
(1971) 03 MAD CK 0056
In the Madras High Court

P. Narayanasami Reddiar

APPELLANT

Vs

K.M. Jayarama Reddiar

RESPONDENT

Date of Decision : 05-03-1971

Acts Referred:

Limitation Act, 1908 — Article 11A

Citation : (1971) 84 LW 793 : (1971) 2 MLJ 369

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

M.M. Ismail, J.—The defendant in O.S. No. 60 of 1964, on the file of the Court of the District Munsif of Tirupattur, who lost before the trial Court, as well as the first appellate Court, is the appellant before this Court. One Kullathai alias Amavasai Reddi was the decree-holder in O.S. No. 76 of 1954, on the file of the Subordinate Judge's Court, Vellore, for recovery of possession of certain immovable properties. Under Exhibit A-4 dated 19th March, 1959, the said Amavasai Reddi sold the properties covered by the decree in O.S. No. 76 of 1954 in favour of the respondent herein. However, the appellant herein claimed to have obtained an assignment of the decree from the very same Amavasai Reddy under a document marked as Exhibit B-1 dated 9th March, 1959. On the strength of this assignment, he applied to the Court for recognition of the assignment and the same was ordered. Thereafter, when he proceeded to take delivery of possession of the properties, the same was obstructed by the Respondent herein. For removal of the obstruction, the appellant herein filed a petition in E.A. No. 1145 of 1960 and the same was ordered on 5th July, 1961. Against that order, the respondent herein filed a revision petition to this Court and the same was numbered as C.R.P. No. 1430 of 1961 and was admitted by this Court. Subsequently, that civil revision petition was dismissed by this Court on 19th November, 1963. At this stage, it is necessary to mention one fact and that is E.A. No. 1145 of 1960 was ordered on the ground that the obstruction offered by the respondent herein was mala fide and that finding was upheld by this Court in C.R.P. No. 1430 of 1961. It was thereafter the present suit, O.S. No.

60 of 1964 was instituted by the respondent herein to set aside the summary order on the ground that he became entitled to the properties by virtue of the purchase under Exhibit A-4, dated 19th March, 1959. His case in the suit was that the assignment obtained by the appellant herein was not valid; as a matter of fact, the deed of assignment was executed by Amavasai Reddi in favour of the appellant herein subsequent to the sale of the properties to the respondent and the document was ante-dated and that ante-dating was made clear by the fact that stamp papers for Rs. 140 were purchased on 9th February, 1959, and the document itself was registered only on 13th April, 1959. The appellant herein resisted the suit of the respondent on several grounds including the one that the suit was barred by limitation with reference to Article 11-A of the First Schedule to the Limitation Act of 1908.

2. The learned Principal District Munsif who tried the suit accepted the case of the respondent herein that the assignment under Exhibit B-1 was only subsequent to the sale of the properties under Exhibit A-4, that the same was ante-dated and on the date of the assignment the assignor had parted with his interest in the properties and that therefore under the assignment deed, the appellant herein secured no interest in the suit properties.

3. On the question of limitation, following the judgment of this Court in Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, the learned District Munsif came to the conclusion that the time during which the Civil Revision Petition was pending on the file of this Court was liable to be excluded u/s 14(1) of the Limitation Act, that even otherwise, the starting point of limitation with reference to the third column of Article 11-A was the date of the final order passed by this Court in C.R.P. No. 1430 of 1961 and that if so calculated, the suit was within time.

4. Against this judgment of the learned District Munsif, the appellant preferred an appeal to the learned Subordinate Judge of Tirupattur, and the learned Subordinate Judge, on 19th August, 1966, in A.S.No. 86 of 1966, dismissed the appeal concurring With the conclusion of the learned District Munsif. Hence the present second appeal by the defendant in the suit.

5. As far as the finding of the Courts below that the assignment in favour of the appellant herein was subsequent to the sale of the properties in favour of the respondent herein is concerned, it is overwhelmingly supported by evidence, and, in view of this feature, Mr. Vedantachari, learned Counsel for the appellant, did not, very fairly, canvass the correctness of this finding. He confined his attack on the judgments of the Courts below with reference to their conclusion on the question of limitation. The argument of Mr. Vedantachari is that the third column of Article 11-A of the First Schedule to the Limitation Act of 1908 mentions the starting point of limitation as "the date of the order" and that will mean only the date of the original order, and not the date of any appellate order or revisional order. According to the learned Counsel this position becomes clear When the third column of Article 11-A is compared with the third column of Article 13

which uses the expression "the date of the final decision or order in the case by a Court competent to determine it finally" and also with the third column of Article 182 of the same schedule which expressly mentions the date of the decree or order, or where there has been an appeal, the date of the final decree or order of the Appellate Court, or where there has been a review of judgment, the date of the decision passed on the review, or when there has been an amendment of the decree, the date of the amendment, separately as distinct from one other. The contention of the learned Counsel is, when the other articles of the Schedule make a clear distinction between the order and the final order on appeal, or on review or amendment, Article 11-A merely uses the expression "the date of the order" and it can only mean the date of the order of the executing Court, and the date of the order of the appellate Court or the revisional Court cannot be comprehended by the expression "the date of the order". Of course, there is the other question, whether the period during which the civil revision petition on the file of this Court was pending can be excluded u/s 14(1) of the Limitation Act or not. I am clearly of the opinion that, with reference to the facts of this case, the period during which the civil revision petition was pending on the file of this Court cannot be excluded u/s 14 (1) of the Limitation Act and even the decision of this Court in Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, , relied on by the Courts below supports this conclusion. Section 14(1) of the Limitation Act of 1908 is as follows:

In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, whether the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

The indispensable ingredient for the application of Section 14(1) is that the Court in which the other proceeding was pending must be unable to entertain it "from defect of jurisdiction or other cause of a like nature". If this condition is not satisfied, even if the other conditions in Section 14(1) are satisfied, that section will not apply. In this particular case, I have already referred to the fact that in C.R.P. No. 1430 of 1961 this Court concurred with the conclusion of the executing Court that the obstruction offered by the respondent herein was mala fide and the civil revision petition was not dismissed by this Court on the ground of on alternative remedy by Way of a suit being available to the respondent herein, or on the ground of there being no error of jurisdiction in the order of the executing Court. Only if the civil revision petition had seen dismissed on any of these grounds, then Section 14 (1) would be attracted because it could be then said that this Court was unable to grant any relief "from defect of jurisdiction, other Cause of a like nature".

5-a. Even the decision of this Court in Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, , does not support the conclusion of the Courts below in this

behalf because in that case when a revision petition was preferred to this Court, that petition was dismissed on the ground that the petitioner had a remedy by way of a suit under Order 21, Rule 63 of the Code of Civil Procedure, and was not dismissed on the merits. Therefore, the decision of this Court in Koppolu Venkataswami v. Uttarkar Sara Bai so far as this aspect is concerned, would have had any application only if C.R.P. No. 1430 of 1961 had been dismissed on the ground that the respondent herein had a remedy by way of a civil suit. In so far as the civil revision petition was dismissed on merits, Section 14 (1) will not be attracted and the above decision of this Court also will have no application.

6. That leaves only the other question, namely, as to what is the starting point of limitation under Article 11-A of the First Schedule to the Limitation Act of 1908. Fortunately, there are two decisions of this Court which support the conclusion of the Courts below. Before I refer to those two decisions, it is necessary to refer to the observation of this Court in Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, , itself on this question. Somayya, J., who decided the case, stated as follows on this part of the question.

There is one other question whether the starting point under Article 11 of the Limitation Act, must be taken to be the final order, i.e., the order in the revision petition. It is not denied on the other side that if there was an appeal against the order and an order was passed by the appellate Court, it would be the date of the appellate order that would be the starting point. That question has been decided by a Bench of this Court in Venugopala Mudali v. Venkatasubbiah Chetti ILR (1916) Mad. 1196. But it is urged that if it is a revision petition, the starting point must be the date of the first Court's order. I do not see any justification for this contention. It will be noted that even in a civil revision petition, it is clear that if the High Court passed an order allowing the revision and held against the respondents in the revision petition, the party who was unsuccessful before the High Court would have to file a suit within one year from the date of the High Court's order. Therefore if the real reason for holding that in the case of an appeal the starting point should be the date of the appellate order is that the appeal is a continuation of the proceedings of the trial Court, the same reasoning should apply in the case of a civil revision petition and there is no reason why a different construction should be applied in the case of a civil revision petition. I am aware that a different view has been expressed in some judgments and I would say, speaking for myself, that there is much to be said in favour of the view that under Article 11 of the Limitation Act, the starting point should be taken to be the date of the final order, whether that order was passed on an appeal from that order or whether it was passed in a civil revision petition from that order. Having regard to my decision on the first point, it is unnecessary to go further into this question.

In view of the reservation implied on the last sentence in the extract given above, Mr. Vedantachari, the learned Counsel for the appellant, contended before me that the decision of Somayya, J., cannot be considered to be an authority on

this aspect of the question. Since the learned Judge had already held that the time during which the civil revision petition was pending was liable to be excluded, u/s 14(1) of the Limitation Act certainly it was really unnecessary to decide the question whether if Section 14(1) were not applicable, the starting point of limitation could be the date of the order of this Court in the civil revision petition in that case. Since I have held in the present case that Section 14(1) of the Limitation Act is not attracted, it becomes necessary for me to decide this question for the disposal of this second appeal.

7. Before I refer to the decision of this Court in *C. V. Venugopal Mudali v. Venkatasubbiah Chetty and three Ors.* ILR (1916) Mad. 1196 referred to by Somayya, J., it is necessary to extract Article 11-A in full:

Description of suit.

Period of limitation

Time from which period begins to run.

1

2

3

11-A. By a person against whom an order has been made under the Code of Civil Procedure, 1908, upon an application by the holder of a decree for the possession of immovable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser to establish the right which he claims to the present possession of the property comprised in the order.

One year

The date of the order.

The question for consideration is whether there is anything inherent in that Article itself so as to limit the expression "the date of the order", occurring in the third column, to the original order, or can it have reference to any subsisting final order. In my opinion, having regard to the language contained in the first column of Article 11-A there is nothing inherently impossible in this case to construe the expression "the date of the order" occurring in column 3, as meaning the date of the final order or the ultimate or subsisting order, with reference to the particular complaint or claim, which had been adjudicated by the Court. If an order of the Court of the first instance has been taken up on appeal, or in revision, according to the procedure prescribed by law, and the order of the original Court has been confirmed, or modified, or reversed, the ultimate order that survives is that of the Court of appeal or revision and the order of the original Court merges with

that order. As a matter of fact, once such an order has been taken up on appeal or revision and the appellate or the revisional Court has pronounced its judgment, the original order loses its existence as an independent order and becomes merged with the order of the appellate Court or the revisional Court, which order alone will be the subsisting order, and if anybody complains against that order, the order which will be subject matter of the complaint will be the ultimate order and not the original order.

8. Having this as the background, I shall refer to the decision of this Court in C. V. Venugopal Mudali v. C. Venkatasubbiah Chetty and three Ors. ILR (1916) Mad. 1196. In that case, a claim petition was filed by the second defendant in the suit objecting to the attachment of certain properties as belonging to the first defendant in execution of the decree passed by the High Court on its original side. The petition was allowed in favour of the claimant by an order passed by a single Judge of the High Court on the original side. The plaintiff-decree holder filed an appeal against the order of the High Court under Clause 15 of the Letters Patent and the original order was confirmed on appeal. The plaintiff thereafter instituted a suit under Order 21, Rule 63 of the Code of Civil Procedure, 1908, to establish his right to attach the property. By the time the suit was instituted, it was more than one year from the date of the original order, but it was within one year from the date of the appellate Order. The question for consideration was whether, with reference to Article 11 of Schedule I to the Limitation Act, the suit was barred or not. This Court held that the word "order" in Article 11 of the Limitation Act should be construed as meaning the only subsisting order in the case, which is the appellate order (when there has been an appeal) in accordance with the recognised principles of jurisprudence. The Bench pointed out that except to the extent to which the statute law treats the judgment of the first Court as existing for certain purposes, the appellate Court's judgment on general principles of jurisprudence supersedes the judgment of the first Court even when the appellate judgment is a judgment confirming the lower Court's decision. Dealing with an argument similar to the one put forward by Mr. Vendantachari, the Court pointed out:

It was however urged that because in two or three other articles of the Limitation Act special provision is made for counting the period from the date of the appellate order when there has been an appeal and no such special provisions are found in Article 11, therefore the Legislature intended the date of the original order to be the starting point so far as the suits mentioned in Article 11 are concerned even when there has been a Letters Patent Appeal. It appears to me that there are at least two answers to this argument. One answer is that the fact that the Legislature in order to remove all doubts and with abundant caution has specially made provision in some cases for the contingency of an appeal, namely, that the order passed in the appeal was to be the starting point in those cases that fact is not a sufficient reason for not construing the word "order" found in Article 11 as the only subsisting order passed on the claim petition (where there has been an appeal) in accordance with recognised principles of jurisprudence.

Secondly, there seems to be at least one other Article in the Limitation Act in which there is no express reference to the contingency of an appeal and to the decree passed on such an appeal, but the Legislature must have intended that the starting point must be the date of the final appellate decree (in case there was an appeal) and not the original decree. I refer to Article 175 which says that an application for payment of the decree amount by instalments under the CPC should be made within six months from the date of "the decree". Such an application is made under Order 20, Rule 11, Clause (2), and it cannot surely be held that where the original Court passes a decree for a certain sum of money and the plaintiff appeals to the appellate Court on the ground that he ought to have been decreed a larger sum but his appeal is dismissed, an application under that order and rule cannot be made by the judgment-debtor after six months from the date of the original decree but within six months from the date of the appellate decree even though the decree-holder consented to such an order being made.

This extract from the judgment of the Bench completely and clearly answers the argument of Mr. Vedantachari in this behalf. Therefore, if the matter in the present case, instead of being a case of revision u/s 115 of the Code of Civil Procedure, had been an appeal the decision of the Bench of this Court, which is binding on me, is a complete answer to the contention raised by the learned Counsel for the appellant.

9. The only other question that has to be considered is whether the fact that in the present case it was not an appeal preferred to this Court, but a revision petition, will make any difference to the legal position. In my opinion, on the general principles of jurisprudence, there cannot be any difference. Once the word "order" occurring in Article 11 or 11 -A (there is no difference between the two Articles as far as this is concerned and the argument was advanced before me only on that basis) is not to be confined only to the original order and it can refer to an appellate order, which alone remains as the final order or subsisting order, I am unable to, see any reason for not including an order passed in revision though, confirming, as the only final order or subsisting order, within the scope of the word "order" occurring in column 3 of Article 11-A. A revision is provided, as much as an appeal, by the very same law relating to procedure and, if in regard to a particular matter an appeal is available and the appellate Court passes the final order and, with regard to another matter, only a revision is available and the Court exercising powers of revision passes the final order, there is no justification either in logic, or on principle, for making a distinction between the two kinds of orders passed by the Court to which an appeal or revision was taken according to the procedural law applicable in this behalf. Apart from this general principle, there is the authority of a Full Bench of this Court in P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar (deceased) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others, , to the effect that there is no essential difference between a remedy by way of appeal and that by way of a revision. That case arose expressly with reference to

Article 182 of the First Schedule to the Limitation Act of 1908. I have already referred to the fact that Article 182 refers to the original decree or order, the appellate decree or order, the order on review and the order on amendment, separately and independently. The thing to be noticed is that Article 182 did not refer to an order in revision at all. Therefore, there is some plausibility of an argument that, when the Legislature has chosen to enumerate the different possible kinds of orders with reference to which the limitation has to be computed and in the context of enumerating every kind of order, has failed to enumerate an order in revision as one of them, certainly, the Legislature did not intend to include an order in revision as one of the orders with reference to which the limitation should commence. Notwithstanding this plausible argument, the Full Bench held that Article 182 (2) of the First Schedule to the Limitation Act includes Civil Revision Petitions as well and hence the execution application filed within the prescribed time calculating from the date of the order in the revision petition was within time. If the ratio of the decision of the Full Bench is applied to the present case, it will mean that the period of one year contemplated by Article 11-A can be computed from the date of the order of this Court in C.R.P. No. 1430 of 1961, namely, from 19th November, 1963, and, if it is so computed, the present suit was admittedly within time.

9-a. Mr. Vedantachari wanted to contend that this Full Bench decision was considered by a Bench of this Court in the decision in *Mokshagundam Nagabhushanayya and Others Vs. Pasam Kotayya and Others*, and it has been laid down that there is no analogy between a revision petition and an appeal, that the order dismissing an application for revision does not mean the substitution of the order of the High Court for the order of the Magistrate and therefore it cannot be said to incorporate his order and that the real analogy is when the Court dismisses an application for review. However, this observation of the Bench on which reliance is placed has to be understood in the context of another observation by the very same Bench in the course of the very same judgment and it is as follows:

These judgments (referring to the judgment of the Full Bench and two judgments of the Privy Council) do warrant the assertion that there is an analogy between a revision petition and an appeal; but it does not follow that an order dismissing in limine an application for revision of an order passed u/s 145 (6) of the Code of Criminal Procedure is a final order within the meaning of Article 47 of the Limitation Act.

Thus the Bench decision recognises the assertion that there is an analogy between a revision petition and an appeal, but attempts to make a distinction only with reference to an order dismissing a revision petition in limine. Whether the learned Judges intended to lay down as a general principle that whenever a revision petition is dismissed in limine, that order of dismissal cannot be said to be the only final and subsisting order, but it is the original order that remains in force, or they intended to confine the observation to the dismissal of a petition in

limine for revision of an order u/s 145 (6) of the Code of Criminal Procedure, does not arise for consideration as far as the present case is concerned since G.R.P.No. 1430 of 1961 was not dismissed in limine. All that is necessary for me to point out for the disposal of the present second appeal is that even that Bench which was bound by the Full Bench decision, recognises the assertion that there is an analogy between a revision petition and an appeal and there was no attempt on the part of the Bench to confine the judgment of the Full Bench only to the case arising under Article 183 (2) of Schedule I to the Limitation Act of 1908. Therefore, the combined effect of the decision of this Court in C.V. Venugopal Mudali v. Venkata Subbaiah Chetty and three Ors. ILR (1916) Mad. 1196, and the decision of the Full Bench in P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar (deceased) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others, , is that the "order" that is referred to in column 3 of Article 11-A of the First Schedule to the Limitation Act of 1908 will take in the final order passed by a Court either on appeal, or in revision, either confirming or modifying or reversing, the original order of the lower Court. If this is the effect of these decisions, certainly, in this case, the suit instituted by the respondent within one year from the date of dismissal of C.R.P.No. 1430 of 1961 is within time and the contention of the appellant in this behalf has been rightly negated by the Courts below.

10. Under these circumstances, the second appeal fails and is dismissed. There will be no order as to costs. No leave.