

(1955) 10 AP CK 0001

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2266 of 1953

P. Suryanarayana

APPELLANT

Vs

P. Sreerama chandramurthi and Others

RESPONDENT

Date of Decision : 31-10-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, Order 20 Rule 3, Order 34 Rule 5
Limitation Act, 1963 — Article 181

Citation : (1955) 10 AP CK 0001

Hon'ble Judges : Chandra Reddy, J

Bench : Single Bench

Advocate : K.B. Krishnamurthy, for the Appellant; N. Rajeswara Rao, for the Respondent

Judgement

Chandra Reddy, J.—The question raised in this Code of Criminal Procedure is whether an application for ascertainment of mesne profits and for the passing of a final decree in a suit for partition, for mesne profits and for accounts is governed by Article 181 of the Limitation Act. The suit was filed by the Respondent for partition of the plaint A and B scheduled properties and for delivery of one such share to the Plaintiff and for mesne profits and accounts, and it was decreed on 20-2-1948.

The petition giving rise to this Code of Criminal Procedure was presented on 13-7-1953 before the Subordinate Judge, Vijayawada, for the appointment of a Commissioner for ascertainment of mesne profits and for the passing of a final decree.

2. The petition was opposed by the judgment debtors on the ground that it was barred by limitation as obviously it was beyond three years of the passing of the preliminary decree. The basis of this defence was Article 181 of the Limitation Act.

3. The above objection was overruled by the trial Court which thought that the

petition did not fall within the scope of Article 181 of the Limitation Act., For this conclusion reliance was placed on a judgment of the Calcutta High Court in *Bhushan Chandra v. Chabimoni Dasi* AIR 1948 Cal 363 (A). It also observed that in any event the petition was saved because it was filed within three years from the date when the Plaintiff attained majority.

4. This order of the Subordinate Judge is attacked by Mr. Krishnamurthy as an erroneous one. According to the learned Counsel Article 181 of Limitation Act is attracted to an application ascertainment of mesne profits and also for the passing of a final decree. This argument is founded on *Munnaluri Rama Rao by guardian Gangamma and Another Vs. Tadikonda Sreeramamurthi and Others*, (B) where a Bench of the Madras High Court decided that ascertainment of mesne profits should be applied for within three years of the passing of the preliminary decree, approving the view expressed by Jackson. J. in *Alluri Timmaraju Vs. Alluri Narasimha Raju and Another*, (C).

This ruling does support the contention of Mr. Krishnamurthy. But, it was overruled by a Full Bench of the Madras High Court in *Ramasubramanya Pattar Vs. Karimbil Pati and Others*, (D). There also an application for ascertainment of mesne profits in pursuance of the decree of the trial court was filed under Order 20, Rule 12, Code of Civil Procedure, which is in the following words, after the lapse of three years from the date of the judgment;

12. (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree,

(a) for the possession of the property;

(b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an enquiry as to such rent or mesne profits,

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-

(i) the delivery of possession to the decree-holder

(ii) the relinquishment of possession of the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under Clause (b) or Clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

(3) Where an Appellate Court directs such an enquiry, it may direct the Court Of first Instance to make the inquiry; and in every case the Court of first instance may of its own accord, and shall whenever moved to do so by the decree-holder

inquire and pass the final decree.

5. Defence similar to the one here was put forward. This was negated by the Pull Bench which expressed the opinion that "a person who obtained a preliminary decree whether in the trial court or on appeal had the right to a final decree on mesne profits being ascertained, irrespective of time. The reason of the rule is that the decree-holder is not bound by any provision to file an application for this purpose.

Rule 12 provides that where an order is passed directing an enquiry as to mesne profits a final decree should be passed in accordance with the result of such an enquiry. The fact that a decree-holder moves the court to start the enquiry does not cast an obligation on him to do it within three years; such an application cannot be brought within the ambit of Article 181 of the Limitation Act.

As pointed out by the Full Bench, the application is merely "in the nature of a reminder of what is still to be done." It is not necessary for me here to consider the effect of sub-rule 3 of A. 12 of Order 20, Code of Civil Procedure, one of the questions determined by the Pull Bench as here the order directing an enquiry into the mesne profits etc., was passed by the trial court and not by the appellate Court. The learned Judges of the Pull Bench thought that the Madras Amendment, which added Rule 3 did not take away the right of the decree-holder to move the court for the ascertainment of the profits and for the passing of a final decree.

6. Mr. Krishnamurthy next urged that this case falls within the principle of *Vclaguru Asari v. Suppa Naicken*, ILR (1944) Mad 791: (AIR 1941 Mad 209) (E). I do not think that pronouncement has any bearing on the instant case. There, a mortgage decree was passed ex parte on the B0-9-1936. The attempt to set aside the ex parte decree by the mortgagor's sons proved futile and the preliminary decree became final. On 3-5-1940 the mortgagee applied for a final decree with a prayer for an order excusing delay.

One of the points debated was whether time began to run from 19-1-1937 when the Court directed that the ex parte decree should be set aside on certain conditions or from the date of some other subsequent order the nature of which need not be stated here. In discussing that matter, the learned Judges proceeded on the assumption that the Article of Limitation Act which applied was Article 181. Obviously that decision is inapplicable for reason that that arose under Order 34; Code of Civil Procedure.

Order 34 Rule 5, Code of Civil Procedure, contemplates the passing of a final decree on an application by the decree-holder. That rule therefore requires the decree-holder to seek the remedy by an application. If a party in a suit for foreclosure or for sale is bound to apply to the court for this relief, surely, the provisions of Article 181 are attracted and the petition will be rejected if it is not filed within three years as envisaged in that Article.

It follows that the application out of which the C.R.P. was filed could not be rejected on the ground of limitation as no period is prescribed for such purpose, Article 181 being inapplicable. In view of this, it is unnecessary to consider whether the application was filed within three years of the Respondent attaining majority. In these circumstances, the order of trial court is correct and is consequently affirmed.

7. The Code of Criminal Procedure is dismissed with costs.