

(1954) 10 MP CK 0010

In the Madhya Pradesh High Court

Case No : Second Appeal No. 209 of 1952

Gendalal Ramsahi Dhanmandi Dhar and Others

APPELLANT

Vs

Keshavrao Vishnupant Khare

RESPONDENT

Date of Decision : 11-10-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 144, 17, 2(2), 48

Citation : (1954) 10 MP CK 0010

Hon'ble Judges : Newaskar, J

Bench : Single Bench

Advocate : Bhawaniprasad, for the Appellant; C.M. Chaphekar, for the Respondent

Final Decision : Dismissed

Judgement

Newaskar, J.—The only question raised in this second appeal on behalf of the Appellants is that execution petition No. 369 of 1943-44 filed by the decree-holder in the Court of First Munsif Court Darbar Dhar is barred by Section 48, CPC having been filed more than 12 years from the date of the decree.

The point put forward on behalf of the Appellants is that the decision of the highest Court on a revision petition filed will not be "the date of the decree" within the meaning of Section 48, CPC and reliance in this connection is placed upon the decision of the Madras High Court reported in - K. Nagalinga Chetty Vs. O.K. Srinivasa Aiyangar and Another,

2. The fact of the present case are as follows: In Civil Suit No. 15 of 1919-20 a decree was passed in favour of the Plaintiff for a sum of Rs. 1556-12-9 and interest on 12-1-1921. Against this decision an appeal was preferred. This was appeal No. 14 of 1920-21. This appeal was disposed of on 25-7-1922. In this the decree of the lower Court was confirmed with a slight modification.

Against this decision second appeal was preferred in the High Court of Dhar. This was Civil Second Appeal No. 3 of 1922-23. It was dismissed with costs 6-3-1923.

Thereafter a petition for revision was filed in the Dhar Darbar on 21-1-1924. It was finally disposed of on 2-10-1941.

3. The Plaintiff decree holder thereafter filed execution petition on 15-12-1941. This was dismissed for default on 29-4-1942. Fresh application for execution was filed on 26-5-1944.

4. To this application several objection were raised on behalf of the judgment-debtor including one regarding the execution petition being barred u/s 48, Code of Civil Procedure. The Executing Court overruled all these objection and ordered the execution to proceed.

5. Judgment-debtors preferred appeal against that decision and the appellate Court dismissed the appeal. This is a second appeal against that decision.

6. Mr. Bhawaniprasad for the Appellant judgment-debtors has pressed the point set out by me at the commencement of this judgment and took reliance upon K. Nagalinga Chetty Vs. O.K. Srinivasa Aiyangar and Another,

7. On the other hand, it was contended by Mr. Chaphekar that the case reported in K. Nagalinga Chetty Vs. O.K. Srinivasa Aiyangar and Another, is disapproved by the Madras High Court itself in - Nacharammal and Others Vs. Veerappa Chettiar, and this latter Madras case is followed recently in - Kunjammal Vs. Krishna Chettiar by agent, Velayudham Pillai, . It was also pointed out that Patna High Court in - Jagannath Bal Vs. Sadhu Charan Bal, considered the aforesaid decision of the Madras High Court but refused to follow it.

Thus he contended both according to Patna High Court and later Madras decision, where a revision petition is filed and disposed of it is the decision of that matter which affords terminus quo of the litigation and an execution petition can be filed within 12 year from the decision in that proceeding.

8. In order to appreciate the argument it will be useful to refer to the provisions of Section 48, CPC in so far as they are material for the present purpose:

9. Section 48(a), Code of Civil Procedure. runs as follows:

(1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 12 year from:

(a) the date of the decree sought to be executed, or,

...

Thus according to Section 48, CPC the period of 12 year, except in the case subsequently mentioned in the Section, has to be computed from the date of the decree.

10. The word "decree" has been defined in Section 2(2), CPC as under:

"In this Act, unless there is anything repugnant in the subject or context:

"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 17 or Section 144 but shall not include (a) any adjudication from an order, or

(b) any order of dismissal for default.

11. Thus, where rights of parties are conclusively determined by an adjudication in a suit which is formally expressed it become a decree. It cannot be doubted that a decision of a Court of appeal would be a decree whether it affirms, modifies or sets aside the decision of the lower tribunal. But it is said that a decision in a revision petition will not be a decree.

12. This contention however is not correct. Even in a revision petition the jurisdiction exercised in an appellate one and Court in either reversing, modifying or confirming the decision of the Court of the appeal acts in exercise of that jurisdiction.

13. In - AIR 1932 165 (Privy Council) either Lordships of the Privy Council while dealing with the term appeal held as follows:

There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, and that it is no less in appeal because it is irregular or incompetent.

14. In the present case the Court of revision considered the matter on merits and dismissed the revision petition confirming the decision of the lower tribunal. While considering the merits it could have set aside or modified the decision. In that case it could not have been said that that decision is not a decree. Will it make any difference if it confirms the decision? While thus confirming it exercises an appellate jurisdiction though limited in character circumscribed by the limitations placed by Section 115, Code of Civil Procedure.

15. The reasoning in K. Nagalinga Chetty Vs. O.K. Srinivasa Aiyangar and Another, which take the view that decision in revision does not alter the date of decree, is based on the Full Bench decision of that Court in - Paladugu Veera Ramachandra Rao Vs. Paladugu Parasuramayya and Another, That was a case of amendment of a decree and it was held that the period of 12 years is to be computed u/s 48, CPC not from the date of amendment but from the date of the decree itself.

The Full Bench case referred to above was not dealing with a case of decision in a revision petition and the case cannot properly serve as a guide in deciding

whether the decision in revision can be called a decree within the meaning of the term as used in Section 48, Code of Civil Procedure.

16. In Nacharammal and Others Vs. Veerappa Chettiar, their Lordships of the Madras High Court had to consider the question whether the word "decree" means that of the trial Court or of appellate Court. It held after referring to several authorities that it means decree of the appellate Court. In this case their Lordships did not agree with the interpretation sought to be put by Mockett and Burn JJ. upon the decision in Paladugu Veera Ramachandra Rao Vs. Paladugu Parasuramayya and Another, in K. Nagalinga Chetty Vs. O.K. Srinivasa Aiyangar and Another,

17. The same view is taken in Kunjammal Vs. Krishna Chettiar by agent, Velayudham Pillai, Although these decisions do not involve the question regarding a revision petition they at any rate do suggest that the interpretation put in K. Nagalinga Chetty Vs. O.K. Srinivasa Aiyangar and Another, as regards the Full Bench decision of Madras High Court is not correct.

18. The decision of Rowland J. in Jagannath Bal Vs. Sadhu Charan Bal, suggests that a petition for revision and an appeal are placed on the same footing as regards the application of Section 48, Code of Civil Procedure.

19. On these considerations and authorities referred to above I hold that the contention raised on behalf of the Appellant does not deserve to succeed.

20. The appeal is therefore dismissed with costs.