
(1995) 11 MAD CK 0080

In the Madras High Court

Case No : C. R. P. No's. 711/93 and 4, 5 and 7 of 1995

Ms. Madras Hardware Mart

APPELLANT

Vs

V. Hutcheeswaran and 2 others

RESPONDENT

Date of Decision : 22-11-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18(2), Order 20 Rule 6A, Order 21 Rule 16, Order 21 Rule 21, Order 41 Rule 1
Limitation Act, 1963 — Section 12(2)
Stamp Act, 1899 — Section 2(15), 33

Citation : (1995) 11 MAD CK 0080

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : P.S. Raman, for Mr. Viswanathan, for the Appellant; Kumarasamy, for the Respondent

Final Decision : Dismissed

Judgement

Abdul Hadi, J.—These Civil Revision Petitions are connected, arising out of the same suit O. S. No. 683 of 1970, on the file of the X Assistant Judge, City Civil Court, Madras, and hence they are taken up together. The said suit is a partition suit and preliminary decree for partition was passed on 28.4.1972 and final decree for partition was passed on 1.12.1975. The first defendant in the suit is the father and the second, third and fourth defendants and the first plaintiff are the sons. The first plaintiff died and hence the other plaintiffs were brought on record as his legal heirs. The suit relates to one house property and the preliminary decree declared 1/5th share in the said property to each of the first plaintiff and first defendant to fourth defendant. The above said final decree directed the first plaintiff, second and third defendants to sell their 3/5th share in all to the first and fourth defendants who owned the other 2/5th shares together. The fifth defendant was the mortgagee under the mortgage dated 7.3.1970, of the suit property from the first defendant. The 5th defendant assigned the said mortgage on 24.7.1975 to the 6th defendant who was a tenant of a portion of

the said property. The 6th defendant was not a party originally but he was imploded by order in I. A. No. 5641 of 1978. First defendant sold his 1/5th share under sale deed dated 16.5.1975 to 6th defendant. 4th defendant sold his 1/5th share under another sale deed dated 16.5.1975 to 6th defendant. These two sale deeds were thus prior to the above said final decree for partition. After the final decree for partition, plaintiffs sold their 1/5th share to 6th defendant by sale deed dated 16.2.1976, and 3rd defendant also sold his 1/5 share to 6th defendant under sale deed dated 3.3.1976. Thus 6th defendant became the owner of 4/5th share in the said suit property. But 2nd defendant did not sell his 1/5th share to 6th defendant, despite the direction in the above said final decree dated 1.12.1975. First and fourth defendants also, the decree holders in the above said final decree, did not file Execution Petition for getting the sale deed pursuant to the final decree. But, it is said that they assigned the above said final decree in favour of 6th defendant on 25.1.1984. After the said assignment 6th defendant filed I. A. No. 10085 of 1987 praying for condemnation of the delay in depositing the required stamp for being engrossed in the final decree so that the Execution Petition could be filed for executing the final decree. That I A. was allowed by order dated 23.2.1987 whereby the delay was condoned. Thereafter 6th defendant filed E.A.V. in S. R. No. 42580 of 1990 under O.21, R. 16 of the C.P.C. in December 1990, (that is, beyond 12 years from the date of the final decree, namely, 1.12.75), for granting permission to it, the assignee decree holder, to execute the said final decree. The said Execution Application was filed against 2nd defendant/judgment debtor alone since the said 2nd defendant alone had not executed the sale deed in respect of his 1/5th share..

2. By order dated 3.9.1991 the said Execution Application was rejected, observing as follows

Heard. Failure on the part of the 1st and 4th defendants to submit the stamp papers for the drafting of the final decree will not save the limitation. Hence this E.P. is rejected.

In other words the rejection was on the ground that the Execution Application was held to be out of time, (presumably as per Art 36 of the Limitation Act, 1963 which provides for a limitation period of 12 years only)

3. Against the said order of rejection in the abovesaid Execution Application the abovesaid Civil Revision Petition No. 711 of 1993 has been filed by the 6th defendant, the petitioner in the said Execution Application, against the 2nd defendant, who is the respondent (V. Hutcheeswaran) in the said Execution Application.

4. The Civil Revision Petition Nos.4, 5 and 7 of 1995 are filed by the same 2nd defendant (though described here as V.H. Eswar) against the common order dated 25.5.1992 in C.M.P. No. 704 of 1987, C.M.P. No. 4254 of 1991 and C.M.P. No. 3745 of 1989 respectively. There was also one other Civil Revision Petition, namely, C.R.P. No. 6 of 1995 against the order in C.M.P. No. 4257 of 1991 which

was also part of the abovesaid common order. But that C.R.P. was not pressed and hence it was dismissed on 21.1.1995.

5. C.M.P. No. 704 of 1987 is to direct the first respondent therein (the original Advocate-Receiver, Mr. P.K. Sivasubramaniam) to redeposit the 4/5th share of the rental collections from the suit building paid to 6th defendant who is the 2nd respondent in the said C.M.P. CM J. No 3745 of 1989 is also in effect for the same prayer as in C.M.P. No. 704 of 1987. This fact has been also admitted by the learned counsel for the petitioner in the Civil Revision Petitions. The prayer therein actually is to direct the said Advocate-Receiver to recover from the 6th defendant an amount of Rs. 65,500/- "out of the rental collections of the suit property from 1974 till 1985" which was said to be given to 6th defendant by the said Receiver earlier. C.M.P. Nos. 704 of 1987 and 3745 of 1989 have been filed on the ground that 6th defendant, who has purchased only the abovesaid undivided 4/5th share in the abovesaid coparcenary property under the abovesaid four sale deeds, has, under Hindu Law, only a right to get partition of the said 4/5th share and cannot possess or enjoy the usufructs therefrom. Therefore, the contention is that despite the above fact the Receiver had illegally paid the abovesaid rental collections to the 6th defendant and that is why the prayer by the 2nd defendant is that the Receiver must get back the said sum wrongly paid and deposit it into Court.

6. C.M.L.P. No. 4254 of 1991 is to direct the new Advocate-Receiver Mr. Adaikalam to collect (in future) the rents from the 6th defendant in respect of the portions occupied by it in the suit-property. This prayer is also on the footing that the purchaser-6th defendant of the abovesaid 4/5th share has no right to possess any portion of the suit property pursuant to the abovesaid Hindu law concept and that therefore, he should pay rent just as any other tenant for the abovesaid portions occupied by him for his business.

7. While dealing with the abovesaid C.M.Ps. it has been inter alia held by the court below that 2nd defendant is entitled to get back his 1/5th share in the rental collections including interest, that is, in all a sum of Rs. 24,316/-. Therefore, the Court below directed 6th defendant to deposit the said sum of Rs. 241316/- into court. Regarding the balance of 4/5th share, after noting the argument of the learned counsel for the 2nd defendant based on the abovesaid Hindu law concept, the court below however concluded that only pursuant to a consent order dated 25.10.1971 in I.A. No. 16010 of 1971 the rental collections were paid over by the Receiver to the abovesaid 5th defendant-mortgagee in discharge of the mortgagee debt. The Court below also further points out that pursuant to another order dated 10.3.1977 in I.A. No. 23707 of 1976 filed by the 6th defendant claiming the rental collections to it, direction was given by the court below for the Receiver giving the rental collections to the 6th defendant and that there was no appeal filed by the 2nd defendant, respondent in the said I.A. No. 23707 of 1976, against the abovesaid order dated 10.3.1977. On the above reasoning CM.P. No. 704 of 1987 and 3745 of 1989 were only partly

allowed as stated above. In C.M.P. No. 4254 of 1991 it was held by the court below that for the portion in the suit building occupied by 2nd defendant and the portion occupied by the 6th defendant therein the Receiver should determine the quantum of rent and that after the dispute is resolved between 6th defendant and 2nd defendant, necessary adjustment could be made and till then no rent need be collected from both of them. In this way it is said that the said C.M.P. also has been allowed partly.

8. The learned counsel for the petitioner in Civil Revision Petition Nos. 4,5 and 7 of 1995, in support of the abovesaid Hindu law concept, relied on A.I.R.1955 Mad 288-D.R=68 L.W.166 Smt. Poodipeddi Laxminarasamma Vs. Gada Ranganayakamma and Others, , (Lakshrninarasamma v, Ranganayakamma). No doubt both the said decisions have held that a person who purchases an undivided share of a co-parcener of a joint Hindu family cannot claim to be put in possession of any definite piece of the family property nor is entitled to have joint possession with the co-parceners who have not parted with their share and he has only an equity to work out his rights by means of a partition standing in his vendor's shoes. On the other hand, learned counsel for the 6th defendant argued that at least the aforesaid purchases from plaintiffs and 3rd defendant are under sale deeds after the final decree and so the abovesaid Hindu law concept cannot apply since after the said final decree the respective shares of the said plaintiffs and 3rd defendant could be taken only as shares of co-owners and not co-parceners.

9. This argument of the learned counsel for the 6th defendant cannot be accepted since the abovesaid final decree only directs the plaintiffs and 3rd defendant to sell their respective shares to 1st and 4th defendants. So what has been transferred under sale deeds dated 16.2.1976 and 3.3.1976 could only be their respective shares in the coparcener property.

9A. Learned counsel for the 6th defendant also argued that, as pointed out by the court below, pursuant to orders passed by the court, the rental collections have been paid over to 6th defendant and this order cannot be reopened now. I think this argument of the learned counsel for the 6th defendant has to be accepted. The court below already points out that pursuant to the above referred to consent order dated 25.10.1971 the rental collections were paid over to the mortgagee towards the discharge of the mortgage debt and that by the above referred to order dated 10.3.1977 rental collections were directed to be paid over to 6th defendant and there was no appeal against the said order, by 2nd defendant Therefore, with reference to the abovesaid consent order, the 2nd defendant is now estopped from claiming the relevant portion of the rental collections back. Likewise, since he has not preferred any appeal against the other order dated 10.3.1977, 2nd defendant's present claim is barred by the principles of res-judicata. It is settled law that a decision given by a court at one stage of the suit is binding at a later stage. (Vide Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, . Therefore, even assuming that the

abovesaid earlier orders were passed contrary to the abovesaid Hindu law concept laid down in V.C. Thani Chettiar and Another Vs. Dakshinamurthy Mudaliar and Others, etc., the court, in view of the principle of estoppel and res-judicata, cannot hold anything differently in the above said C.M.Ps., pursuant to the present claim now made by the 2nd defendant. Therefore, there is no case for interference with the common order in C.M.P. Nos. 704 of 1987, 3745 of 1989 and 4254 of 1991, particularly under S. 115 of the Civil Procedure Code. Hence, Civil Revision Petitions Nos. 4, 5 and 7 are dismissed with costs.

10. Now, coming to Civil Revision Petition No. 711 of 1993, the only question to be decided there is regarding the abovesaid limitation aspect in relation to the execution of the above referred to final decree passed on 1.12.1975 against the second defendant directing him to sell his 1/5th share to the first and fourth defendants. Here, the relevant portions of Article 136 of the Limitation Act, 1963 have to be Insert table here & content matter missing in htm file also.

The contention of the learned counsel for the sixth defendant is that, as stated above, the delay in depositing the stamp papers for engrossing them on the final decree to be drafted, has been condoned in the abovesaid I.A. No. 10085 of 1987 by order dated 23.2.1987 and thereafter the stamp papers were deposited and the final decree was drafted after the stamp papers were engrossed and therefore, the abovesaid execution application having been filed in December 1990 itself, that is, within about three years from the said engrossment, the Execution Petition is within time. According to him, the final decree becomes "enforceable" as per Art. 136, only when the requisite stamp papers are engrossed on the decree. In support of this contention, he relied on the Full Bench decision of the Calcutta High Court Bholanath Karmakar and Others Vs. Madanmohan Karmakar and Others, and the Supreme Court decision reported in 1995-3-S.C.C.413 = 1995-1-L.W.568 (Shankar B. Lokhande v. Chandrakant S. Lokhande).

He has also relied on AIR 977 S.C. 2319 (Udayan Chinubhai v. CBail). In order to further reiterate the said contention, he also relied on AXR.1938 Mad 307 -47 L.W.51 Division Bench (Satyanadam v. Nammayya) and Dharmaraja Vellar v. Ramachandra Vellalar 1993 (1) M.L.J.- 426, wherein, though limitation question is not directly involved, it has been held that only when the requisite stamp papers are engrossed on the final decree, the said decree becomes a valid decree enforceable.

11. On the other hand, on the above aspect, the learned counsel for the 2nd defendant relied on (1995) 1 M.L.J.-147 (Abdul Salam v. Hameed Joharan) which purports not to approve the view taken in A.I.R.1988 Cal-1, in view of the decisions reported in 92 LW-599-D.B. (Umayal Achi v. Ramanathan Chettiar), AJLR.1951 S.C.16 = 64 L.W353 (Yeshwant v. Walchand), AIR 1943 Mad 650 = 56 L.W 393 Intimuri Chinna Venkatappa v. Padda. Venkatappa, and A.I.R.1946 Mad - 348(D.B) = 59 L.W.145 Venkataraya spundar v. Mallappa Goundar.

12. I have considered these rival submissions on the abovesaid limitation aspect. The only question to be resolved is whether the abovesaid final decree dated 1.12.1975 becomes enforceable only when it is engrossed on the requisite stamp papers pursuant to relevant provisions, of the Stamp Act consequent upon the abovesaid order dated 23.2.1987 in I.A. No. 10085 of 1987 condoning the delay in depositing the said stamp papers.

A Division Bench of this Court has held in *Pandivi Satyanandam and Others Vs. Paramkusam Nammayya and Another*, that where a decree in a partition suit which is in substance a final order effecting partition is not engrossed on a proper non-judicial stamp, there is no decree in existence.. In A.I.R.1956 Mad 207 = 69 L.W.18. F.B (Board of Revenue v. Moideen) also it was held that a final decree for partition passed by a civil court is an instrument of partition as defined in S. 2(15) of the Stamp Act and that such a decree could only be engrossed on stamp papers of sufficient value. The Full Bench also approved of the above referred to *Pandivi Satyanandam and Others Vs. Paramkusam Nammayya and Another*, . The Full Bench also held that where the parties fail to furnish the requisite stamps for a final decree for partition, the Court cannot draw up a decree on insufficiently stamp paper and cannot impound it under S. 33 of Stamp Act Here again, the Full Bench referred to AXR.1938 Mad 307.

13. Relying on the above referred to *Pandivi Satyanandam and Others Vs. Paramkusam Nammayya and Another*, recently *Dharmaraja Vellalar Vs. Ramachandra Vellalar and Others*, held "... till the final decree is engrossed on proper non-judicial stamp paper the final decree for partition has no existence at all and till that is done, the suit shall be considered as pending. Therefore, in view of the above decisions there is no final decree at all in existence unless and until it is engrossed on sufficient stamp paper.

14. No doubt, the above referred to decisions did not consider Art.186 of the Limitation Act, 1963. However, in the context of the facts to which Art. 82 of the old Limitation Act, 1908, is applicable the Supreme Court observed thus:-

After final decree (for partition) is passed and direction is issued to pay stamp papers for engrossing the final decree thereon and the same is duly engrossed on stamp paper (s) it becomes executable or becomes an instrument duly stamped, thus condition precedent is to draw up a final decree and then to engross it on stamp paper(s) of required value. These two acts together constitute final decree crystallizing the rights of the parties in terms of the preliminary decree. Till then there is no executable decree as envisaged in O. 20, R. 18(2) attracting the residuary Article 182 of the Limitation Act. Contrary views of the High Courts are not good law

The Division Bench of the Andhra Pradesh High Court in *Smt. Kotipalli Mahalakshamma Vs. Kotipalli Ganeswara Rao and Others*, correctly decided the question of law and held that the limitation begins to run only after final decree is engrossed on stamp papers.

(Emphasis supplied).

15. The above referred to A.I.R.1960 D. B. A.P. 54 also deals with a case to which old Article 182 applies, and has held that where the final decree for partition is not engrossed on requisite stamp paper, application for execution of such a final decree is not one in accordance with law and that since only on 3.1.1953 it was engrossed on the said stamp paper the limitation commenced only on 3.1.1953.

16. The Supreme Court in the abovesaid Dadan Bai Vs. Arjundas, as already seen, also points out that contrary views of the High Courts are not good law. So, any view expressed by any High Court contra is not good law. So the abovesaid Inturi China Venkatappa Vs. Inturi Peda Venkatappa and Others, and AIR 19461 S.C. 348 = 59 L.W.145 are also not good law. No doubt, the abovesaid observation of the Supreme court was in relation to a case with reference to which the old Limitation Act applies and not the new Limitation Act of 1963. However, in so far as the abovesaid observation of the Supreme Court is concerned, I do not think the difference between the old Art. 182, and the new Art. 136 will have any bearing. In fact, while in the old Art. 182 the term "enforceable" was not used while referring to the final decree, the word "enforceable" has been introduced only in Art. 136, while referring to the final decree.

17. No doubt, following observations have been made in 92 L.W. -599 (supra) on the above aspect, while pointing out the distinction between the old Limitation Act and the new Limitation Act;-

The time when decree or Judgment becomes enforceable is from the date when it is pronounced. Article 136 of the Limitation Act, 1963, prescribed the date, as and from which the decree could be executed. It says that the period of 12 years begins to run from the date when the decree becomes enforceable A decree of a civil court which adjudicates rights of the parties becomes enforceable on the date when it pronounced its judgment. There cannot be a postponement of the date of its enforceability. It is in this respect that the present Article differs from the old Art. 183 which, while referring to decrees of High Courts, provided that time from which the period begins to run to enforce the judgment is the time when a present right to enforce the judgment accrues. Under the old Act certain factors apart from the date of enforceability of the judgment could also be enquired into to find out whether a right has accrued. Accrual of right in jurisprudence depends upon a bundle of facts. It was in that context and conjunction that the earlier Act was the bedrock of unnecessary litigation. The Parliament, having thus made an express provision that time would begin to run for executing any decree from the date when it becomes enforceable, it means that an Execution Petition has to be filed within twelve years from date of the pronouncement of the judgment.

17 A. But the case in the abovesaid 92 L.W. 599 related to only a money decree

and not a decree for partition and so the question whether the final decree for partition did not become enforceable without the requisite stamp papers having been engrossed therein did not arise at all in the said case. So in my view the abovesaid observation in 92 L.W.599 cannot be taken out of context and applied to the present facts, particularly in the light of above referred to observations in A.I.R.1938 -Mad 307 = 47L.W.51 (D.B) and A.I.R.1956 Mad 207 = 69 L.W.1&T.B) (1993). 1 M.L.J. 426 and (1995)-3- S.C.C. 413 =1995 -1-L.W. 568.

18. No doubt in Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari, which was considering the scope of Section 48(2) of Civil Produce Code now repealed, the relevant observation of the Supreme Court was as follows:-

Where a decree provides that the decree holder should pay the deficit amount before it executed the decree is not a conditional one in the sense that some extraneous event is to happen on the fulfilment of which alone it can be executed. The payment of court fees on the amount found due is entirely in the power of the decree holder and there is nothing to prevent him from paying it then and there. Thus it is a decree capable of execution from the very date it is passed.

But this observation turned on the facts before the Supreme Court in relation to the said repealed S. 48 of the Civil Procedure Code. Thus Supreme Court decision turned on its facts and the above observation cannot be applied to a case of final decree for partition which has necessarily to be engrossed on the requisite stamp paper under the Stamp Act for its enforceability, it is more so in the light of the above referred to observations in the decisions like A.I.R.1938 Mad 307 = 47 L.W.51 (D.B) A.I.R.1956 Mad 207 =69 L.W.18 (FB.), as well as the decision of the Supreme Court itself in (1995) 3 S.C.C. - 413 = 1995-1-L.W.568.

19. The net result is, the direct judgment on the point is the above referred to judgment, A.I.R.1988 Cal 1 F.B. (Bholanath v. Madanmohan), which has held that the limitation under Art. 136 only begins from the date when the final decree for partition is engrossed on requisite stamp paper. The relevant observations in the said Full Bench decision are as follows:-

But, as already indicated, in the case of partition decree, the decree, even though already passed or made, cannot in view of the provisions of the Stamp " Act, become enforceable unless drawn up and engrossed on stamp papers. Because of such decrees, which do not become enforceable on the dates of their being passed or made, the present Art 136 has used the expression "when the decree becomes enforceable" and has made the same the starting point of limitation, departing from the expression used in Art. 182 of the preceding Limitation Act, 1908, where under the starting point was "the date of the decree". Therefore, under Art 136 of the present Limitation Act, the terminus a quo being the date "when the decree becomes enforceable, "the period of limitation in respect of a partition decree cannot begin to run until it acquires such enforceability only when it is engrossed on requisite stamp papers,

whatever, might be the date of its being made or passed by the Court..."But whereas in a decree for partition, no legally operative decree can come into existence at all unless the requisite stamps are furnished by the parties and the decree is engrossed on such stamp papers, R. 6A (of O. 20, C.P.C.) can have no application and cannot operate to equate the last paragraph of the judgment with the formal decree for partition outweighing and overthrowing the relevant provisions of the Stamp Act The words "where the decree is not drawn up" in R. 6A(2) would obviously contemplate a case where the decree could be, but has not been, drawn up by the court and cannot refer to a case where, as in a partition suit, the decree could not at all be drawn up and has, therefore, not been drawn up by the court for the requisite stamp papers not having been furnished by the parties

(Emphasis supplied-sic).

20. No doubt in Abdul Salam Vs. Hameed Joharan and Others, a learned judge of this Court chose to differ from the said Full Bench decision on the reasoning which could be gathered from the following observations:"

The last decision that was relied on by the learned counsel is the one reported in Bholanath Karmakar and Othen v. Madanmohan Karmakar and Others, A.I.R.1988 Calcutta 1. The said decision, of course, supports the learned counsel for the respondent No. 2. It was held in that case that the decree for partition does not become enforceable unless the same is engrossed on stamp paper and, therefore, the period of execution does not begin to run under Art. 136 of the Limitation Act unless the decrees are drawn up. For various reasons than one, the said decision cannot be supported. The wording of the Limitation Act which has to be interpreted strictly, does not provide for such an interpretation. It will amount to enlarging the period of time than what is provided under the Limitation Act Their Lordships followed the decision Udayan Chin Ubhai v. C. Bali, ALR.1977 S.C.2319, for the said position. I have already said that the decision has no relevance insofar as the execution of the decree is concerned, and their Lordships also have not taken into consideration paragraphs 32 and 35 of the said decision. Their Lordships in that case have said;

.. But whereas in a decree for partition, no legally operative decree can come into existence at all unless the requisite stamps are furnished by the parties and the decree is engrossed on such stamp papers. For getting title to the property, the said observation will be correct But, under O. 21, C.P.C. when decree is not necessary for initiating proceedings, as in O.41. Rule 1, C.P.C the said observations by the learned judges cannot be applied to this case.

21. In view of my abovesaid discussion supported by earlier Division and Full Bench judgments of this Court as well as by the above referred to observations of the Supreme Court itself in Shankar Balwant Lokhande (dead) by L.Rs. Vs. Chandrakant Shankar Lokhande and Another, am unable to follow the view expressed in Abdul Salam Vs. Hameed Joharan and Others, since I am bound by

the above referred to Bench judgment in A.I.R.1938 Mad 307 = 47 L.W.57 and Full Bench judgment, A.I.R.1956 Mad 207 = 69 L.W.18 and also the Supreme Court judgment reported in Shankar Balwant Lokhande (dead) by L.Rs. Vs. Chandrakant Shankar Lokhande and Another, Further, with due respect, I may also point out that the above referred to observation in Abdul Salam Vs. Hameed Joharan and Others, , "it will amount to enlarging the period of time than what is provided under the Limitation Act, is not correct. Further, in my view the Calcutta Full Bench decision - AIR 1988 (1) Calcutta has not incorrectly relied on AIR 1977 - S.C. - 2319. In AIR 1977 S.C.2319 the question that actually came up before the Supreme Court for consideration was different from the actual question considered in the present case or in the case of (1995) 1 M.L.J.-147. In the said Supreme Court case, the question no doubt was, what is the time requisite for obtaining copy of the decree u/s 12 (2) of the Limitation Act. In that connection the Supreme Court has observed as follows:-

When a judgment is delivered in the presence of the parties clearly announcing certain steps to be taken by the plaintiff before the decree can be prepared, the matter stands on an entirely different footing. In the present case without deposit of the deficit court fees by the plaintiff, the decree could not be instantly prepared under the law. Time was given to the plaintiff for that purpose and there could be no decree in existence in law until the plaintiff supplied the court fees, without the existence of the decree any application for a copy of the decree would be futile." (Emphasis supplied-sic).

The above observations though arise in- a different context could be applied even to the present case by way of analogy. Here also without the necessary engrossment of stamps on the final decree, there could be really no final decree in existence in law.

Therefore, the court below erred in rejecting the abovesaid Execution Application as out of time and I set aside the impugned order dated 3.9.1991 in the said Execution Application and remand the Execution Application back to the Execution Court for dealing with the said Execution Application on its merits. The Civil Revision Petition No.711 of 1993 is allowed, however, in the circumstances of the case, no costs. The Civil Revision Petition Nos. 4,5 and 7 are dismissed with costs.