

(2006) 12 MAD CK 0070

In the Madras High Court

Case No : Civil Revision Petition (NPD) (MD) No. 1293 of 2006

Govindan Nair

APPELLANT

Vs

Devasam Executive Officer, Parameswaran and
Balakrishnakurup (died)

RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Limitation Act, 1963 — Article 136

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 109

Citation : (2006) 12 MAD CK 0070

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : K. Vamanan, for Hemalatha, for the Appellant; T.V. Sivakumar, for D. Hari, for R.1, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman, J.—The present revision is directed against the order of the learned Principal District Munsif, Padmanabhapuram, dated 24.04.2000, made in E.P. No. 168 of 1992 in O.S. No. 628 of 1969.

2. One Dr.S.Natesan, representing the plaintiff Kanyakumari Devaswom Board, as its President has filed the suit against one Chellappan Pillai and Bhaskarakurup, for injunction and for recovery of the suit property. The said suit has been decreed on 24.03.1972. The second defendant in the said suit has preferred an appeal in A.S. No. 110 of 1972, on the file of the Subordinate Judge, Padmanabhapuram. By an order dated 26.09.1974, the Judgment and decree of the Court below has been modified to the effect that the plaintiff has to pay the value of the building in the suit property as improvements to the second defendant in the said suit. Further, it has been held that the second defendant has to surrender the possession of the property to the plaintiff after the deposit of the value of the building by the plaintiff. Thereafter, one Parameswaran has filed an appeal before the High Court, Madras in S.A. No. 2391 of 1978. The

second appeal was dismissed on 25.01.1979. Thereafter, the decree holder filed E.P. No. 34 of 1981, which was dismissed on 04.10.1983. Later, another execution petition namely E.P. No. 168 of 1992, has been filed by the decree holder. The Judgment debtor has contested the said execution petition on the ground that it is barred by limitation. Nevertheless, the learned District Munsif, Padmanabhapuram, by his order dated 24.04.2000, has allowed the execution petition filed by the decree holder for delivery of possession of the suit property. Questioning the said order, the present civil revision petition being filed by the Judgment debtor.

3. Mr.K. Vamanan for Ms.Hemalatha, learned Counsel appearing for the petitioner contended that the second appeal was dismissed confirming the Appellate Court Order on 25.01.1979 and execution petition filed on 27.01.1992, which is clearly barred by limitation. Further case of the petitioner is that earlier E.P. No. 34 of 1981, has been filed by the decree holder which was dismissed on 04.10.1983 and the present E.P. No. 168 1992, was filed after the expiry of 12 years from the date of the judgment and decree in second Appeal No. 2391 of 1978 on 25.01.1979 and hence, the same is clearly barred by limitation.

4. Per contra, Mr.T.V. Shivakumar for Mr.D.Hari, learned Counsel appearing for the decree holder/first respondent has submitted that

(a) Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 clearly says that there is no limitation regarding recovery of possession of temple property and

(b) Further, earlier E.P.Bo.34 of 1981, filed by the decree holder for delivery of possession was dismissed on 04.10.1983 and the present execution petition in E.P. No. 168 of 1992, has to be construed as continuation of the above Execution petition and hence, the argument of the learned Counsel for the respondent that the execution petition filed on 27.01.1992 as time barred is incorrect.

5. I have heard Mr. K,Vamanan, learned Counsel for the petitioner and Mr.T.V. Shivakumar learned Counsel for the respondent.

6. It is an admitted fact that originally the suit in O.S. No. 628 of 1969, has been decreed on 24.07.1972. The decree of the Court below has been modified by the learned Subordinate Judge, Padmanabhapuram to the following effect.

This appeal coming on 12.09.1974 before me for final hearing in the presence of Thiru K. Krishnamoorthy Avocate for the Appellant and of Thiru S.Subramania Pillai Advocate for the Respondent and having stood over to this day for consideration, the Court doth order and decree of the Lower Court be and hereby is modified to the effect that the plaintiff do pay to the second defendant the value of the buildings in the suit property as improvements and that the quantum of such value will be ascertained in the execution proceedings and that the second defendant do surrender possession of the suit property to plaintiff after depositing the value of buildings by the plaintiff.

The Court doth further order and decree that in other respects the Decree of the Lower Court do stand

7. Thereafter, the respondent seems to have filed E.P. No. 179 of 1993 for appointment of an Advocate Commissioner to assess the subsequent improvements. The said application has been dismissed by the Court below on 14.06.1994. Aggrieved by the same, the petitioner has filed Civil Revision Petition in CRP. No. 1912 of 1994, before the High Court, Madras and the same was dismissed on 20.10.1998.

8. On the above said facts, now I will consider the submissions made by the learned Counsel for the petitioner and the respondents.

9. Mr.K. Vamanan, learned Counsel for the petitioner contended that the second appeal filed by the petitioner was dismissed on 25.01.1979 and the respondent should have filed the execution petition on or before 25.01.1991, within 12 years from the date of dismissal of the second appeal. But, the execution petition has been filed by the respondent only on 27.01.1992, which is clearly barred by limitation. Further, the learned Counsel for the petitioner contended that the Court below went wrong in deciding that there is no limitation for filing the execution petition, in view of Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act XXII of 1959. In this connection, the learned Counsel cited a decision reported in Dr. Chiranjilal (D) by LRs. Vs. Hari Das (D) by LRs., and relied upon a passage at paragraph 22 which reads "Therefore, the period of limitation begins to run from the date when the decree becomes enforceable i.e. When the decree is engrossed on the stamp paper".

10. Per contra, the learned Counsel for the respondents submitted that as per Section 109 of the HR & CE Act, there is no limitation for filing the execution petition and hence, the contention of the learned Counsel for the petitioner that the execution petition is time barred cannot be accepted. Further, the learned Counsel for the respondent submitted that in A.S. No. 110 of 1972, the learned Subordinate Judge, Padmanabhapuram while confirming the Judgment and decree in O.S. No. 628 of 1969 (District Munsif Court, Padmanabhapuram) has clearly held that the Judgment and decree is modified to the effect that the respondent has to pay the value of the buildings in respect of the suit property as improvements and that the quantum of such value shall be ascertained in the execution proceedings and that the petitioner has to surrender possession of the suit property to the respondent after depositing the value of the building by the respondent.

11. Thus, according to the learned Counsel for the respondent, the time starts only from the date of deposit of the amount. The amount has been deposited on 16.08.1994 and within 12 years the execution petition has been filed by the respondent and hence, it cannot be stated that the execution petition is time barred.

12. I see some force in the said argument of the learned Counsel for the

respondent. As rightly pointed out by the learned Counsel for the respondent, in A.S. No. 110 of 1972, the Appellate Authority namely, the Subordinate Judge, Padmanabhapuram, while modifying the decree made in O.S. No. 628 of 1969, has clearly held that the value of the building in the suit property pertaining improvements and that quantum of such value has to be ascertained in the execution proceedings and thereafter, the petitioner who has been arrayed as second defendant in the said suit has to surrender possession of the suit property. The respondent seems to have filed E.P. No. 34 of 1981 and the same was dismissed on 04.10.1983 for failure to deposit a sum of Rs. 48,869/- as improvements made by the petitioner. The said amount has been deposited on 16.08.1994 and the execution petition that has been filed by the respondent is taken on 27.01.1992 is within time.

13. The learned Counsel for the respondent has further drawn my attention to the Judgment reported in AIR 2000 SC 1760 (Deep Chand v. Mohan Lal) wherein the Apex Court has clearly held as follows:

As noted earlier, the appellants-judgment-debtors are found to have committed defaults in the payment of the instalments as agreed upon. The decree-holder was, therefore, entitled to get the sale deed executed in terms of the decree passed in his favour. He was held "entitled to possession" of the land as soon as the sale deed was executed and registered. It is not disputed that sale deed was executed in favour of the decree-holder vide Court orders dated 23rd March, 1984. The execution application seeking possession of the land, the subject matter of the decree, was filed in April, 1994, admittedly, within a period of twelve years as prescribed under Article 136 of the Limitation Act. The High Court has rightly held that the decree for possession of land became enforceable only after the execution of the sale deed as was the direction of the Court decreeing the suit. Before the execution of the sale deed in his favour on 23.03.1984, the decree-holder was not entitled to possession in terms of the decree. The decree, therefore, itself directed its execution after the execution of the sale deed in favour of the decree-holder. The decree-holder has been proved to have filed successive applications for the execution of the decree within the period of limitation. The language of Article 136 cannot be strained in favour of the judgment-debtors who have been found to have not availed of the benefits of decree conferred upon them as they are proved to have failed to pay the amount even in instalments. The decree in the instant case is not capable of any other interpretation. As a general rule the executing Court should not find ways to dismiss the execution application as barred by time unless it is established, beyond doubt, that such an application was beyond limitation.

14. Thus, starting point of limitation does not start from the Judgment and decree of the Courts but later performance as per the Judgment and decree.

15. Yet another Judgment that has been cited by the learned Counsel for the respondent is reported in 2005 (2) L.W. 753 (Chandi Prasad and Ors. v. Jagdish Prasad and Ors.) wherein the Apex Court in paragraph 20 has held as follows:

It is not disputed that all decrees; be it original or the appellate, are enforceable. Once a decree is sought to be enforced for the purpose of execution thereof irrespective of being original or appellate, the date of the decree or any subsequent order directing any payment of money or delivery of any property at a certain date would be considered to be the starting period of limitation.

16. If the principle laid therein is applied, the starting point for limitation for filing the execution petition either will start from the date of dismissal of the execution petition in E.P. No. 34 of 1981 dated 04.10.1983, or on 16.08.1994, the date on which the amount has been deposited by the respondent. Even if one or the other dates are taken into account, the execution petition that has been filed by the respondent on 27.01.1992 is well within the time.

17. In view of the above discussions, it would be unnecessary to enter into further discussion to find out whether Section 109 of the HR & CE Act will be applicable or not or the other question whether the dismissal of the earlier application in E.P. No. 34 of 1981, was due to the default of the respondent herein or whether it was due to the circumstances beyond its control. I am satisfied that it is unnecessary to enter into the said kind of discussion in view of my conclusion on facts that the execution petition filed by the respondent is within time.

18. From the discussion made above, I am fully satisfied that the order of delivery made by the learned Principal District Munsif, Padmanabhapuram dated 24.04.2000, made in E.P. No. 168 of 1992 in O.S. No. 628 of 1969, is liable to be confirmed and the same is confirmed. The Civil Revision Petition stands dismissed. However, there is no order as to costs.

19. Taking into account that the petitioner is residing in the suit property from the year 1966 onwards and also running the school, I deem it necessary to grant 6 months time to the petitioner to vacate and hand over the vacant possession of the premises.