

(1949) 03 PAT CK 0004

In the Patna High Court

Mt. Sita Kumari and Others

APPELLANT

Vs

ramnath Nonia and Another

RESPONDENT

Date of Decision : 04-03-1949

Acts Referred:

Limitation Act, 1963 — Section 14

Citation : AIR 1949 Patna 514

Hon'ble Judges : Shearer, J;Reuben, J

Bench : Full Bench

Judgement

Reuben, J.—On 29th November 1945 the Munsif of Jamui passed a decree for specific performance of a contract for the sale of land in favour of the appellants. The decree says:

The plaintiffs will be entitled to recover possession of the suit lands on their depositing Rs. 8,00 in favour of defendant 2 within three months from the date of this order.

The defendant appealed. On 1st July 1946 the appeal was dismissed and the Munsif's decree was confirmed. On 18th September 1946, the plaintiffs deposited Rs. 800 and applied to the Court, for delivery of possession over the land. This has been refused on the ground that the time for the making of the deposit ran from the date of the Munsif's decree. Hence, this appeal.

2. The only question in this case is whether the effect of the appellate decree is to give a fresh starting point to the period within which the deposit could be made. There is a conflict of decisions on the point. A positive answer is indicated by Nanchand v. Vithu 19 Bom. 259 ; Satvaji Balajirao Deshmukh Vs. Sakharlal Atmaramshet, and Rupohand v. Shamsul Jehan 11 All. 846 and a negative one by Jaggarnath Pande v. Jokhu Tewari 18 All. 223, Ramaswami Kone v. Sundara Kone 31 Mad. 28, Bhola Nath v. Kanti Chundra 25 Cal. 311 and Basanta Kumar Adak Vs. Radha Rani Dasi and Another,

3. In my opinion the point is concluded so far as this Court is concerned by

Gobind Prasad v. Jugdip Sahay A.I.R.1925 Pat. 369 , in which in circumstances substantially similar to those in the present case, Bucknill J. (Ross J. agreeing) held that an appellate order of confirmation gave rise to a fresh period during which a deposit might be made. Their Lordships followed Satvaji Balajirao Deshmukh Vs. Sakharlal Atmaramshet, and refused to follow Ramaswami Kone v. Sundara Kone 31 Mad. 28 . In Panchu Sahu Vs. Muhammad Yakub and Others, , Mullick. A.C.J. (Wort J. agreeing) has spoken of this finding as an obiter dictum. The ground given, is that the decision proceeded on an application, of Section 14, Limitation Act. With the utmost respect, I would differ from this observation, and-would assert to the contrary that the decision in (Lala) Gobind Prasad Vs. (Lala) Jugdip Sahay, , proceeded on the finding that the appellate decree gave rise to a fresh starting point. In that case there were two obstacles in the way of the plaintiff, firstly, that deposit was not made within two months from the original decree, and secondly, that it was not made within two months of the appellate decree. Section 14 was applied only for getting over the second obstacle, reliance being placed for this purpose on a deposit for the same purpose made by the decree-holder's son within two months of the appellate decree. Therefore, the decision in (Lala) Gobind Prasad Vs. (Lala) Jugdip Sahay, is not obiter and is binding on us. The case before the Acting C.J. and Ross J., was on its facts distinguishable from (Lala) Gobind Prasad Vs. (Lala) Jugdip Sahay, and from the case before us. There the appeal was preferred by persons who had to make the deposit in question. A finding that the appellate decree necessarily implies a fresh starting point would mean that the party liable to pay may get an extension of time by filing a frivolous appeal. Their Lordships did not see any reason to encourage such appeals. Further, they pointed out that the view taken by the District Judge would mean that the plaintiff for no fault of his own would lose interest on the Bum directed to be deposited by the original decree. Neither of these considerations arises here.

4. It seems to me that the correct view is that a fresh starting point is not necessarily implied in such an appellate decree, and it is a matter for consideration in each case whether it is implied or not. When the appellate Court dealt with the case before us, the time limited by the Munsif had expired. It was open to the defendant to press this point, and to the appellate Court to decide that, the time having expired, it was not open to the plaintiffs to make the deposit and there was nothing before the appellate Court for decision. It was equally open to the appellate Court to dismiss the appeal and expressly extend the time for making the deposit. When the appellate Court refrained from following the first course, and confirmed the Munsif's decree, what was its intention? Surely it wanted to give the plaintiffs an effective decree in their favour. If so, we are justified in holding that the Court intended to exercise its power of extending the time for making the deposit, and incorporated in its decree the relevant provisions of the Munsif's decree. That is to say, this is a case in which we must hold that a fresh starting point is implied in the decree of the appellate Court.

5. Mr. Ganesh Sbarma has urged that we should hold that the decree of the Munsif having merged in the decree of the appellate Court, the time limited will run from the date of the appellate decree. This attractive line of reasoning was followed in *Rupchand v. Shamshul Jehan* 11 All. 346 , but it is contrary to the principle enunciated in *Panchu Sahu Vs. Muhammad Yakub and Others*, that the person liable to pay should not be enabled to gain time by filing a frivolous appeal.

6. Mr. K.D. De has attempted to draw a distinction between matters arising in the execution of a decree, and those relating to the failure to comply with a condition precedent prescribed in a decree. He urges that *Bhup Indar v. Bijai Bahadur* 27 I.A. 209 , which was relied on in *Satvaji Balajirao Deshmukh Vs. Sakharlal Atmaramshet*, , which in its turn was followed in *(Lala) Gobind Prasad Vs. (Lala) Jugdip Sahay*, , was a case of the first kind. This is so, but we are only concerned with the principle laid down in that case, viz., that the meaning of the appellate decree must be ascertained by interpretation. In that case the appellate decree did not expressly mention mesne profits but their Lordships of the Judicial Committee held that this was implied and that the order carried all profits up to its own date. This principle seems also to have been accepted in *Ramaswami Kone v. Sundara Zone* 31 Mad. 28, another case relied on by Mr. De. Their Lordships mentioned *Pattoji v. Ganu* 15 Bom. 370, as holding that an extension could only be effected expressly or impliedly by the appellate decree and concluded that it would be.

going too far to hold that an appellate decree affirming an original decree has in all cases the effect of enlarging the time limited.

7. On the above grounds, I would allow this appeal, set aside the order of the Courts below and direct that the petition of the plaintiffs be dealt with according to law. They will get their costs throughout.

Shearer J.

I agree.