-holder by the time the decree was passed, he could have enforced it from that very day. The right to execute the decree is different from the decree being enforceable. A distinction between these two causes is always maintained.

4. In *Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari*, the Supreme Court held that the decree is not a conditional one in the sense that some extraneous events were to happen on the fulfilment of it alone it can be executed and that the payment of court-fee on the amount found due to the decree-holder was entirely in the power of decree-holder and there was nothing to prevent him from paying it then and there and that a decree which can be executed by the decree-holder only after payment of the Court-fee was a decree capable of execution from the very date, it was passed. Applying the principle enunciated in this case, I have no doubt, in holding that the decree was enforceable from the day when it was passed and this is not a case of unenforceability of the decree, but is a case where the decree-holder being unable to execute the Decree due to non-fulfilment of certain conditions by him.

5. It is submitted by Mr. Rajeswara Rao that the decree was drafted only after the production of the succession certificate and therefore, the decree became enforceable only from the date of drafting. According to Order 20, R. 7 C. P. C., the date of the decree should be the date on which the judgment was pronounced and not the date on which it was actually signed by the Judge. Hence I find no force in this contention.

6. The next submission of Mr. N. Rajeswara Rao, the learned counsel for the appellant was that the decree passed on 28-8-1958 was amended on 6-1-1961 and time begins to run from the date of the amended decree. If the date of the amended decree is to be taken in to account, the execution petition is in time. Therefore, the question for consideration is whether time begins to run from the date of the original decree or from the date of the amended decree. In this case, the original decree was a joint decree in favour of the plaintiffs and the second defendant for recovery of money against the first defendant. But as per the amended decree dt. 6-1-1961, the plaintiffs alone were entitled to recover from the first defendant 9/16th share in the amounts.

7. There are two articles in the Limitation Act that deserve to be noticed in this context. Art. 182 of the Limitation Act of 1908 provided three years as period of limitation for execution of a decree and time begins from the date of decree or order. However S. 48 of C. P. C., provided a maximum period of 12 years.

Reading these two provisions together the applications had to be filed within three years from the date of the original decree or appellate decree and the same had to be kept alive by renewing the same subject to a maximum of 12 years. Sub-clause (4) of Art. 182 specified that in a case where the decree is amended, time begins to run from the date of the amended decree. The Limitation Act was amended and Art. 182 was substituted by Art. 136 by the amending Act of 1963 which came into force on 1-1-1964. The new Art. 136 provided 12 years period of limitation for execution of a decree and specified that time begins to run from the date when the decree becomes enforceable. S. 48 was deleted from C. P. C. It may be mentioned, here that Art. 182 of unamended Act, does not mention the words "when the decree becomes enforceable". But on the other hand, says "from the date of decree or order". The present case is governed by Art. 136 of the Act as the execution petition was filed on 7-7-1972 and the new Limitation Act had come into force before the expiry of the time prescribed under the old Act. Indeed, it is not disputes that it is Art. 136 that applies. This Article was introduced providing a maximum period of limitation of 12 years without there being a need for the decree-holder to keep the decree alive by making an application every three years. Consequently S. 48 is deleted from C. P. C. But the question is when does this 12 years period begins to run. Old S. 48 C. P. C. , is silent with regard to the starting point. It only mentions the terminus. It was always the provisions of the Limitation Act that prescribed the starting point. Article 136 says, time begins to run from the date when the decree becomes enforceable. It implies that it is from the date of the decree that is in force. When the decree is amended, it is only the amended decree that is in force. The original decree is superseded. The enforceable decree is only the amended decree. The scope of Art. 136 came up for consideration by a Division Bench of this Court in Posani Ramachandraiah Vs. Daggupati Seshamma, . The questions in this case was whether time begins to run from the date of the original decree or the Appellate Decree. The Division Bench held that the Limitation has to be reckoned from the date of the appellate decree irrespective of the fact whether the decree of the trial Court is suspended pending appeal or varied or confirmed in appeal. Even in case where the original decree is confirmed in appeal, if time begins to run from the date of the Appellate decree apportion (sic) in a case of amendment of the decree time has to be reckoned from the date of the amended decree. After amendment the original decree is no longer in force and as such the same cannot be "enforced" and the decree that is enforceable only the amended decree.

8. Mr. P. V. R. Sarma, the learned counsel for the respondent relied upon the following decisions in support of his contention that time must be reckoned from the date of the original decree and not the amended decree.

9. In Paladugu Veera Ramachandra Rao Vs. Paladugu Parasuramayya and Another, , a Full Bench of the Madras High Court held that amendment or no amendment, execution of a decree beyond 12 years is barred by S. 48, C. P. C., and an amendment of a decree u/s. 152 does not have the effect of starting a

fresh period of limitation. But this decision turned upon the provisions of S. 28 C. P. C. The learned Judge observed that though Art. 182 of the Limitation Act was amended and a new clause i.e. Cl. (4) was added to make it clear that the limitation begins to run from the date of the amendment, there was no corresponding change in the language of S. 48 C. P. C., and therefore, the learned Judges drew an inference that the period of 12 years should be counted from the date of the original decree. The unreported ruling of Madhavan Nair and Cornish, JJ., which held that the period of limitation should be calculated from the date of amendment of the decree was overruled.

10. In *Lakshminarasinga Rao v. Balasubramanyam*, AIR 1949 Mad 251 Mark, J., held that the date of the decree for purposes of applying S. 48 is the date on which the decree becomes operative namely, that on which the plaintiff was at liberty to file an execution petition to enforce a relief which the Court had granted him.

11. In *Ganeshmal Pasmal Vs. Nandlal Tulsiram*, Gajendragadkar, J., speaking for the Court said the provisions contained in S. 48 of the code are not effected by the provisions of Art. 182 of the Limitation Act even on the ground that the decree which is sought to be executed was subsequently amended. Relying on these decisions, it was argued that the relevant date is the date of original decree.

12. All these cases arose u/s. 48 C. P. C., which is now repealed with effect from 1-1-1964. While S. 48 provided a maximum period of 12 years it does not mention the date from which the 12 years period begins to run. It was only Art. 182 of the Limitation Act which provided that the time begins to run from the date of the amended decree. In the absence of a similarly specification relating to the starting point in S. 48 the Courts have held that the maximum period of 12 years must be reckoned from the date of the decree. Therefore, the decisions turned upon the language of S. 48 which does not contain a provision as we find in Art. 182 to the effect. But we are now concerned with Art. 136 and not S. 48 which stood deleted with effect from 1-1-1964 or Art. 182 which was abrogated. While S. 48 which is now deleted used, the words "12 years from the date of the decree", Art. 136 says "12 years from the date when the decree becomes enforceable". Therefore, these decisions are of no assistance in construing the scope of Art. 136 of the Limitation Act.

13. The next decision on which reliance was placed was *Ouseph Vs. Lona*, . This decision undoubtedly supports the case of the respondents. But I am unable to agree with the principle enunciated in this decision. No doubt, the principle of S. 48 is now embodied in Art. 136 which provided for 12 years period of limitation for the execution of a decree, but the starting point must be determined with reference to the express language of Art. 136 which says "when the decree becomes enforceable". These words were not there in S. 48. In my opinion the proper interpretation would be, to reckon the period from the date of the decree that is sought to be enforced i.e., if there is an appeal, it is the Appellate Decree

and if there is an amendment, it is from the date of the amended decree. As I said earlier, even in a case of affirmance, if time begins to run from the date of the appellate decree and not the original decree, much more so in the case of a decree which is amended as the original decree no longer retains its form. The amendment gives a fresh starting point of limitation. Even though Art. 136 does not contain the words "in case of an appeal", the Courts have construed that it is the appellate decree that is relevant is ultimately it is that decree which becomes capable of execution. In the case of an amendment, the original decree no longer retains its form and what is sought to be executed is the amended decree. Therefore, the words "enforceable" must be construed with reference to the decree that is sought to be enforced. Reckoned from the date of amendment, the execution petition filed is within time.

14. It is lastly submitted by Mr. V. R. Sarma, that in this case the amendment being of a formal nature, it cannot give rise to a fresh starting point of limitation. I do not agree. While it is true that an innocuous amendment such as change in cause title etc., which does not affect the rights of the parties does not give a fresh starting point of limitation, a substantial amendment stands on a different footing. In a present case, the original decree is a joint decree in favour of the plaintiffs and the 2nd defendant against the first defendant. Now the decree is amended giving the plaintiff only a 9-16th share in the amount. Thus the plaintiffs are not entitled to recover the entire amount along with the 2nd defendant. Their entitlement is reduced and it is limited to 9/16th share. The decree is substantially varied. Hence time has to be reckoned from the date of the amendment and so reckoned the Execution Petition is within time.

15. In the result, the C. M. S. A., is allowed. The orders of the Courts below are set aside. No costs.

16. Appeal allowed.