

(2005) 09 AP CK 0029
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2095 of 2005

Indian Bank, Vijayawada-1 Branch

APPELLANT

Vs

Banka Bullebbayi (died) and Another

RESPONDENT

Date of Decision : 16-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152

Citation : (2006) 1 ALD 26 : (2005) 6 ALT 683

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : Ambadipudi Satyanarayana, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—Despite service of notice, none appears for the respondents.

2. Heard the learned Counsel for the petitioner and perused the material placed before me.

3. This revision is directed against the order dated 30-11-2004, passed by the learned II Additional Senior Civil Judge, Vijayawada in I.A.No. 235 of 2001 in O.S.No. 487 of 1979 filed u/s 152 of the CPC seeking amendment of the preliminary decree.

4. Revision petitioner is the plaintiff in the suit. The suit was filed for recovery of money based on a mortgage. A preliminary decree was passed on 15-1-1986 stipulating six months' period for redemption. It appears that the respondents have not redeemed the mortgage. Therefore, a final decree was passed on 27-3-1989. The petitioner filed the E.P. in the year 1990, and the same is pending. During the E.P. proceedings, the petitioner detected certain errors in the decree and accordingly filed the present application. The trial Court dismissed the said application observing as under:

"The preliminary decree was passed on 15-1-1986 granting 6 months time for redemption which is 15-7-1986. Thus, the decree has to be executed on or before 15-7-1998, but the petition is filed for amendment of decree on 15-2-2001 by which date, the decree is barred by limitation".

5. From the above observation, it appears that the Court below was under the impression that the application seeking amendment of the preliminary decree was filed after the said decree was barred by time since the decree has to be executed on or before 15-7-1998.

6. It is represented by the learned Counsel for the petitioner that a final decree was passed on 27-3-1989 and pursuant to the said final decree an execution petition was filed in the year 1990 being E.P.No. 49 of 1990. Since an E.P. can be filed within a period of 12 years from the date of the final decree viz., 27-3-1989, the E.P. filed in the year 1990 is well within time and hence the application seeking amendment of the decree is maintainable.

7. Learned Counsel for the petitioner submits that it is only during the pendency of the E.P., some mistakes in the calculation memo have been noticed and in order to get them corrected, the present application had been filed u/s 152 CPC and that there is no limitation for filing an application u/s 152 CPC.

8. It is required to be noted that (i) the preliminary decree was passed on 15-1-1986; (ii) final decree was passed on 27-3-1989; (iii) E.P. was filed in the year 1990 and; (iv) the present I.A. was filed in February, 2001.

9. It is to be noticed that there is no limitation prescribed for filing an application u/s 152 CPC for amendment of a decree. However, such an application can be filed only so long as the decree remains executable. In other words, if the decree becomes inexecutable by virtue of limitation also, in addition to some other reason or reasons, no application u/s 152 CPC can be maintained to amend the decree so as to make the inexecutable decree executable.

10. To put it hypothetically, in case execution of a decree (as was passed originally) is barred by limitation by operation of law, and in case such a decree is amended/ corrected at a later stage u/s 152 CPC, such amended decree cannot be executed since the decree, which was originally passed in the first instance and became time-barred, would not get revived and become executable merely because it is amended at a later stage.

11. In this case, the aforementioned aspects have not been considered by the Court below, while computing the period of limitation and, in coming to the conclusion that the decree became inexecutable after 15-7-1998, more so, when the present E.P. was claimed to have been filed well within the time of limitation making the decree executable, and when the same is pending.

12. From the facts narrated by the learned Counsel for the petitioner, the reasoning given by the Court below while dismissing the petition on the question of maintainability cannot be sustained.

13. In the result, this civil revision petition is allowed, the impugned order is set aside, and I.A.No. 235 of 2001 in O.S.No. 487 of 1979 is restored to the file of the court below to its original number, with a direction to dispose of the same by a reasoned order, on its own merits and in accordance with law, in the light of the factual situation stated supra. It is made clear that this Court has not expressed anything on the merits of the matter. No costs.