

(1967) 02 KL CK 0002
In the High Court Of Kerala
Case No : A.S. No. 486 of 1964

Pavu

APPELLANT

Vs

The Government of Kerala and Another

RESPONDENT

Date of Decision : 08-02-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48
Limitation Act, 1963 — Section 15, 15(1)

Citation : (1967) KLJ 629

Hon'ble Judges : K. Sadasivan, J; Anna Chandy, J

Bench : Division Bench

Advocate : V. Sankara Menon and K.K.K. Kurup, for the Appellant; P.K. Kurien, K.A. Nayar and K. Sukumaran, for the Respondent

Final Decision : Dismissed

Judgement

Sadasivan, J.—The first judgment-debtor in O.S. 31 of 1949 on the file of the Sub Court of Ottapalam is the appellant and the appeal is against the order of the learned Subordinate Judge holding that the execution application is not time barred. E.P. 257 of 1962 was presented by the decree holder on 17.9.1962. The decree in the case was passed on 22.3.1950. The judgment-debtor contended that being beyond 12 years of the decree, the right of the decree holder to execute the decree was lost u/s 48 C.P. C. As against this contention the decree holder pointed out that in view of the periods excluded under special enactments that came after the date of the decree like Act V of 1954 and Act 1 of 1955 (both Madras Acts) and the Kerala Act 31 of 1958 execution was not barred. Under these Acts the execution of decrees were directed to be put off for specified periods, and when those periods are excluded the execution will not be barred by the 12 year rule provided by Section 48 C.P. C. Learned counsel for the judgment-debtor would argue that the temporary suspense of execution of decrees provided in the special enactments cannot curtail the 12 years provided u/s 48; in other words in computing the period of 12 years u/s 48, the time excluded by the intervening special enactments ought not to be given credit to. No decree is

executable, according to him, after 12 years of the date of the decree even though the right to execute decrees is banned in the meantime by special enactments.

2. This question seems to have come up for judicial consideration in the various High Courts and the matter was finally set at rest by a Full Bench decision of the Madras High Court rendered in *Kandaswami Pillai v. Kamappa Chetty* (A.I. R. 1952 Mad. 186) wherein Rajamannar, C.J., reviewing the position in the light of prior decisions both of the Madras High Court and the other High Courts stated as follows:-

On a careful consideration of the decided cases on the point and the course of legislation I have arrived at the following conclusions:-

The execution "prescribed" in S. 15 (1) of the Limitation Act does not mean "prescribed by the first schedule" to the Act. It would include a case where a period of limitation is prescribed by any general statute like the civil procedure code. Even if it be understood in the strictest sense, the period fixed by S. 48 of the Code must be deemed to have become a part of the Limitation Act by a process of incorporation in Arts. 181 and 182. Whether the word "prescribed" in S. 15 (1) would apply to periods of limitation provided by other statutes or not, it is clearly indicated by Art. 181 that the period fixed by S. 48 is in "pari materia" with the periods of limitation provided in the schedule to the Limitation Act.

It was contended in that case that the CPC should be treated as a special law in so far as it provides a period of limitation in Section 48. The learned Chief Justice disagreeing with that view observed:

I am unable to agree with this view. The expression "special law" which has not been defined in the Limitation Act, was intended to cover only laws like the Rent Act of 1859 which was a complete code in itself. In the ordinary sense "special" is used in antithesis to "general". A special Act as opposed to a general or public Act means one that is directed towards a special subject or social class of objects. The special law contemplated is the law which gives rise to special causes of action and which itself provides for the method of enforcement of rights conferred by that Act or for redress of injuries suffered by the application of the provisions of that Act. The Provincial Insolvency Act, for instance, would be a special law; likewise the income tax Act. The CPC is not such a special law. It is a general law relating to procedure.

3. The above decision has been followed in a series of cases both of the Madras and other High Courts. It has more or less uniformly been held that in computing the period of limitation u/s 48 C.P. C. the periods limited by special enactments, in applying for execution of decrees have to be excluded. Thus in *Venu Ammal v. Kumarappa Chettiar* (1961-1 M.L. J. 30) it was held:-

Section 48 of the CPC fixes a period of limitation for purposes of execution of decrees and it has to be read with other saving provisions as to limitation under

special enactments like the Madras Act I of 1955 or the enactments that preceded it. It will be unreasonable to let section 48 of the Code to have a free play so as to destroy the beneficial effect of the special enactments relating to agriculturists. The total period of time by which execution of decrees was stayed by such enactments have to be excluded from the period of limitation prescribed under S. 48 of the Code.

In *Chenchamma v. Kumaraswami Naidu* (A.I. R. 1963 Mad. 397) It was observed:-

The twelve year period cannot, in such cases, commence to run from the date on which the decree is passed. Necessarily, therefore, the period of 12 years has to be computed only from the date of the default in making the payment. The default would arise only after the dates or periods specifically mentioned in the decree. Since the last installment would be payable on 1-7-58 according to S. 4 (7) the fresh application filed on 25-8-1965 was not barred by limitation.

The Mysore High Court under similar circumstances in *Pandurang Annaji Kokatnur v. Channabagappa* (A.I. R. 1961 Mysore 259) has held:-

Section 48 C.P.C. is a legal provision which specifies a certain period beyond which execution cannot be ordered. Thus the provisions contained in S. 48 C.P.C. must truly be regarded as a period prescribed for applying for execution. The word "limitation" appearing in S. 52 of the B.A.D.R. Act, does not mean the period of limitation as prescribed by the Indian Limitation Act, but a legally specified period beyond which action cannot be brought. Therefore, though the bar contained in S. 48 C.P.C. does not appear in the law of limitation, yet, it must be truly regarded as a period prescribed for applying for execution. The provisions of S. 52 of the B.A.D.R. Act can be invoked by the decree holder to save the bar of S. 48 of the Code of Civil Procedure.

To the same effect is the ruling of our High Court in *Kutty Sankaran Nair v. Sankaran* (1959 K.L. T. 7) wherein it was held:-

The effect of S. 5 of Act V of 1954 would be that in computing the period of limitation the time during which plaintiff was prevented from filing a suit by S. 3 of the Madras Ordinance V of 1953 as well as by S. 3 of the Madras Act V of 1954 had to be excluded, that is to say, over and above the normal period of limitation the time would be extended by the periods during which the institution of the suit was prohibited by these two enactments. Under Ss. 3 and 8 of Act 1 of 1955 the plaintiff would get the period of limitation extended by a further period of four months. The total extension under the three enactments come to two years and four months.

That was a case in relation to the filing or instituting the suit is limited by the special enactments; but the principle adopted is the same.

Finally in a recent case in *Pratapchand v. Lekshman Prasad Gupta* (1966-II M.L. J. 235) the Madras High Court has held:-

Section 48 of the CPC is controlled by Section 15 of the Limitation Act and the expression "prescribed" in S. 15 (1) of the Limitation Act is not restricted to the periods of limitation prescribed under Schedule I of the said Act and it would include also case where a period of limitation is prescribed by any general statute like the civil procedure code. Hence the period of 12 years mentioned in S. 48 of the CPC is "a period of limitation prescribed" within the meaning of S. 15 of the Limitation Act.

4. It, therefore, follows that Section 48 of the CPC prescribes a period of limitation and the period so prescribed is subject to curtailment as provided in Section 15 (1) of the Limitation Act. u/s 48 the decree-holder is given the full period of 12 years from the date of the decree for pursuing his application for execution and if slices of small periods are cut away from the aggregate period of 12 years by means of special enactments, he would certainly stand to lose and it is to prevent that injustice that the period fixed by Section 48 is put "pari materia" with the periods of limitation provided in the Schedule to the Limitation Act. To put it differently, the decree holder must get his full quota of 12 years irrespective of the periods limited by special enactments. The claim made by the decree holder is hence well founded and the execution is within time. The order of the court below is hence confirmed and the appeal is dismissed, but in view of the question of law argued we direct both parties to suffer their costs.