

(1949) 11 MAD CK 0002
In the Madras High Court
Case No : A.A.A.O. No. 230 of 1947

Korapolu Shedthi

APPELLANT

Vs

Gangayya Shetty (died) and Others

RESPONDENT

Date of Decision : 15-11-1949

Acts Referred:

Limitation Act, 1908 — Article 182(5)

Citation : AIR 1950 Mad 656 : (1942) 55 LW 227

Hon'ble Judges : Panchapagesa Sastri, J

Bench : Single Bench

Advocate : T. Krishna Rao, for the Appellant; K.Y. Adiga and K.P. Adiga, for the Respondent

Final Decision : Allowed

Judgement

1. The decree-holder is the appellant. He obtained a mortgage decree on 8th January 1937 in O. S. No. 5 of 1934 on the file of the District

Munsif'a Court of Karkal. That decree was scaled down under Madras Act IV 4 of 1938 and an appeal against that amended decree was

dismissed on 16th January 1940. The decree-holder thereafter filed R. E. P. No. 411 of 1941 for execution of the decree. That was on 26th

March 1941. The judgment-debtors filed R. E. A. No. 602 of 1941 in the said E. P. No. 411 of 1941 on 25th August 1941, and they pleaded

that there was an adjustment of the decree as a result of which, the decree was not to be executed for a period of three years, and thereafter

payment of a smaller sum should be accepted in complete satisfaction. They also filed a counter to the main execution petition reiterating the same

objections which they had set forth in their own application R. E. A. No. 602 of 1941. The executing Court decided against the judgment-debtors

and dismissed their application R. E. A. No. 602 of 1941. This was on 26th January 1942. The decree-holder thereupon proceeded with the execution. A sale was held on 11th April 1942 but there were no bidders. The decree-holder, who appears to have obtained leave to bid, was apparently unwilling to bid at the figure fixed by way of upset price and so the sale became infructuous. Thereupon the Court passed this order

No bidders Sale stopped. Petition struck off." This was on 11th April 1942. This was apparently the last working day of the term as the Court was closing for the summer recess immediately thereafter. The judgment-debtors had filed an appeal against the order dismissing their application R. E. A. No. 602 of 1941. This appeal A.S. No. 103 of 1942 was finally heard and dismissed by the appellate Court on 5th March 1943. For some reason or other, the decree-holder had taken no further steps in relation to this execution petition No. 411 of 1941, after the first sale, which proved infructuous. On 19th February 1946, which is within three years from the date of the order in App. No. 103 of 1942, the decree-holder filed the present E. P. No. 150 of 1946 for recovery of Rs. 2096 odd by sale of the mortgaged property. The judgment-debtors pleaded that the decree was barred by limitation as the present application was more than three years from 11th April 1942 which, according to them, was the date when a final order was passed on the previous execution application No. 411 of 1941. Both the lower Courts have held against the decree-bolder as in their view the order of 11th April 1942 was intended by the Court as finally terminating the execution proceedings so far as that Court was concerned. Although the Court did not use the word ""dismissed"" in the context the word ""struck off"" must be under-stood as meaning that the execution petition was dismissed. According to the lower Court the decree-holder, who had obtained permission to bid did not care to bid and there was apparently no request by him to adjourn the sale for another day, whether with or without fresh proclamation as the case may be. In those circumstances, the lower Courts were of the view that there was a final order on the previous execution Petition No. 411 of 1941, and the present execution application, which is more than 3 years from that date of the final order, was barred by limitation. In their view the previous execution application was not pending, but finally disposed of on 11th April 1942.

2. In the second appeal it is pointed out for the decree holder that this view of the lower Courts is wrong. It is stated that there was no default of

the decree-holder at all and there was no request by the decree-holder either to have the petition dismissed, as not pressed. The words ""No

bidders. Sale stopped, petition struck off"" should be understood as merely amounting to an adjournment of the execution petition to be taken up

later by the Court suo motu or by an application of the parties for revival. In this view it is argued that the petition must be taken to have been

pending and there was no final disposal of it. The present application was, therefore, to be treated as one reminding the Court to take up the

pending application on its file and dispose of it in a legal manner. Notwithstanding some ambiguous expressions in col. 5 of the execution petition,

the prayer column makes it clear that this is what the decree-holder wanted. The expression ""struck off"" is capable of different meanings according

to the context and attending circumstances. And these words by themselves are ambiguous and would not exclusively show either that the Court

intended to keep alive the matter or intended to dispose of it finally. The Judicial Committee had observed in a very early case as follows :

The reported cases sufficiently show that in India

the striking an execution proceeding off the file is an act which may admit of different interpretation according to the circumstances under which it is

done, and no general rule which would govern all cases of this kind can be laid down.

As observed by the Full Bench in Mohammad Taqi Khan Vs. Raja Ram and Others, , the question in all these cases for consideration is

whether In view of all the circumstances and the language of the order in question, there was an intention to dispose of the matter finally or

whether the matter was suspended temporarily?

3. This test is accepted as correct by the advocates on both sides. Applying this test, it seems to me, that in the particular order in question, passed

as it was on the last day of the term by the Court, and based on no default of the decree-holder, the intention must have been merely to temporarily

postpone the matter and not dispose of it finally, In this view the previous execution petition No. 411 of 1941 must be deemed to be pending and it

would follow therefrom that the present execution petition is one merely to draw

the attention of the Court to the pendency of that application on its file and to dis-pose of it. So viewed the present execution application is in order and the Court is bound to go on with further execution

proceedings in E. P. No. 411 of 1941, which is still pending on its file undisposed of.

4. In the result the decrees of the lower Courts are reversed and the executing Court is directed to take up E. P. No. 411 of 1941 on its file and

continue the execution proceedings thereon. The appellant will get his costs from the respondents in all the Courts. No leave.