
(1962) 09 AP CK 0011

In the Andhra Pradesh High Court

Case No : Second Appeal No. 25 of 1959

Kammiseti Perumallu

APPELLANT

Vs

Inaganti Kotireddi and Others

RESPONDENT

Date of Decision : 18-09-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58
Limitation Act, 1908 — Article 11, 14

Citation : AIR 1963 AP 268

Hon'ble Judges : P. Chandra Reddy, C.J.; Chandrasekhara Sastry, J

Bench : Division Bench

Advocate : M.B. Ramasarma, V.K. Vaidya, as Amicus Curiae, for the Appellant;
A. Satyanarayana Rao, for N. Krishnamurthy, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddy, C.J.—The second appeal relates to the interpretation of Article 11 of the Indian Limitation Act. It was referred to a Bench by our learned brother, Venkatesam, J., as he thought that there was divergence of judicial opinion in this matter.

2. In order to appreciate the scope of this inquiry, it is necessary, to state the facts which lie in a very narrow compass. In execution of the decree obtained by the appellant against respondents 2 and 3 herein in O. S. No. 481 of 1951 on the file of the District Munsif's Court, Ongole, he attached the properties which are the subject matter of this appeal and which were mortgaged to the first respondent. The first respondent then intervened with E. A. No. 599 of 1952, a claim petition under Order 21, Rule 58 C. P. C.

3. The answer of the appellant to this petition was that the mortgage was a collusive transaction entered into between the claimant and the judgment-debtors with a view to defeat the creditors.

4. The trial Court without going into the merits of the claim dismissed it

observing that the petitioner (the first respondent herein) could agitate the validity of his mortgage in regular proceedings, as the enquiry before it was restricted to the question of possession. It was remarked by the District Munsif :

"These are questions involving detailed enquiry into the relative titles of the parties and cannot be enquired into in these proceedings. Admittedly, the petitioner is not in possession of the suit property on the date of attachment. The attachment cannot be attacked by the petitioner when he does not claim present possession of the property."

5. This order was made on 25-10-1952. Instead of bringing an action to vacate this order to establish his rights in the property in dispute, the first respondent filed a revision petition in the beginning of November, 1953. That petition was dismissed in limine, obviously for the reason that he could bring a suit under Order 21, Rule 63 C. P. C. The first respondent waited for another year and then brought the suit which has given rise to this appeal.

6. It was resisted inter alia on the ground that the suit is barred by limitation under Article 11 of the Limitation Act.

7. The trial Court while holding that the mortgage was supported by consideration, dismissed the suit in the view that it was barred by limitation, it not having been brought within one year of the rejection of the claim.

8. On appeal by the aggrieved plaintiff, the lower appellate Court decreed the suit differing from the trial Court on the question of limitation. In reaching the conclusion that the suit is not barred by limitation, the subordinate Judge relied on the judgment of Somayya J. in Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, The aggrieved first defendant has preferred this second appeal.

9. When the second appeal came up before our learned brother, Venkatesam, J., it was urged before him by the learned counsel for the appellant that the view of Somayya J. that the starting point of limitation should be the date of the order of the High Court in the revision petition was opposed to the principle enunciated in Baiznath Lala Vs. Ramdoss, and C.V. Venugopal Mudali Vs. C. Venkatasubbiah Chetty and Others, . Venkatesam, J. thought that having regard to this conflict it was necessary that the appeal should be decided by a Bench of this Court. That is how, it is before us now.

10. The primary question for determination in this second appeal, therefore, is, whether the limitation commences from the date of the order rejecting the claim or from the date of the order of High Court dismissing the revision petition.

11. Before we embark upon a discussion bearing on this topic, it is convenient to look at the terms of Article 11 of the Limitation Act. It reads :

"By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order :

1. Order under the Code of Civil Procedure, 1908 (V of 1908), on a claim

preferred to, or an objection made to the attachment of, property attached in execution of a decree;

2. Order u/s 28 of the Presidency Small Cause Courts Act, 1882 (XV of 1882).

..... One year. The date of the order."

Indisputably, the matter is governed by Article 11 of the Limitation Act. The only question for consideration, is, what is the date of the order from, which the period of one year should be computed. In other words, does the order contemplated by the third column refer to the order of the trial Court or to the order of the revisional Court.

12. The test propounded in the determination of this question by Sadasiva Ayyar J. in *C.V. Venugopal Mudali Vs. C. Venkatasubbiah Chetty and Others*, is that where the decision on review or revision does interfere with the original decision, the former decision becomes the only subsisting order and stands on the same footing as the decision passed in a competent appeal and in that case that would become the starting point for limitation. To put it differently, has the order of the trial Court merged in that of the High Court? i.e., whether the dismissal of the revision petition by the High Court could be regarded as a subsisting order. Clearly, if the object of the suit is to vacate the order of dismissal of the claim petition, it is only that order which contains the rejection of the claim. When the High Court declines to interfere with the order of the trial Court, it cannot be regarded as a subsisting order which could be impeached in a suit. It may be that if the order of the trial Court is affirmed by the revisional Court on a consideration of the material, it could be deemed as a subsisting order and that could perhaps be impugned in a suit. But the situation like the present is not analogous to it, since it could not be said that there is any affirmance of that order. The High Court summarily dismissed the revision in limine. Somayya J. thinks that the position arising from a dismissal of the revision petition could be equated to that of an appellate order. The learned judge referring to *C.V. Venugopal Mudali Vs. C. Venkatasubbiah Chetty and Others*, says :

"It will be noted that even in a civil revision petition, it is clear that if the High Court passed an order allowing the revision and held against the respondents in the revision petition, the party who was unsuccessful before the High Court would have to file a suit within one year from the date of the High Court's order. Therefore, if the real reason for holding that in the case of an appeal, the starting point should be the date of the appellate order is that the appeal is a continuation of the proceedings of the trial Court, the same reasoning should apply in the case of a civil revision petition and there is no reason why a different construction should be applied in the case of a civil revision petition."

13. With great deference to the learned Judge, there is a vital distinction between the case of a revision being accepted by the High Court setting aside the order of the trial Court and a case where the revision is dismissed without expressing any opinion on the merits. When the order of the trial Court is

reversed by the appellate Court (the High Court), it is the decision of the High Court that is attacked in the suit. But, that is not the case where no opinion is expressed on the merits of the claim in the revision but it is merely dismissed even at the stage of admission. Somayya, J., however, did not express himself finally on the matter, having regard to the fact that a different view was taken in some judgments and further it was unnecessary for him to go further into that question.

14. The rule stated by Manohar Lal J., a member of the Full Bench in Lal Bihar Lall and Another Vs. Bani Madhava Khatri and Others, is in consonance with the dictum of Sadasiva Ayyar J., in C.V. Venugopal Mudali Vs. C. Venkatasubbiah Chetty and Others, . The learned Judge expressed himself on the subject in the following words :

"The High Court has not substituted any order of its own, but has merely declined to exercise jurisdiction in this particular case with the result that the order in the claim case remains the order passed by the original Court -- the matter, of course, would have been different if the High Court had varied the order of the Original Court."

In our opinion, these observations bring out the true ambit of Article 11 of the Limitation Act.

15. Likewise, in AIR 1931 17 (Nagpur) Niyogi, Judicial Commissioner ruled that the word "order" occurring in Article 11 of the Limitation Act should be construed as meaning the only subsisting order in the case. This is also the view taken by the Calcutta High Court in Meghmala Debi Chakravarti Vs. Saday Parhya and Others, The criterion adopted by the learned Judge in the interpretation of Article 11, column 3, is the same as indicated above. In our opinion, the view embodied in the cases cited above represents the correct law and we accord out respectful assent to it. It follows that a suit brought within one year from the date of the order of the High Court dismissing in limine the revision petition is barred by limitation, since such a suit should have been filed within one year from the date of dismissal of the claim petition by the trial Court.

16. Another contention faintly urged by the learned counsel for the respondents, though not raised either in the Courts below or before our learned brother, is that, in any event, this case is attracted by Section 14 of the Limitation Act. We need not pause to consider whether such a case as the present one falls within the purview of Section 14, having regard to the fact that it is difficult to postulate in this case that the first respondent prosecuted the revision in good faith. It is not out of place to remember in this content that the District Munsif rejected the claim not after enquiry into the merits but on two preliminary grounds, namely (i) that the first respondent did not have possession and (ii) that the matter involved a detailed enquiry into the relative titles of the parties and so it could not be enquired into in these proceedings. In such a situation, could it be said that the first respondent acted bona fide in carrying the matter in revision and

that too nearly a year after the dismissal of the claim petition? Moreover, the revision petition was dismissed as far back as 14-11-1953. What prevented him from filing a suit within a short time thereafter passes our comprehension. He did not choose to lay the action on the basis of the mortgage till a year after the order of dismissal of the revision petition by the High Court. We are, therefore, not persuaded that the first respondent was acting in good faith in taking this litigation to the High Court and in not filing a suit within a year of the order of the trial Court. There will, therefore, be no justification to exclude all this time in computing the period of limitation. For these reasons, the contention founded on Section 14 of the Limitation Act also has to be negated.

17. No other point is raised in this second appeal.

18. We, therefore, accept the appeal and dismiss the suit. In the circumstances of the case, the parties will bear their own costs throughout.

19. Before parting, we would like to express our gratitude to Sri Vaidya, who assisted us in this enquiry.