
(1986) 07 KL CK 0025
In the High Court Of Kerala
Case No : C.R.P. No. 1157 of 1982-D

Nanikutty Amma Kamalamma	Vs	APPELLANT
The Trivandrum Permanent Bank		RESPONDENT

Date of Decision : 23-07-1986

Acts Referred:

Limitation Act, 1963 — Article 136

Citation : AIR 1987 Ker 163

Hon'ble Judges : Varghese Kalliath, J

Bench : Single Bench

Advocate : Panicker and Poti, for the Appellant; T.R.G. Warriyar, for the Respondent

Judgement

Varghese Kalliath, J.—This revision petition concerns a question of limitation. The respondent herein filed a suit O.S. No. 20 of 1960 for recovery of money. The trial Court decreed the suit on 5-7-1966. This decree was enforceable only against the defendants 1 to 12, 14 and 16 and their assets. The plaintiff was not satisfied with the said decree. He filed an appeal against that decree and in that appeal the plaintiff claimed a decree against all the defendants in the suit namely defendants 1 to 34 and also against the assets of all the defendants. In appeal the trial Court decree was confirmed. It was on 24-10-1972.

2. The Counsel for the plaintiff tells me that execution of the decree was sought in the year 1976. But later the execution petition was not prosecuted. Now the plaintiff has filed E. P. No. 29 of 1980. This is dt. 19-4-1980.

3. The 4th defendant-revision petitioner contended that the execution petition is barred by limitation. The execution Court rejected the contention and ordered execution. Hence he files this revision.

4. The format of the contention is that the period of 12 years in Article 136 of the Limitation Act for the execution of the decree has to be computed not from the date of disposal of the appeal but from the date of the trial Court decree i.e.

5-7-1966. If this date is taken as the date of the starting point of limitation obviously the execution petition is barred by limitation.

5. Counsel for the revision petitioner based this argument on the new and different phraseology used in Article 136 of the new Limitation Act for the purpose of reckoning the starting point of limitation. He submits that the change effected in the language to denote the starting point of limitation in Article 136 is significant and that has to be examined for a proper valuation of his submission.

6. The article corresponding to Article 136 in the new Act is Article 182 in the 1908 Act. I quote the articles.

"Art. 136 For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court

Twelve years

Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:

Provided that an application for enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

Art. 182 : For the execution of a decree or order of any Civil Court not provided for by Art. 183 or by S. 48 of the CPC 1908 (V of 1908)

Three years : or, where a certified copy of the decree or order has been registered, six years.

1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or
....."

Clause (2) of the third column of Article 182 denoting the "time from which period begins to run" provided that if there has been an appeal, limitation for the execution of the decree would commence only from the date of the final decree or order of the appellate Court or withdrawal of the appeal. Now there is a total change in the phraseology in regard to the starting point for the computation of the period of limitation in the new provision, viz. Article 136 of the Limitation Act. In the new Act in Article 136 the starting point of limitation is :

"Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money....."

The new Article 136 makes a very serious deviation from the old Article 182 in the matter of starting point of limitation. It provides that the time will begin to run from the moment the decree or order becomes enforceable. (continued on 2nd column)

7. Counsel relying on the language used in the Article namely that the time will begin to run where the decree or order "becomes enforceable" submits that it should be held that the time of 12 years for the execution of the decree has to be computed from the date when the trial Court passed the decree. He says that there was an enforceable decree as soon as the trial Court decreed the suit. He tells me that a plain reading of Article 136 will never admit of any other interpretation. He reminds me that the filing of the appeal will never stop the running of time. He is correct in his submission that the filing of the appeal alone will not stop the running of time for limitation. But in this case, there was an appeal and in that appeal the appellate Court after considering the merits of the case confirmed the decree of the trial Court. In such a case, what is to be ascertained is : what is the decree that can be executed whether it is the trial Court decree or the appellate Court decree? The further question is whether the trial Court decree subsists for execution. What is the decree that is enforceable? These questions are relevant. They call for answer. These questions I feel have been answered plainly and clearly by this Court in the decision reported in *Mathevan Bhargavan Vs. Dadi Bivi Halima Bivi and Others*, . This Court observed thus :

"The appellate decree alone is capable of enforcement even though it is by way of confirmation of the decree of the trial Court."

8. Viscount Dunedin, J. in *Jowad Hussain v. Gendan Singh* AIR 1926 PC 93 quoted what Tudball, J. said in *Madho Ram and Others Vs. Nihal Singh and Others*, . The Privy Council said : --

"The point is put with admirable brevity by Tudball, J.:--

"When the Munsiff passed the decree it was open to the plaintiff or the defendant to accept that decree or to appeal. If an appeal is preferred, the final decree is the decree of the appellate Court of final jurisdiction. When that decree is passed, it is that decree and only that which can be made final in the cause between the parties."

9. In *Nagendra Nath v. Suresh* AIR 1932 PC 1652 Sir Dinesh Mulla puts the same point thus : --

"There is no warrant for reading into the words "where there has been an appeal" any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. So long as there is any question sub judice between any of the parties those affected shall not be compelled to pursue the so often thorny path of execution which, if the final result is against them, may lead to no advantage. Nor in such a case as this is the judgment-debtor prejudiced. He may indeed obtain the boon of delay, which is so dear to debtors. Hence the contention that an appeal in order to save limitation under Clause 2 of the articles must be one to which the persons affected were parties and that it must also be one in which the whole decree was imperilled is not sound."

10. I feel no doubt that in cases where the decree of the trial Court is taken up in appeal and the appellate Court disposes the appeal confirming the decree, the decree to be executed is only the decree of the appellate Court and not of the trial Court. In *Gojer Bros. (Pvt.) Ltd. Vs. Shri Ratan Lal Singh*, , the Supreme Court also took the same view, I have mentioned, relying on AIR 1926 PC 93.

11. The jurisprudential justification for the application of the doctrine of merger seems to be that there cannot be at one and the same time more than one operative order or decree governing the same matter. So, it follows that a judgment of an inferior Court if subjected to an examination by the superior Court and the superior Court disposes of that matter, the judgment of the inferior Court ceases to have existence as an operative judgment in the eye of law. It is superseded for all purposes by the judgment of the superior Court. The identity of the judgment of the inferior Court is lost by its merger with the judgment of the superior Court.

12. Gajendragadkar, J. in *Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co.*, observed that there can be no doubt if an appeal is provided against an order passed by a Tribunal, the decision of the Appellate Authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority, the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement. It has to be noted that the consequence of the confirmation or affirmance of the decision of the inferior Court by the superior Court, is to render the decision of the superior Court alone to subsist and to be operative and capable of enforcement.

13. Wanchoo J. in *Collector of Customs, Calcutta Vs. East India Commercial Co. Ltd.*, explains the position thus :--

"It is this principle, viz., that the appellate order is the operative order after the appeal is disposed of, which is in our opinion the basis of the rule that the decree of the lower Court merges in the decree of the appellate Court, and on the same principle it would not be incorrect to say that the order of the original authority is merged in the order of the appellate authority whatsoever its decision -- whether of reversal or modification or mere confirmation."

14. I have no doubt that the decree of the appellate Court alone subsists, and that alone can be executed. It is dt. 24-10-1972. The E.P. has been filed on 19-4-1980. Obviously it is within 12 years. There is no limitation. In this view, the C.R.P. is only to be dismissed and I do so. The execution Court should take up E.P. No. 29/1980 and should proceed with that E.P. No order as to costs.