
(2015) 01 MAD CK 0140

In the Madras High Court

Case No : C.R.P (NPD) No. 1479 of 2005 and CMP No. 12354 of 2005

K.G. Sathyamurthy

APPELLANT

Vs

State Bank of Travancore and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2015) 4 BC 290 : (2015) 3 CTC 50 : (2015) 2 LW 137 : (2015) 2 MLJ 597

Hon'ble Judges : K. Kalyanasundaram, J.

Bench : Single Bench

Advocate : V. Nicholas, for the Appellant; T. Venugopalan, Advocates for the Respondent

Judgement

K. Kalyanasundaram, J.—This revision arises out of the order passed by the executing court in EPR No. 262 of 2004 in O.S. No.124 of 1982.

2. The first respondent Bank had instituted a suit in O.S. No.124 of 1982 against the petitioner and the 2nd respondent for recovery of a sum of Rs.90,941.50. However, after trial, the Sub Court, Udumalpet partly decreed the suit for Rs.74,739.47 alongwith interest. Dissatisfied with the judgment and decree, the Bank preferred an appeal in A.S. No.292 of 1985. This Court, allowed the appeal on 19.02.1998. Thereupon, the decree holder levied an execution petition to recover the decree amount. The petitioner filed his counter opposing the execution stating that the decree is barred by limitation. The suit was decreed on 29.06.1983 and the execution application filed on 06.08.1999 is barred under Article 136 of the Limitation Act. The executing court rejected the case of the judgment debtor and proceeded with execution. Challenging the order, the present revision petition is filed.

3. Mr.V.Nicholas, learned counsel for the petitioner submitted that the suit was partly decreed on 29.06.1983 and only for disallowed portion, the plaintiff filed an appeal and therefore the limitation has to be calculated from the date of the

original decree. The learned counsel has relied upon a judgment of the Hon''ble Supreme Court in *State of Madras Vs. Madurai Mills Co., Ltd.*, .

4. On the other hand, Mr.T.Venugopalan, learned counsel for the respondents submitted that the decree passed by the trial court has merged with the decree passed in A.S. No.292 of 1982 and therefore the execution petition is in time. The learned counsel relied upon a judgment of the Hon''ble Apex Court in *Chandi Prasad and Others Vs. Jagdish Prasad and Others*, and a judgment of Madurai Bench of this High Court in *Karuppaiya Muthuraja Vs. V. Karuppaiya Muthuraja and Perumal Muthuraja*, .

5. As per article 136 of the Limitation Act, an execution petition has to be filed within a period of 12 years from the date of decree. Admittedly, the suit was decree in part and the plaintiff has filed the appeal challenging the decree of the trial court. The Appellate Court has allowed the appeal and decreed the suit in entirety by judgment and decree dated 19.02.1998.

6. It is settled law that the appeal is to be considered to be a continuation of the suit and the decree of the trial court merges with the decree of the Appellate Court. Even if there is any modification made by the Appellate Court, the decree of the Appellate court supersedes the decree of the trial court. Limitation would start from the date of decree passed by the appellate court and not by the trial court.

7. In *Chandi Prasad's* case cited supra, the Hon''ble Supreme Court has held as follows -

20. 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.

21. It is axiomatic true that when a judgment is pronounced by a High Court in exercise of its appellate power upon entertaining the appeal and a full hearing in presence of both parties, the same would replace the judgment of the lower court and only the judgment of the High Court would be treated as final. [See *U.J.S. Chopra Vs. State of Bombay*, When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intent and purport, the suit continues.

8. The same view was followed by the Madurai Bench of this Court in *Karuppaiya Muthuraja's* case, cited supra. In my considered opinion, the decision of the Hon''ble Supreme Court and this Court referred supra is applicable to be facts of the present case. In the judgment of *State of Madras v. Madurai Mills Co. Ltd.*'s case cited supra, the assessment order passed by the Deputy Commercial Tax Officer was challenged before the Commercial Tax Officer. The order was partly allowed by the Commercial Tax Officer. Again, the Deputy Commercial Tax Officer

issued a revised assessment order. In the above case, the Board of Revenue issued a notice including the amount which was wrongly excluded by the assessing authority. In the above case, the Hon''ble Supreme Court has held as follows -

The doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior authority and the other by a superior authority, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the subject matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. The application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction.

9. In my considered view, the above judgment of the Hon''ble Supreme Court does not have bearing to the facts of this case. In the present case, the appellate court decreed the suit on 19.02.1998 and the execution petition was laid on 06.08.1999. So, it is within the period of limitation. Hence, I do not find any merits in the revision petition.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.