
(1941) 03 PAT CK 0021
In the Patna High Court

N.V. Ranganandham and Others

APPELLANT

Vs

M. Ponnacharamma

RESPONDENT

Date of Decision : 26-03-1941

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48, 8

Citation : AIR 1942 Patna 128

Hon'ble Judges : Dhavle, J;Chatterji, J

Bench : Full Bench

Judgement

Chatterji, J.—The question for determination in this appeal is whether an application for execution of a decree is barred by limitation. The decree in question was passed by the Presidency Small Cause Court of Madras on 13th October 1925. It was transferred for execution to the District Munsif's Court at Berhampore, and the present application was filed in that Court on 6th May 1938. The execution was thus filed beyond 12 years from the date of the decree. There were some previous execution eases, and it is not disputed that the present execution is not barred under the three years' rule prescribed by Article 182 of Schedule 1, Limitation Act. The objection was taken by the judgment-debtor that the execution was barred u/s 48, Civil P.C., and also under Article 183 of Schedule 1, Limitation Act. The learned Munsif overruled the judgment-debtor's objection and allowed the execution to proceed. On appeal to the District Judge, the objection was confined only to Article 183 of Schedule 1, Limitation Act. The learned District Judge, agreeing with the Munsif's view, dismissed the appeal. Hence this appeal by the judgment-debtor. Mr. S.N. Sen Gupta for the appellant, in the first place contends that Section 48, Civil P.C., bars the present execution. That section enacts:

Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 12 years from? (a) the date of the decree sought to be executed.

2. But Section 8, Civil P.C., provides: Save as provided in Sections 24, 38 to 41, 75, Clause (a), (b) and (o), 76, 77 and 155 to 158, and by the Presidency Small Cause Courts Act, 1882, the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the Towns of Calcutta, Madras and Bombay.

3. It is, therefore, obvious that Section 48 of the Code does not apply to any proceeding in, any Court of Small Causes established in the towns of Calcutta, Madras and Bombay. It is conceded that if the present execution had been taken out in the Presidency Small Cause Court of Madras, Section 48 of the Code, would not, by virtue of the provisions of Section 8 of the Code, have been applicable. It is, however, contended that as the present execution is a proceeding in a Court other than "any Court of Small Causes established in the towns of Calcutta, Madras and Bombay" Section 8 of the Code will not operate so as to make Section 48 inapplicable. This contention, if accepted, would lead to an obvious anomaly: if Section 48 is to govern the present execution, it will be barred, but if the next day a fresh application for execution is made in the Presidency Small Cause Court of Madras, the execution will not be barred. Such inconsistent position could not possibly have been contemplated by the Legislature. It seems to me that when Section 8, Civil P.C., says that "the provisions in the body of this Code shall not extend to any suit," it means that the provisions shall not also extend to any decree passed in any such suit. In this view Section 48 of the Code will not apply to a decree passed by a Presidency Small Cause Court. The point is covered by the decision of the Madras High Court in *Sree Krishna Doss v. Alumbi Ammal* 36 Mad. 108. In that case, a decree passed by the Presidency Small Cause Court of Madras was transferred for execution to the City Civil Court. In the latter Court an application for execution was filed beyond 12 years from the date of the decree. The judgment-debtor raised the objection that the execution was barred u/s 48, Civil P.C. The lower Court gave effect to this objection and dismissed the execution case. On appeal the High Court reversed the decision, holding that Section 48 had no application. Mr. Sen Gupta argues that in that case the question of the true interpretation of Section 8, Civil P.C., as suggested by him, was not raised or decided. But the learned Judges obviously had Section 8 in their mind, because they observed: "This section Section 48, Civil P.C., is not applicable to any suit or proceeding in the Presidency Small cause Court." They further said:

In our opinion the exception relating to Section 48, Civil P.C., should also naturally be understood as applicable to decrees passed by the Courts to which that section is applicable.

4. In my opinion, the view taken in the above case is correct. Mr. Sen Gupta, on the authority of the Privy Council decision in *Her Highness Ruckmaboyee v. Lulloobhoy Mottichund* 5 M.I.A. 234 contends that the law of limitation is a law relating to procedure, and that consequently Section 48, Civil P.C., which is applicable to the Munsif's Court at Berham-pore, should govern the case. A

similar contention was raised in *Sree Krishna Doss v. Alumbi Ammal* 36 Mad. 108 and was considered and overruled by the learned Judges. Mr. Sen Gupta, also lays stress on the following words in Section 48: "no order for the execution of the same decree shall be made" and he argues that the section does not really lay down any rule of limitation, but merely prescribes a rule of procedure. Undoubtedly, the section lays down a rule of procedure, but its effect is to put a time limit to execution in certain cases. I have already shown that upon a proper construction of Section 8, Civil P.C., Section 48 of the Code is inapplicable in the present case. Mr. Sen Gupta, in the next place, contends that the present execution is barred under the 12 years" rule prescribed by Article 183 of Schedule 1, Limitation Act. The first column of that article is in these words:

To enforce a judgment, decree or order of any Court established by a Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.

5. The decree under execution in the present case is admittedly not a decree "of any Court established by a Royal Charter in the exercise of its ordinary original civil jurisdiction." In other words, it is not a decree passed by the High Court in the exercise of its ordinary original civil jurisdiction. But Mr. Sen Gupta seeks to apply Article 183 with reference to Section 16, Presidency Small Cause Courts Act (15 of 1882) which runs as follows:

All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

6. The law of limitation is dealt with in the Limitation Act and all questions relating to limitation must be decided with reference to the provisions of that Act, subject of course to the express provisions of any special or local law. Section 16, Presidency Small Cause Courts Act, in no way affects the provisions of the Limitation Act. When a decree passed by one Court is sent to another Court for execution, the period of limitation applicable to the execution of the decree depends on the character of the Court which passed the decree, and not on the character of the Court executing it. This was held in *Tincourie Dawn v. Debendra Nath* 17 Cal. 491 . In that case a decree which was passed by the Presidency Small Cause Court of Calcutta was transferred to the High Court for execution. The execution was filed in the High Court within 12 years, but beyond three years, from the date of the decree. The judgment-debtor took the objection that the execution was barred by three years" rule. The decree-holder, on the other hand, contended that the execution, being in the High Court, was governed by the 12 years" rule under Article 180, Limitation Act of 1877 (corresponding to the present Article 183). On behalf of the decree-holder reliance was placed on Section 228 of the Civil P.C. of 1882 (corresponding to Section 42 of the present Code), as Mr. Sen Gupta does in the present case. Section 42 of the present Civil P.C. provides:

The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

7. This section as pointed out by Wilson, J., in the above case in *Tincourie Dawn v. Debendra Nath* ("90) 17 Cal. 491

deals simply with the manner of execution and leaves the matter of limitation to be governed by the Limitation Act.

8. There is, therefore, no justification for the contention that the present execution will be governed by Article 183 of Schedule 1, Limitation Act. I think the Courts below were right in holding that the present execution is governed by Article 182 of Schedule 1, Limitation Act and, therefore, not barred by limitation. I would, therefore, dismiss the appeal with costs.

Dhavle, J.

I agree.