

(1965) 02 KAR CK 0012
In the Karnataka High Court
Case No : Second Appeal No. 625 of 1961

Murgeppa Veerabhadrapa

APPELLANT

Vs

Rachappa Veerabhadrapa

RESPONDENT

Date of Decision : 18-02-1965

Acts Referred:

Limitation Act, 1908 — Section 182, 183

Citation : AIR 1966 Kar 11 : (1965) 1 MysLJ 532

Hon'ble Judges : K.S. Hegde, J

Bench : Single Bench

Judgement

(1) In this second appeal, this Court is called upon to determine the true scope of the expression "some part of the principal money secured thereby or some interest on such money has been paid", found in the proviso to the third column of Art.183 of the Limitation Act, the question arising for decision being whether the claim made in the execution petition which has given rise to this appeal, is barred by time.

(2) The material facts of the case are these. Respondent as Decree-holder obtained a decree against the appellant and two others in Summary Suit No. 299 of 1944 on the Original Side of the Bombay High Court. The decree in question was passed on 19th August 1944. The application for execution with which we are concerned in this case was filed on 21st June 1957. The judgment debtor No.3 paid to the Decree-holder on 25th June 1947 a sum of Rs. 1,000 and another sum of Rs. 700 on 18th August 1949. The question that arises for decision is, whether these payments can be said to keep alive the decree against all the judgment-debtors.

(3) Article 183 of the Limitation Act reads this:

(1) (2) (3)

To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary Civil jurisdiction, or an order of the Supreme Court.

Twelve years When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right. Provided that when judgment, decree or order has been revived, or some part of the principal money secured thereby or some interest on such money has been paid, or some acknowledgment or right thereto has been given in writing signed by the person liable to pay such principal or interest or his agent, to the person entitled thereto or his agent, the 12 years shall be computed from the date of such revivor, payment of acknowledgment or the latest of such revived payments or acknowledgments, as the case may be"

(4) The decree with which we are concerned in this case is a decree made by the Bombay High Court in the exercise of its original Civil jurisdiction. That Court was established by a Royal Charter.

(5) It is not denied that the decree-holder had a period of 12 years from the date his right to enforce the decree accrued, to execute the decree. The right to execute the decree accrued on the date of the decree viz., 19th August 1944. Therefore, he had a right to execute the decree till 19th August 1956. The execution petition with which we are concerned in this case was filed on 21st June 1957. Hence, prima facie, that execution petition is barred by time. But the question is, whether the payments made by judgment-debtor No. 3 on 25th June 1947 and 18th August 1949 extend the period of limitation. If the payment made by judgment debtor No. 3 on 18th August 1949 is held to give a fresh life to the decree, then it follows that the Decree-holder had a right to execute the decree till 18th August 1961. In that case, the execution petition is well within time.

Therefore, we have to address ourselves to the question whether the payment made on 18th August 1949(I am wholly ignoring the payment made on 25th June 1947 as it is irrelevant for deciding the point is issue) can be held to be a payment coming within the meaning of the expression "some part of the this principal money secured thereby or some interest on such money has been paid" in the proviso referred to earlier. On a plain reading of the proviso in question it can hardly be doubted that the payment in question is one that comes within that proviso. The proviso does not say in terms that a decree is kept alive only as against the judgment-debtor who pays any portion of the decree amount. It says that once a payment of some part of the principal money secured thereby or some interest on such money is made that would give the Decree-holder a fresh period of 12 years for the execution of the decree. In fact, on the language of the proviso, the payment should be made towards the amount due under the decree. It may be that the provision in question may lend itself to mischief; but that is a matter for the legislature. If the language of the proviso is plain and unambiguous, as I think it is in the present case, no question of interpretation arises. The duty of the Court is to give effect to the language.

(6) Sri Malimath, the learned counsel for the appellant, in support of his argument that payment by one Judgment-debtor cannot keep alive the decree against the other Judgment-debtor, tried to seek support from the language of

the second part of Explanation I to Article 182 which says:

"Where the decree or order has been passed jointly against more persons than one the application, if made against any one or more of them or against his or their representatives, shall take effect against them all."

(7) Accordingly to Mr. Malimath, absence of a similar provision in Article 183 goes to indicate that the Legislature did not intend that the payment by one of the judgment-debtors in a decree coming under Article 183, should have the effect of keeping the decree alive as against his co-judgment-debtors. As observed by the Allahabad High Court in *Ram Krishna Murarji Vs. Ratan Chand and Another*, that each article of the Limitation Act has its own language and it is that language which is to be interpreted in each case. While explanation I to Article 182 provides that in the case of a joint decree the execution against one judgment-debtor would keep alive the decree against all the Judgment-debtors, the proviso to Article 183 provides that payment towards the decree keeps alive the decree. Hence, there is no point in comparing the language of Article 182 with that of Article 183 of the Limitation Act. I am of the opinion that in a decree coming under Article 183 any payment made towards the decree keeps alive the decree against all the Judgment-debtors. My view in this regard finds full support from the decision of a Bench of the Madras High Court in *Arjee Prabappa Chetti Vs. Koneti Desikachari*, and that of the Patna High Court in *Tugan Mull Vs. Ladhu Lal and Others*, In the former case, it was laid down that:

"Under Article 183 payment is not required to be made either by the debtor or by some person acting on his behalf for the purpose of saving limitation. Payment for Judgment debtor or to his account is sufficient."

A similar view was taken in the latter case. Speaking for the Bench, Fazl Ali, J., as he then was, laid down therein:

"That the word "payment" in Article 183 has a wider meaning than that contemplated in Section 20, Article 183 is not qualified in any way as to the mode in which the payment is to be made or as to the person who is to make it; part payment of the decree debt in execution will provide fresh starting point for limitation; and limitation will be saved not only against the Judgment-debtor who made the payment but against other Judgment-debtors also."

(8) Reliance is placed by Sri Malimath, on *James Russel McLaren v. Veeriah Naidu* ILR 38 Mad 1102 : AIR 1916 Mad 1038 (2) ; *V. Krishnaiyah Vs. C. Gajendra Naidu and Others*, ; *M.G. Murugesam Chetty Vs. E. Kanniappa Mudaliar*, ; *Bhobani Naik Vs. Balaram Dhal*, and *Ram Krishna Murarji Vs. Ratan Chand and Another*, , in support of his contentions. I do not think that these decisions support the contentions advanced on behalf of the appellant. They bear on a totally different point. In those decisions it was laid down that if a decree is revived as against one judgment-debtor it does not mean that it is revived against all the Judgment-debtors. In all those cases, the question that fell for decisions was, whether a decree has been revived in an execution levied against

all the Judgment-debtors, can it be said that the decree is revived against all the judgment-debtors. The decisions referred to above negative the contention that the revival of the decree effected is a revival against all the judgment-debtors.

It may be noted that the proviso to Article 183 contemplates the keeping alive of the decree in three different manners, viz., revival of a decree keeping alive the decree by payment and keeping alive the decree by acknowledgment. Each one of these contingencies is independent of the other. In this case, we are not concerned either with the question of revival of a decree or of keeping alive the decree by acknowledgment of the debt. The two sets of cases deal with different facets of a question. Therefore, it cannot be said that there was any conflict between the two lines of decisions referred to above.

(9) No decisions taking a view contrary to that taken in Arjee Prabappa Chetti Vs. Koneti Desikachari, and Tugan Mull Vs. Ladhu Lal and Others, were brought to my notice.

(10) For the reasons mentioned above, this appeal fails and the same is dismissed.

(11) The respondent is not represented in this court. Hence there will be no order as to costs.

(12) Appeal dismissed.