
(1877) 02 AHC CK 0001
In the Allahabad High Court

Paras Ram

APPELLANT

Vs

Gardner

RESPONDENT

Date of Decision : 21-02-1877

Acts Referred:

Citation : (1875) ILR (All) 355

Hon'ble Judges : Robert Stuart, C.J;Turner, J;Spankie, J;Pearson, J;Oldfield, J

Bench : Full Bench

Judgement

Robert Stuart, C.J.—We are asked by the reference whether the application of the 25th March 1875, has been brought within the period allowed by Article 167, Schedule 2, Act IX of 1871. It was suggested that Article 167 does not apply to such a case, and no doubt it does not come so literally and precisely within the limits provided by that article. But in my view Article 167 does apply, inasmuch as the application of the 25th March 1875, was not a new or fresh act, but was in legal continuance of the application of June 1871, and in my judgment therefore Article 167 applies constructively, the three years allowed by the article being reckoned from the 10th August 1872, when Paras Ram's rights as against Dabi Das were restored to him.

2. That the execution of the decree is not barred clearly appears from the dates and legal character of the procedure. Paras Ram, the appellant, obtained his decree on the 23rd March 1871, and he applied for execution of it by attachment and sale of the hypothecated property on the 10th of June 1871, and the 21st of August 1871, was fixed for the sale. In the course of the attachment, one, Dabi Das objected to the sale on the ground that he had bought the property in execution of a decree he held against the same judgment-debtor, and on the 16th of August 1871, his objection was allowed. On the 17th of June 1872, (being within a year from the 16th August 1871), Paras Bam brought a regular suit against Dabi Das and obtained a decree in his favour on the 10th of August 1872. On the 25th of March 1875, Paras Ram filed an application for the execution of his original decree of March 1871. It is not explained why he allowed

the interval to elapse without attempting to use his decree, but he had three years from the 10th of August 1872, and, therefore, as between that date and the 25th of March 1875, he was clearly within his rights.

3. The interruption to the execution of his decree was not occasioned by any fault or laches of his own, but was caused by the illegal intervention of Dabi Das. Paras Ram's procedure, therefore, under his decree must he held to have been legally continuous, and he may proceed to its execution.

4. As to the application of the 25th of March 1875, being a fresh application having no such connection with what had gone before as we can now take judicial notice of, I cannot so regard it. On referring to it, I find that it recites the whole previous procedure and simply repeats the prayer for execution of the decree which was made in June 1871. It was, therefore, an application in legal continuance of the former process up to the 10th August 1872, when Paras Ram obtained his decree in regular suit, and it ought to be granted as being within time.

Pearson, J.

5. The application of the 25th March 1875 may be regarded as an application to the Court to proceed with the former application of the 10th June 1871, the proceeding under which had been interrupted by Dabi Das' objection and the order allowing it; but if so regarded, is, nevertheless, in substance and effect an application for the execution of the decree of the 23rd March 1871; and Article 167, Schedule 2, Act IX of 1871, is applicable to it, and requires that it should have been presented within three years from the date of the former application above mentioned. It can scarcely be contended that there is no limitation to the time within which the decree-holder was competent to make such an application as that of the 25th of March 1875; but if the limitation prescribed by Article 167 be not applicable, I do not find any other limitation provided by the law. I see nothing in the law to warrant us in ruling that he was at liberty or bound to make such an application within three years from the date of the decree obtained by him in his suit against Dabi Das on the 15th August 1872. It might be reasonable and equitable to exclude from the computation of the period of limitation fixed by Article 167 the time during which such a suit was pending, but such a course is not authorized by the law. The absence of any provision for the exclusion of that time may be a defect in the law, and cases may be supposed in which the defect might cause hardship. In the present case the decree-holder delayed for 10 months to bring his suit against Dabi Das, and after obtaining a decree therein delayed for thirty-one months to apply to the Court to proceed with the execution of the decree of the 23rd March 1871. His suit against Dabi Das was pending less than two months; and the exclusion from the computation of the period of limitation of the time during which it was pending would not bring his application within time. In my opinion the lower Court have rightly held Article 167 to be applicable to his application of the 25th March 1875, and to preclude its entertainment.

Turner, J.

6. The application made for the execution of this decree by attachment and sale proceeded to such a point that as against the judgment-debtor a sale was ordered when its further prosecution was interrupted by the intervention of a third party, who succeeded in establishing his objection to the satisfaction of the Court executing the decree. The only course open to the decree-holder to procure a revision of the order allowing the objection was by the institution of a regular suit against the objection. This course he adopted, and having obtained a decree setting aside the order allowing the objection and declaring the liability of the property to be brought to sale in execution of the decree he had obtained against the original judgment-debtor, he then applied to the Court executing that decree to proceed with the application for execution which had been interrupted. On the ground that the application we are considering is not a fresh application to execute the decree, but an application to carry out the order which as against the judgment-debtor had become final, and of which the prosecution was interrupted by the allowance of the objection of a third party since disallowed, I am of opinion that the provisions of the Limitation Act relating to applications for the execution of decree do not apply to it.

Spankie, J.

7. I accept the view that the application of the 25th March 1875 must be regarded as one for a continuance of the former proceedings, in execution and not as a fresh application for execution within the meaning of Article 167, Schedule ii, Act IX of 1871. Section 246, Act VIII of 1859 provides that a suit may be brought to contest an order made under it, and if the suit be duly instituted within one year as required by Act IX of 1871, and the order of the Court in execution be reversed, it appears to me that the decree-holder is at liberty to ask that the order which should have been, but was not made, should issue.

8. I hardly think that we are called upon to consider whether this view of the case would not do away with limitation altogether. All that is contended is that the former application was practically reversed when a decree in the regular suit allowed by s. 246, Act VIII of 1859, reversed the order of the Court executing the decree. It may be said that there are circumstances in the case referred to us, which are unfavourable to the decree-holder and show that he did not use due diligence in bringing his suit or in making his application to revive the former execution proceedings. This may be so, and, if so, it is for the divisional bench to deal with that part of the case.

Oldfield, J.

9. I think we may hold that the last application may be considered as a continuance or renewal of the former application for execution in which the proceedings had been interrupted by the reference to the Civil Court, and were renewed on the second application, the latter will not therefore be an application

to which the period of limitation in Article 167 will apply.

Turner and Oldfield, JJ.

10. Made the following order in the special appeal.--In accordance with the opinion expressed by the majority of the Court, we hold the application within time. Setting aside the order of the Courts below, we remand the application for disposal on the merits to the Subordinate Judge's Court. Costs of the appeal in the Judge's Court and in this Court to abide and follow the result.