(1971) 01 KL CK 0005

In the High Court Of Kerala

Case No : S.A. 313 of 1956

Geevarghese Muthalali Alexander Muthalali — APPELLANT

Vs

Bhagavathi Ammal Seetha Lakshmi Ammal — RESPONDENT

Date of Decision : 06-01-1971

Acts Referred:

Limitation Act, 1963 — Section 30(b)

Citation : (1971) KLJ 401

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;P. Unnikrishna Kurup, J

Bench : Division Bench

Advocate : George Varghese Kannanthanam and Thomas V. Jacob, for the Appellant; T.M. Mahalinga Iyer and S.K. Brahmanandan, for the Respondent

Final Decision : Dismissed

Judgement

P. Unnikrishna Kurup, J.—The 13th defendant in O. S. No. 1 of 1115 on the file of the District Court, Quilon, is the appellant in this second appeal. The question that arises for consideration in this second appeal turns on an interpretation of section 30(b) of the Limitation Act, 1963(Act 36 of 1963), herein-after referred to as the new Act. The decree holder-respondent in execution of the decree in O.S. No. 1 of 1115 purchased the property in court auction and the sale was confirmed on 25-10-62. She applied for delivery on 1-4-1964 and was met with the plea that the application was barred by limitation under the provisions of the new Act. Under Article 180 of the Indian Limitation Act, 1908, hereinafter called the old Act, the period for a purchaser of an immovable property to apply for delivery of possession was three years from the date of confirmation of the sale. On that basis the application for delivery made by the decree-holder was well within time. But in the meantime, the new Act had come into force on 1-1-1964. Under Article 134 of the new Act, the period allowed to an auction-purchaser for taking delivery of the immovable property purchased in execution of a decree was reduced to one year from the date of confirmation of the sale. In terms of this provision in the new Act, the execution petition for delivery was barred by limitation. But section 30 (b) of the new Act provided that:

Any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be preferred or made within a period of 90 days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, whichever period expires earlier.

The result is that the decree-holder gets a period of 90 days next after the commencement of the new Act and the question that arises for consideration is whether the application filed by him on 1-4-1964 is with in that time. The new Act came into force, as already stated, on 1-1-1964 and 90 days have to be computed next after the commencement of the new Act. The word ''commencement'' used with reference to an Act has been defined as the day on which the Act came into force u/s 2 (7) of the Interpretation and General Clauses Act. It would therefore follow that the application may be preferred within a period of 90 days next after the day on which the Act came into force. The day next after the date on which the Act came into force is 2-1-1964.

2. In sub-section (1) of section 12 it is provided that:

In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

Applying this provision, 2-1-1964, which is the day next after the commencement of the Act, has to be excluded for the purpose of computing the period of limitation. The result would be that the execution petition for delivery filed by the decree-holder is within time and the decision of the lower appellate Court is correct.

The second appeal fails and is dismissed. In the circumstances of the case, however, there will be no order as to costs.

