

(1967) 11 AP CK 0003

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 499 of 1966

K. Venkata Subbayya

APPELLANT

Vs

District Collector, Chittoor and Another

RESPONDENT

Date of Decision : 24-11-1967

Acts Referred:

Constitution of India, 1950 — Article 225, 226
Limitation Act, 1908 — Article 182, 183

Citation : AIR 1969 AP 381

Hon'ble Judges : Obul Reddi, J

Bench : Single Bench

Advocate : P.A. Choudhary, for the Appellant; N.V. Suryanarayana Murthy and Amicus Curiae, for the Respondent

Judgement

1. This Civil Revision Petition arises out of the order of the District Munsif, Kalahasti, in E. P. No. 186 of 1963 in Writ Petition No. 1011 of 1957 on the file of this Court, holding that the execution petition filed by the respondent-decree-holders is within time under Art. 183 of the Limitation Act, 1908.

2. The short facts leading to the filing of the execution petition by the decree holders in the writ petition are the following:-

The writ filed by the petitioner-judgment-debtor was dismissed with costs of the respondents. To execute the decree, awarding costs to the respondents, a civil miscellaneous petition No. 6835 of 1963 was filed for transmission of the decree and the decree was transmitted to the Court of the District Munsif, Kalahasti. Then an execution petition was filed on 28-10-1963. The judgment-debtor contended that since the decree is dated 4-9-1959 and the execution petition was filed on 28-10-1963, the petition is barred by limitation under Article 182 of the old Limitation Act. The case of the respondent was that it is a decree of the High Court and that Art. 183 applies, which provides twelve years" period of executing the decree of a Court established by Royal Charter. The District Munsif held that the High Court of Judicature, Madras, was established by Royal Charter

and the Andhra Pradesh High Court is the successor High Court to the former High Court and therefore, it is Article 183 that applies as such the execution petition filed is within time.

3. Mr. P.A. Chowdhary, the learned counsel appearing for the petitioner, contended that Article 183 of the Limitation Act, 1908, applies only for the enforcement of a decree of any Court established by Royal Charter in the exercise of "its ordinary original civil jurisdiction" and it can have no application when the High Court passed a decree in exercise of its special original jurisdiction and the relevant provision is Article 182 which provides for the execution of a decree of "any civil Court, not provided for by Article 183 or Section 48 of the Code of the Civil Procedure" The second contention of Mr. P.A. Chowdhary is that although the High Court of Andhra is a successor Court to the High Court of Madras created by Royal Charter, it is all the same not a High Court established by Royal Charter and that under the States Reorganisation Act (Act XXXVII of 1956), the jurisdiction of the then existing State of Andhra was extended to the whole of the territories transferred to the State from the erstwhile State of Hyderabad and therefore, Article 183 can have no application to a decree by a High Court not established by the Royal Charter.

4. Mr. N. V. Suryanarayana Murthy appearing as amicus curiae contended that the High Court of Andhra Pradesh is the successor High Court to the High Court of Madras, exercising jurisdiction in respect of the territories transferred by the establishment of the Andhra High Court by virtue of Section 28 of the Andhra State Act and that Article 225 of the Constitution preserves all the powers possessed by the High Court on the date of the commencement of the Constitution until affected by any law passed by the Legislature and as such a decree made by the High Court of Andhra Pradesh is a decree falling within the scope of Article 183 of the Limitation Act for the purpose of limitation.

5. To appreciate the contentions of the learned counsel, it may be useful to extract the two provisions of Arts. 182 and 183 of the Limitation Act (1908) so far as they are relevant for our purpose.

Article 182

Description of Application. Period of Limitation Time from which period begins to run

For the execution of a decree or order Three years; or where a The date of the decree.

of any Civil Court not provided for by certified copy of the decree

Article 183 or by section 48 of the or order has been registered

Code of Civil Procedure, 1908. six years.

Article 186

To enforce a judgment, decree or order of Twelve years. When a present right, to any Court established by Royal Charter in enforce the judgment, the exercise of its ordinary original civil decree or order accrues jurisdiction or an order of the Supreme to some person capable Court. of realising right.

6. It may be now convenient to notice the relevant provisions of the Constitution. Article 214 of the Constitution lays down that there shall be a High Court for each State. Article 225 says; "Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court and to regulate the sittings of the Court or in Division Courts shall be the same as immediately before the commencement of this Constitution." The proviso to Article 225 is not relevant for the purpose of discussion. Article 372 enables the continuance in force of existing laws and their adaptation. It lays down that the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority. Explanation I to Article 372 reads: "The expression "law in force" in this article shall include a law passed or made by the Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas." The object of Art. 225 is to preserve all the powers possessed by the High Court at the date of commencement of the Constitution until affected by any law passed by the Legislature. This article also does not confer on the High Court jurisdiction or power which it did not possess on the date of the commencement of the Constitution. The Andhra High Court was constituted by Section 28 of the Andhra State Act, 1953, with effect from 5-7-1954 and named as High Court of Andhra and its name was changed to High Court of Judicature, Andhra Pradesh, by the operation of the States Reorganisation Act and the jurisdiction and powers of the existing Courts on the date of commencement of the Act were preserved. The practice and procedure in the Andhra High Court is stated in Section 32 of the Andhra State Act. Section 32 recites; "Subject to the provisions of this part, the law, in force immediately before the prescribed day with respect to practice and procedure in the High Court at Madras shall, with the necessary modifications, apply in relation to the High Court of Andhra and accordingly that High Court shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the prescribed day exercisable by the High Court at Madras.

Provided that any rules or orders which are in force immediately before the prescribed day with respect to practice and procedure in the High Court at

Madras shall, until varied or revoked by rules or orders made by the High Court of Andhra apply, with the necessary modifications in relation to practice and procedure in the High Court of Andhra as if made by that Court." The effect of the section, that although the High Court of Andhra has no rule-making powers under the Constitution or the Government of India Act or under any Letters Patent is to confer in the Andhra High Court, all such powers which the Madras High Court exercised in regard to rule-making. The Andhra High Court, therefore followed the practice and procedure prescribed under the rules of the High Court of Madras with the successor Court in respect of the area which came under its jurisdictions consequent on its formation. It is well to bear in mind that consequent on the reorganisation of State, the High Court of Andhra has been renamed as that the High Court of Andhra Pradesh and its jurisdiction was extended over the Telangana Area of the erstwhile Hyderabad State and as such is not a "new State" as it is a State formed by the provisions of Part II of the States Reorganisation Act. In this connection we may also remember that Letters Patent of 1865 of the High Court of Madras is made applicable to the High Court by virtue of Section 32 of the Andhra State Act. The Letters Patent is an Act for establishing High Courts of judicature in India and the High Court of judicature of Madras is established under it. The amended Letters Patent High Court, Madras, so far as it relates to the jurisdiction, recites:

"And that the High Court of Judicature so to be established should have and exercise all such Civil, Criminal, Admiralty and Vice-Admiralty, Testamentary Intestate and Matrimonial Jurisdiction, Original and Appellate, and all such powers and authority for and in relation to, the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original, civil and criminal jurisdiction beyond the limits of the Presidency Town, as might be prescribed thereby, and save as by such Letters Patent, might be otherwise directed and subject and without prejudice to the Legislative powers in relation to the matters aforesaid of the Governor-General of India in Council of the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner, vested in any of the Courts in the same Presidency abolished whatsoever, in any manner, vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts" vide Appendix III of the Rules of the High Court of Judicature, Andhra Pradesh at Hyderabad, pp. 73 and 74,. Clause (7) of the Letters Patent deals with writs, summons, precepts, rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature at Madras in the name of the Crown and under the seal of the High Court.

Under the heading "Civil Jurisdiction of the High Court" Clauses (11) to (20) deal with ordinary, original civil jurisdiction and extraordinary original civil jurisdiction and Clause (21) deals with the appellate civil jurisdiction.

7. The Privy Council had occasion to discuss the scope of Articles 179 and 180 of the Limitation Act, 1877, which correspond to Articles 182 and 183 of the Limitation Act, 1908 in *Navivahoo v. Turner*, (1889) 16 Ind App 156 (PC). By Art. 180 of the old Act (1877), an application to enforce a judgment of any Court established by royal charter in the exercise of its ordinary original civil jurisdiction is barred unless made within twelve years from the time when a present right to enforce the judgment accrued. By Article 179, an application for the execution of a decree or order of any civil court not provided for by Article 180 was barred unless made within three years from various points of time. That was a case where the Insolvency Court of Bombay ordered on 19-8-1868 that a judgment should be entered up on the name of the official assignee against the insolvent Candas Navivancoo for a sum exceeding sixteen millions of rupees, Nothing was done under the judgment for execution of the decree till 5th April 1886, when the insolvency Court ordered execution for a sum of nearly five millions to be taken out against certain properties described in the order. The representatives of the insolvent took up the plea that the right to execute the order of the insolvency Court was barred by lapse of time. Scott, J., who first heard the application held that it was barred by limitation. On appeal by the official assignee, Sargent, C. J. and West, J. reversed the order of Scott, J. and directed that execution should issue. West, J.'s view was that the case fell under Article 180 and that no present right accrues till the Insolvency Court made order on the 5th April, 1886. Sargent, C. J., held that the case was not provided for by the Limitation Act at all. IT is against that order an appeal was carried to the Judicial Committee. Lord Hobhouse repelling the contention that though the Insolvency Court's jurisdiction was civil and original, was not ordinary, observed that "But their Lordships are of opinion that the expression "ordinary jurisdiction" embraces all such as is exercised in the ordinary course of law and without any special step being necessary to assume it and that it is opposed to extraordinary jurisdiction which the Court may assume at its discretion upon special occasions and by special orders. They are confirmed in this view by observing that in the next group of clauses, which indicate the law to be applied by the Court to the various classed of cases, there is not a fourfold division of jurisdiction, but a threefold one, into ordinary, extraordinary and appellate. The judgment of 1868 was entered up by the High Court not by way of special or discretionary action, but in the ordinary course of the duty cast upon it by law, according to which every other case of the same kind would be dealt with. It was, therefore, entered up in exercise of the ordinary original civil jurisdiction of the High Court and no present right accrued to the official assignee to move for execution until the order of the 5th April, 1886 was made."

8. The Madras High Court had occasion to consider the ordinary and extraordinary civil jurisdiction of that Court in *In Re: The Debts and Securities of the late G.A. Kuppuswami Nayagar (Deceased) K. Kesava Nayagar*, That was a case where a petition was filed on the Original Side of the High Court for grant of a succession certificate under the Succession Act of 1925, as amended by Act

XVIII of 1929. Section 300 of that Act gave concurrent jurisdiction to the High Court with the District Judge in the exercise of all powers conferred upon the District Judge. The question that arose was whether succession certificate can be granted by the High Court on its original side under the provisions of the Indian Succession Act, 1925, as amended by Act 18 of 1929. Kumaraswamy Sastry J. in the course of his reference to the Bench observed:

"I think there is a distinction between the original jurisdiction of the High Court and the ordinary original civil jurisdiction of the High Court. All applications to the High Court are either civil when matters come for the first time to the High Court, and they are appellate civil when they come in the form of appeals. The granting of probates or succession certificates will come within the original Civil Jurisdiction but it would not come under Ordinary Original Civil Jurisdiction, which by the Letters Patent, seems to be confined to suits and matters under Clauses 12 to 21 which refer to the exercise by the High Court of its Ordinary Original Civil Jurisdiction."

The Division Bench to which this case was referred, however, held that the petition was maintainable having regard to the amendment of the Act.

9. In *P.T. Munia Servai Vs. Hanuman Bank Ltd. by Official Liquidator*, the scope of Articles 182 and 183 of the Limitation Act, 1908, came up for consideration before a Division Bench of the Madras High Court, Rajagopalan, Offg. Chief Justice, observed:

"The expression 'ordinary jurisdiction' embraces all such as it is exercised in the ordinary course of law and without any special step being necessary to assume it is opposed to extraordinary jurisdiction which the Court may assume at its discretion upon special occasions and by special orders. Judged by this test, the jurisdiction conferred on the High Court of Madras by the Banking Companies Act is part of its Ordinary Original Civil Jurisdiction within the meaning of Art. 183. That jurisdiction has to be exercised in the ordinary course of law without any special step being necessary to assume it. In the application of that principle it is immaterial whether the ordinary original civil jurisdiction, besides that provided for by Clause 12 of the Letters Patent is one conferred by the Letters Patent itself, or by a separate enactment."

In *Hamid Hasan v. Banwarilal Roy*, 1947 2 M LJ 32:(AIR 1947 PC 90) the Privy Council held that the power to issue writ in the nature of quo warranto is a civil proceeding and arises in exercise of ordinary original jurisdiction of the High Court. Sir John Beaumont observed; "Any original civil jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or later enactments falls within the description of ordinary original civil jurisdiction."

10. The Calcutta High Court in *Chairman, Budge Budge Municipality Vs. Mongru Mia and Others*, held that the jurisdiction exercised under Article 226 of the Constitution is original as distinguished from appellate or revisional jurisdiction and that although the jurisdiction is original, it is a special jurisdiction and should

not be confused with the ordinary civil jurisdiction under the Letters Patent.

11. A Division Bench of this Court consisting of Subba Rao, C. J., and Jaganmohan Reddy, J. (as he then was) in *Satyanarayanamurti v. Income Tax Appellate Tribunal Madras Bench*, AIR 1957 AP 123, held:

" It is settled law that the High Court was issuing writs in the nature of mandamus, prohibitions, quo warranto and certiorari in exercise of its extraordinary original jurisdiction as contrasted with the appellate jurisdiction. Article 226 of the Constitution conferred express power on the High Court to issue the writs mentioned therein throughout the territories in relation to which it exercises jurisdiction. The territorial limits of the jurisdiction of the Andhra Pradesh High Court extends throughout the State of Andhra Pradesh, and therefore, the jurisdiction of the High Court under that Article may be conveniently described as extraordinary original jurisdiction as distinguished from the Ordinary Original Civil Jurisdiction of a High Court."

IN Civil Appeal 25 of 1961 on the file of the Supreme Court of India, *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, Subba Rao, J., (as he then was) held that what the High Court exercises under Article 226 is extraordinary original jurisdiction and it is well settled that Article 226 confers a discretionary power, on the High Courts to issue appropriate orders, writs etc. Therefore there is no doubt from the aforesaid said decisions that the jurisdiction exercised by the High Court under Article 226 is extraordinary or special original jurisdiction as distinct from ordinary civil jurisdiction conferred by the Letters Patent.

12. The Calcutta High Court had occasion to deal with the scope of Article 183 of the Limitation Act in *Manmatha Nath Sen Vs. Gopee Ballav Sen and Others*, . That was a case where a suit was transferred from Alipore Court to the High Court on an application made in the matter under Clause 13 of the Letters Patent. The suit was tried in exercise of its extraordinary original jurisdiction by virtue of Clause 20 of the Letters patent. As Clause 20 governs also the execution proceedings arising out of such transferred suit, it was held that the law of limitation applicable to execution proceedings of the Court in which such suit was originally instituted will also apply to execution proceedings arising out of such transferred suit and the fact that the suit was transferred to the High Court and disposed of in its extraordinary original jurisdiction does not attract Article 183 of the Limitation Act.

13. The present one is a case where the High Court exercised special jurisdiction conferred upon it under Art. 226, although the exercise of that jurisdiction is discretionary (See *Sangram Singh Vs. Election Tribunal, Kotah*, *Bhurey Lal Baya*, and *Thansingh Nathmal and Others Vs. A. Mazid*, Superintendent of Taxes, . The Supreme Court has described the remedy as discretionary when it is not available as of right, but may be refused by the Court upon a consideration of circumstances which disentitle an applicant even though he may have a legal right which has been infringed namely; (a) that there is an alternative adequate

remedy; (b) that the conduct of the applicant is such that it does not deserve discretionary remedy for example, that he is guilty of laches like unreasonable or unexplained delay or acquiescence; (c) that he had suppressed material facts and the like.

14. The writ jurisdiction which the High Court exercises on its original side is not by virtue of the powers conferred upon it by Clause 13 of the Letters Patent, but by reason of the jurisdiction conferred upon or vested in it under Article 226 of the Constitution. The fact that this jurisdiction is construed as special or extraordinary jurisdiction is only to distinguish it from the ordinary original civil jurisdiction which the High Court possesses under the Letters Patent. The clause "decree or order of any Civil Court not provided for by Article 183" mentioned in Article 182 does not apply to a decree or order of the High Court so long as that decree is made by it in exercise of the jurisdiction conferred upon it by the Constitution. Clauses 11 to 14 of the amended Letters Patent given under the heading "Civil Jurisdiction of the High Court" comprise of both ordinary and extraordinary original jurisdiction. The extraordinary original jurisdiction referred to in Clause 13 is distinct and different from the extraordinary jurisdiction conferred on the High Court under Article 26 of the Constitution. While Clause 13 of the Letters Patent empowers the High Court to sit as a Court of extraordinary original civil jurisdiction, where it withdraws suits to its file, Article 226 of the Constitution vests jurisdiction in the High Court indisputably on its original civil side. It is in respect of orders or decrees made with regard to suits removed and tried under Clause 13 of the Letters patent that Art. 182 of the Limitation Act applies. All other decrees or orders made by the High Court will be governed by Article 183 of the Limitation Act. As has been pointed out by Sir John Beaumont in 1947 2 M LJ 32 : (AIR 1947 PC 90),

"the power to grant an information in the nature of quo warranto which is a civil proceeding used to try the civil right to a public office arises in the exercises of the Ordinary Original Jurisdiction of the High Court."

The special jurisdiction is a jurisdiction possessed by the High Court by virtue of Article 226 of the Constitution and therefore notwithstanding that the High Court exercises special jurisdiction under Art. 226 of the Constitution, it is all the same a jurisdiction exercised on the original civil side. Therefore, the clause "a decree or order of any civil Court." occurring in Article 182 cannot obviously refer to a decree or order of the High Court for which provision is made expressly under Art. 183.

15. Before parting with this revision, I am tempted to quote the observations made by Sir Murray Coutts-Trotter, Kt. Chief Justice in *M.P.P.S.T. Palaniappa Chettiar and Others Vs. Valliammai Achi*, at p. 255), who had occasion to construe the word "received" occurring in Article 183 of the Limitation Act.-

"I have always regarded the Indian Limitation Act as the worst drafted piece of legislation which it has been from time to time my misfortune to be compelled to

construe."

16. I express my thanks to Mr. N. V. Surayanarayan Murthy for the assistance given by him.

17. In the result, the revision fails and is accordingly dismissed. No costs.

18. Revision dismissed.