
(1916) 07 BOM CK 0016
In the Bombay High Court

Maharaja of Bobbili

APPELLANT

Vs

Sree Rajah Narasaraya

RESPONDENT

Date of Decision : 24-07-1916

Acts Referred:

Limitation Act, 1877 — Article 179

Citation : (1916) 18 BOMLR 909

Hon'ble Judges : John Edge, J;Chancellor, J;Buckmaster, J;Atkinson, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

John Edge, J.—This is an appeal from a decree, date a the 2nd May, 1912, of the High Court at Madras, which affirmed an order dated the 25th October, 1910, of the District Judge of Vizagapatam dismissing an application of the 27th April, 1910, for the execution of a decree of the 5th April 1904, on the ground that the application was time-barred when it was made. The question as to whether the application of the 27th April, 1910, was barred by limitation depends on whether a previous application for the execution of the decree which had been made on the 13th December, 1907, was made to the proper Court within the meaning of Article 17901" the second schedule of the Indian Limitation Act, 1877. The period of limitation applicable in this case was three years from the date of applying in accordance with law to the proper Court for execution, or to take some step-in-aid of execution of the decree. The respondents have not appeared and have not been represented in this appeal. The facts, as their Lordships have ascertained them from the papers in the record before them, may be briefly stated.

2. The appellant, on the 5th April, 1904, obtained a money decree against the respondents in the Court of the District Judge of Vizagapatam.

3. In September 1904, the appellant presented a petition to the Court of the District Judge by which he prayed that the decree should be sent to the Court of the Munsif of Parvatipur for execution on the ground that the properties of the

respondents were situate within the local limits of the jurisdiction of the Court of the Munsif, and thereupon the District Judge by his order of the 30th September, 1904, made under 3.223 of the Code of Civil Procedure, 1882, sent the decree for execution to the Court of the Munsif of Parvatipur, and in compliance with Section 224 of that Code sent to the Court of the Munsif (a) a copy of the decree; (b) a certificate that satisfaction of the decree had not been obtained by execution within the jurisdiction of the District Court; and (c) a certificate that no order for the execution of the decree had been made except the order for the transfer of the decree.

4. On the application of the appellant the Court of the Munsif of Parvatipur in execution of the decree attached immovable property of the respondents which was within the local limits of the jurisdiction of that Court. Subsequently on the 10th March, 1905, two months' time was, on their application, granted by the Court of the Munsif u/s 305 of the Code of Civil Procedure, 1882, to the respondents, and it is stated that the petition for execution was dismissed. No further steps were taken to get the decree executed by the Court of the Munsif.

5. On the 9th July, 1907, the appellant applied to the Court of the Munsif for a copy of the decree which had been sent to that Court u/s 224 of the Code of Civil Procedure, 1882, and by order of the head clerk of the Court of the Munsif of the nth July, 1907, he was informed that " No copy of decree in record. It appears that it was returned to the District Court with non-satisfaction certificate." That information was incorrect. On the 13th December, 1907, the appellant presented a petition to the Court of the District Judge in which he alleged that he had presented in 1905 a petition to the Court of the Munsif of Parvatipur for the attachment of the immovable property of the respondents; that the attachment was made; and that subsequently the decree had been retransferred to the District Court; and prayed (i) " that the property described in the schedule hereto attached may be sold u/s 287 of the CPC for the realisation of the amount mentioned in column 8, and further costs in execution "; and (2), that notice u/s 248 of the Code of Civil Procedure, 1882, might be issued to the respondents. No property was, in fact, described in the schedule, but in their Lordships' opinion it is plain that the object of this petition was to obtain from the Court of the District Judge an order for the sale of the property which had been attached by order of the Court of the Munsif. The petition, being defective, was returned to the appellant for amendment, and without having been amended "was again presented to the Court of the District Judge on the 8th January, 1908; the fact that it had been presented was, by order of the District Judge, recorded on the 25th March, 1908, but nothing further appears to have been done on that petition.

6. The next thing which happened was that, on the 27th April, 1910, the appellant presented to the Court of the District Judge a petition for the execution of the decree by sale of the immovable property which had been attached by the Court of the Munsif, In that petition the appellant alleged that the decree had

been returned by the Court of the Munsif to the Court of the District Judge On the 12th July, 1910, the District Judge directed that the Munsif of Parvatipur should be requested to report whether the copy of the decree was retransmitted to the District Judge's Court, and, if so, when, On the 3rd August, 1910, the Munsif of Parvatipur returned to the Court of the District Judge the copy of the decree which had been sent to the Munsif's Court for execution and the certificate of non-satisfaction. In October 1910 the District Judge proceeded to deal with the petition of the 27th April, 1910, of the appellant, who was represented by a vakil, and on the 25th October, 1910, held that the petition of the 27th April, 1910, had not been presented to the proper Court, and that the petition of the 13th December, 1907, not having been presented to the proper Court the presentation of the latter petition did not prevent limitation running, and dismissed the application for execution as having been time-barred, and also apparently as having been presented to the wrong Court.

7. The appellant appealed to the High Court at Madras, which by its decree of the 2nd May, 1912, affirmed the order of the District Judge of the 25th October, 1910. From that decree of the High Court this appeal has been brought.

8. As the decree of the 5th April, 1904, had by order of the Court of the District Judge been sent on the 30th September, 1904, to the Court of the Munsif of Parvatipur for execution by the latter Court, and as the copy of the decree with the non-satisfaction certificate was not returned to the Court of the District Judge until the 3rd August, 1910, and as the petition of the 13th December, 1907, was for execution of the decree by sale of the immovable property of the respondents which was within the local limits of the jurisdiction of the Munsif's Court, their Lordships, having regard particularly to Sections 223, 224, 228, and 230 of the Code of Civil Procedure, 1882, are satisfied that when that petition of the 13th December, 1907, was presented to the Court of the District Judge that Court was not the proper Court to which the application to execute the decree by sale of the immovable property which had been attached by the Court of the Munsif should have been made, and that the proper Court to which that application should have been made was the Court of the Munsif of Parvatipur, as that was the Court whose duty it then was to execute the decree so far as it could be executed by that Court. Consequently, the application by the petition of the 27th April, 1910, was, when made, time-barred under Article 179 of the second schedule of the Indian Limitation Act, 1877, as no application had been made within three years in accordance with law to the proper Court for execution, or to take some step-in-aid of execution, of the decree. Further, their Lordships agree with the District Judge that the application of the 27th April, 1910, was not made to the proper Court.

9. Their Lordships will humbly advise His Majesty that this appeal should be dismissed.