

(1950) 08 MAD CK 0007

In the Madras High Court

Case No : Civil Revision Petition No"s. 318 to 320 of 1947

Kajjam Lakshminarasamma

APPELLANT

Vs

Tanniru Seshayya and Others

RESPONDENT

Date of Decision : 04-08-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 82, Order 38 Rule 13, 11, 39, 7
Limitation Act, 1908 — Section 3
Provincial Small Cause Courts Act, 1887 — Section 33

Citation : AIR 1951 Mad 491 : (1951) 64 LW 254 : (1951) 1 MLJ 150

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : G. Venkatarama Sastri, for the Appellant; N. Ram Mohan Rao, for the Respondent

Final Decision : Dismissed

Judgement

Panchapakesa Ayyar, J.—These are three connected petitions. C. R. P. No. 318 of 1947 is a petition against the order of the Additional

Subordinate Judge, Guntur, dismissing E. P. No. 62 of 1944 in S. C. no. 200 of 1932, on the ground that the petition to amend the E. P. by

adding a prayer to transfer the decree to the original side was barred by limitation, the decree itself having been passed on 16-1-1933, and the

application for transferring the decree to the original side E. a. No. 483 of 1946, having been made only on 16-9-1946, long after the 12 years"

period u/s 48, Civil P. C., had expired, and the application for amendment of the E. P., E. A. No. 517 of 1946, having been filed only on 8-10-

1946, long after the expiry of the 12 years" period u/s 48, Civil P. C., C. R. P. Nos. 319 and 320 of 1947 are filed against the orders of the

Subordinate Judge rejecting the prayers in those two Execution Applications.

2. I have perused the entire records, and heard the learned counsel on both sides. Mr. Venkatarama Sastri, for the petitioner, urged that the decree in the small cause suit should not go to waste like this, and that the decree-holder, a poor ignorant country woman, should not be deprived of the "fruits of her decree (more than Rs. 300) simply because a mere formality, like the transfer of the decree from the small cause side to the original side in the very same Court, where the very same Judge presided, had been omitted to be applied for within 12 years of the passing of the decree. He added that the Subordinate Judge himself, by ordering attachment of immovable properties in E. P. No. 16 of 1944 and E. P. No. 62 of 1944, and calling for sale papers (which were actually filed in E. P. No. 62 of 1944, and even a sale notice was issued), had led the decree-holder to believe that the decree had been really transferred to the original side as per the application made by her in E. A. No. 376 of 1937, and, so, this was a case where limitation ought to be overlooked, the E. P. allowed to be amended, and the transfer to the original side made, the attached immovable properties sold, and the decree amount realised and paid to the decree-holder. I cannot agree. It is obvious that the period of limitation cannot be extended and the absence of jurisdiction to sell the immovable properties (either in the small cause side or in the original side) overlooked, as it operates against the vested interests of the judgment-debtors (respondents 2 to 7). Though the Judge on the original side and the small cause side was the same, the Courts were different, u/s 88 , Provincial Small Cause Courts Act, and a transfer was essential to confer jurisdiction on the original side to attach and sell Immovable properties for satisfying this Small Cause decree. Order 38, Rule 13, Civil P. C. and Order 21, Rule 82, Civil P. C. prohibit the attachment and sale of immovable properties by a Small Cause Court. Section 7(a)(iii), Civil P. C., also shows this. The Bench ruling in Vengu Chetti v. Valjee Kanjee Co., 69 M. L. J. 862 : A. I. R. 1936 Mad. 99 relied on by Mr. Sastri, will not avail his client. In that ruling it was merely held that an order of transmission of a decree by the High Court to a mofussil Court for execution is only a ministerial act and that such an order can be passed ex parte even after the death of the judgment-debtor. Nothing was said there about the transfer of a decree from the small cause side of a mofussil Court to the original side of a mofussil Court on an application made after limitation had

expired u/s 48, Civil P. C. In the High Court, the order of transfer to a mofussil Court may be a ministerial act; but, in the mofussil it may be a

quasi-judicial act and not a mere ministerial act, as the mofussil Courts have not got the elaborate staff and Gazetted Officers of the High Court,

and the Judge himself deals with all such applications for transfer of decrees and passes orders on them. Anyway, the Bench in Vengu Chetty v.

Valjee Kanjee, 69 M. L. J. 862 : A. I. R. 1936 Mad. 99 never said that an application made after limitation had operated should be granted. It is

against all law and equity to overlook limitation, and rob the vested rights of parties, in the absence of fraud, or at least fraud in equity though it is a

technical right and may grate against the ordinary layman's sense of fair-play. Limitation is as valid and binding as any other plea in law, when it is

fully proved, as here. Of course, the original side would get jurisdiction to entertain an application for execution and to attach and sell immovable

properties to satisfy a small cause decree, the moment the transfer was made, Perumal Chettiar v. Kotayya, A. I. R. 1946 Mad. 169 ; 224 I. C.

296, but certainly not a moment earlier. Errors of Court, ordering the attachment of immovable properties without a transfer order will not cure

want of jurisdiction. The ruling of Mockett and Clark JJ. in Divakaran Nambudiripad v. Brahmadathan, I. L. R. (1946) Mad. 117 : A. I. R. 1945

Mad. 241 was relied on by Mr. Sastri for urging that the amendment ought to have been allowed overlooking limitation. I have looked into that

ruling. It will not help the decree-holder in this case. There, it was the duty of the Court to return an execution petition for the sale of immovable

property for rectifying certain formal defects. It failed to do so. When those formal defects were sought to be set right in a petition filed by the

decree-holder for amendment of the E. P., which had been filed before limitation operated the petition itself having been filed after the period of

limitation, the Bench held that the Court had powers to order the amendment. But no question of jurisdiction of the Court was involved there, as

here. The E. P. was filed in the Court having jurisdiction before limitation, and no amendment was required to give the Court jurisdiction as here.

Here, the original side had jurisdiction to attach the immovable properties and bring them to sale only after the small cause decree had been

transferred to the original side. Before that, any order for attachment of immovable properties passed by it in ignorance would be of no avail. A

Court is not expected to instruct ignorant country rustics, or women, or paupers or minors, under our law, to put in all necessary applications

before limitation operates, as Mr. Sastri contends. That is the duty of their lawyers and advocates, not of Courts. The mere fact that the petitioner,

a woman, loses more than Rs. 300 the entire fruits of her decree, cannot be a ground for overlooking the law. It is proverbial that hard cases make

bad law.

3. It has been held by Addison J. in *Sriram v. Tulsiram*, AIR 1929 Lah. 398 : 114 I. C. 329 that a Small Cause Court cannot attach immovable

property in execution of a decree even though it is also an ordinary Court, and the same Judge presides over both the Courts, unless the decree

has been transferred to the ordinary side. No ruling to the contrary, of any of our High Courts has been shown to me ; nor is it possible for such a

ruling to exist in view of Section 7(a)(iii), Civil P. C. and Order 21, Rule 82, Civil P. C. and Order 38 , Rule 13, Civil P. C. It is, of course, true,

as Mr. Sastri urged, relying on some rulings, that a written application for transfer to the original side is not essential, and that it is enough if the

Judge acts on an oral request (as in the case of adjournments) and transfers the decree to the original side, by an order passed by him. He can then

proceed to attach immovable properties after such transfer. But it is one thing to say that no formal application or order is necessary for transfer to

the original side, and quite a different thing to say that no application or order is necessary for transfer to the original side. In this case, there was no

application for transfer, or order of transfer to the original side, formal, or informal after contest or ex parte. The decree-holder brought on

limitation on her head by her own laches. She filed E. P. No. 39 of 1936 on 8-1-1936 itself but allowed it to be dismissed on 27-2-1936 by

paying no batta. She filed E. A. No. 376 of 1937, on 21-6-1937 for transfer of the decree to the original side, but allowed that application to be

dismissed on 22-6-1937, by failure to pay batta. After this phenomenal piece of laches, she cannot be heard to say that she thought that the

transfer was made, and that the Court's orders attaching the immovable properties in E. P. Nos. 16 and 62 of 1944, misled her into thinking that

the transfer was made in that E. A. She filed E. P. no. 171 of 1940 on 24-6-1940 but allowed that E. P. to be dismissed on 6-9-1940 by failure

to pay batta. She filed E. P. No. 185 of 1943 on 25-6-1943 for attachment of movables, and attachment of movables was ordered, but the E. P.

was dismissed on 13-10-1943, as no movables could be found for attachment. She could, and should, have applied at once for transfer of the

decree to the original side and got the immovables attached. She failed to do so. There can be no question of constructive res judicata preventing

the judgment-debtors from opposing this execution petition because of their refusing the sale notices issued in E. P. No. 62 of 1944, as urged by

Mr. Sastri. When the Court has no jurisdiction to entertain an execution petition on the original side and attach immovables and issue sale notices,

its acts in attaching immovables and issuing sale notices are null and void, and as if they are not, and will never operate as res judicata.

4. All the three civil revision petitions deserve to be and are hereby dismissed, but, in the very peculiar circumstances of this case, and seeing that

the petitioner was perhaps misled by the Court's attachment of immovables and the respondents not objecting to the sale notices into believing that

no transfer application or order was necessary in cases where both original and small cause jurisdiction rest in the same Judge, and that she has

realised not a pie despite numerous execution petitions, without costs.