
(1961) 04 MAD CK 0037

In the Madras High Court

Case No : A.A.O. No's. 207 and 208 of 1957 and 55 of 1958

P.P.AR.RM. Periakaruppan Chettiar and Another

APPELLANT

Vs

K.A.P.CT.C.T. Chidambaram Chettiar

RESPONDENT

Date of Decision : 18-04-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19, 20, 43, 47, 48
Limitation Act, 1963 — Article 182

Citation : AIR 1962 Mad 391 : (1961) 74 LW 752

Hon'ble Judges : Ramakrishnan, J; Ramachandra Iyer, J

Bench : Division Bench

Judgement

Ramacitandra Iyer, J.

(1) These appeals relate to the execution of a money decree passed in O. S. No. 208 of 1932 on the file of the Sub-Court. Devakottai C. M. A. Nos. 207 and 208 of 1957 are filed by the first and the sixth defendants, (the latter of whom died during the pendency of the appeals), who were the judgment-debtors under the decree, against the orders of the Subordinate Judge of Devakottai transmitting the decree for execution by the Sub Court at Kumbakonam and allowing concurrent execution to proceed, as the decree-holder had already filed E. P. No. 124 of 1951 in the Sub Court, Devakottai, which is seated to be pending. C. M. A. No. 55 of 1958 is filed by the decree-holder against the order of the transferee court, namely, Sub-Court of Kumbakonam in E. P. No. 68 of 1957, holding that that execution petition is barred under the provisions of S. 48 C.P.C.

One of the complaints of the judgment-debtors in the former two appeals is that the order for transmission of the decree for execution by the Sub Court Devakottai, was passed without notice to them and that the learned Subordinate Judge had in, addition made an observation that the decree was not barred by the provisions of S. 43 C.P.C. We are of opinion that the complaint urged on behalf of the judgment-debtors in regard to these illegalities committed by the lower court is justified.

Normally, we would have set aside the order of the learned Subordinate Judge and remanded the execution, applications for fresh disposal after giving notice to the concerned judgment-debtors. But subsequent events have rendered this procedure unnecessary.

As we stated earlier in pursuance of the order of, the learned Subordinate Judge of Devakottai allowing concurrent execution to proceed, an execution petition was filed for purposes of execution in the Sub Court, Coimbatore. There was no stay of proceedings pending disposal of C. M. A. Nos. 207 and 208 of 1957 in this court. The transferee court has now gone into the matter and held that, the decree is barred by the provisions of Sec. 48 C.P.C. As the only ground of objection to the execution is that relating to the applicability of S. 48 C.P.C. learned counsel here appearing for the decree-holder as well as the judgment debtors, agreed before us that it is unnecessary to Order a remand in C. M. A. Nos. 207 and 208 of 1957, as the question relating to the maintainability of the execution applications can be decided by this court itself. We therefore proceed to consider whether execution applications have been filed in time.

(2) It is necessary to set out a few facts to understand the arguments urged on behalf of the judgment-debtors that the decree is barred under the provisions of S. 48 C.P.C. The suit O. S. No. 208 of 1912 which was dismissed by the trial court, came up by way of appeal to this court in A. S. No. 237 of 1934. By its preliminary judgment dated 18-11-1938 this court held that the plaintiff was entitled to a decree. It appears that the original plaintiff had by then died and a succession certificate was found necessary before a decree could be passed in favour of his legal representative. Steps were taken for that purpose and on 1939 this court passed a decree in favour of the plaintiff for a sum of Rs. 31,126-12-9, with subsequent interest and costs against eight persons.

In the meanwhile, Madras Act IV of 1938 had come into force. The fourth respondent in appeal applied to this court for passing a decree after taking into account the provisions, of that Act. The learned Judges following the practice which till then existed, remitted the application of the fourth respondent for enquiry by the lower Court and or passing a decree in accordance with the provisions of Act IV of 1938. This practice though, prevalent at one time, is not sanctioned by the terms of Act IV of 1938.

It was held in Velagala Sriramareddi and Others Vs. Karri Sriramareddi, being minor by certificated guardian, Mr. G. Bhima Rao, , that where a debt was the subject-matter of an appeal, an application for scaling down should be made before the appeal is disposed of and no Subordinate Court could thereafter entertain an application under S. 19 of the Act. In giving the, judgment the learned Judges merely interpreted the provisions of S. 19 of the Act, which enabled the scaling down of decrees in respect of debts due by agriculturists only with reference to those decrees which were passed prior to the commencement of the said Act. But whatever the correct procedure might be, the learned Judges on appeal passed the decree for Rs. 31,126-12-9 subject to the finding of which

the trial court might make in the application filed by the fourth respondent. The application was thereupon remitted to the trial court along with other papers.

The first defendant, one of the appellants to C.M.A. Nos. 207 and 208 of 1957, file, his own application I. A. No. 963 of 1939 for scaling down so far as he was concerned. That application purported to be under S. 19 of Act IV of 1938. As we have stated carriers Sec. 19 would not apply to the instant case as the decree, was one passed by this court after coming into force of Act IV of 1938. That application would be sustainable only if there had been no decree in the case. Pending disposal of the application there was a stay of execution under S. 20 of the Act. The trial court dismissed the application on 14-3-1942. It follows that the stay granted under S. 20 would have expired by that date. The first defendant challenged the correctness of the dismissal of his application in C.R.P. 1191 of 1942.

By that time the decision of the Full Bench referred to already had been delivered and indeed that was referred to in the judgment of the, trial court. Wads-worth J. before whom C.R.P. 1191 of 1942 came up for hearing, considered the proper meaning to be given to the decree of the High Court. The learned Judge observed,

"At the same time, it does seem to me that this is not a case in which, so far as the contesting defendants were concerned, the learned Judges intended to make a mere observation which was not to be part of the decree, or a case in which the learned Judges wrongly assumed that a statutory right existed in favour of the judgment-debtor to amend this court's decree by an application under S. 19 of Act IV to the lower court. The wording of the reservation in the judgment and its embodiment in the decree seem to make it plain that the learned Judges had before them a plea under the Act taken at the proper time the investigation of which required the examination of witnesses, which they thought could properly be done by the lower court and they proposed to leave it open to the lower court to decide what reduction, if any, was necessary in the amount due by this court as a result of investigation of such evidence. Unfortunately, instead of remanding the matter to the lower court for enquiry, the decree left it to the judgment-debtors to apply to the lower court for the relief to be granted on such inquiry. The undesirability of an order in such a form has been made sufficiently clear, by the decision of the Full Bench referred to. But so far as this defendant is concerned, seeing that there was an oral application before the Bench at the time of the judgment, for the consideration of his claim to relief under the Act and it is made clear in the judgment that that question was referred to the lower court, I do not think that petitioner here, should lose his right to relief merely because the decree directs him to apply to the lower court investigate the claim."

(3) The learned Judge's view appears to be that the decree on its own terms kept open matters relating to the application of Act IV of 1938 for adjudication by the trial Court and in other words, there was no conclusive decree passed by this court though in the decree a Particular sum was mentioned as payable by

the debtors as that sum was made payable only subject to the result of an application that may be filed by the first defendant for relief under the Act. Whether this view taken by Wads-worth J. is right or wrong it is not open to us to consider. The construction of the decree adopted by the learned Judge will be binding on the parties. From that it would follow that notwithstanding the terms of the decree there has been no final disposal of the suit Wads-worth J. remitted the matter for fresh disposal by the lower court.

(4) The learned Subordinate Judge Thereupon passed an order on 17-10-1944 scaling down the decree and directing the first defendant to pay a sum of Rs. 1000. According to the learned Subordinate Judge about Rs. 5000 will be the amount due under the decree after applying the provisions of Act IV of 1938. But he split up that amount into five shares, and directed the first defendant to pay one such share. This order directing the scaling down of the decree was the subject matter of an appeal to this court in A. S. NO. 258 of 1946. By the judgment dated 30-7-1946, Patanjali Sastri and Bell JJ. held that it was not open to the lower court to split up the decree amount in the way in which it was done and that there should be a joint and several decree so far as the agriculturist debtors were concerned in respect of the sum of Rs. 5000 odd. It is the decree-holder's case that this date (30-7-1946) should be taken as the date of the decree.

(5) The decree-holder then filed E. P. 124 of 1951 to execute the decree against the judgment debtors. It was contended on behalf of the judgment-debtors that the execution petition was barred by the provisions of Sec. 48 C.P.C., as it was filed more than 12 years after the preliminary judgment of this court on 18-11-1938. On the other hand, it was contended by the decree-holder that that was not the date of judgment of this court which, according to him, was only on 1-9-1939. If that date were taken, E. P. No. 124 of 1951 would be in time. It was not necessary for purposes of that execution petition to examine precisely what was the real date of the decree, whether it was 1-9-1939 as it is now contended on behalf of the judgment-debtors or 30-7-1946 as contended by the decree-holder. E. P. No. 121 of 1951 would have been in time if the date of the decree were taken to be 1-9-1939. The parties therefore appear to have concentrated their mind only on the question as to whether the date, of the decree should be held to be 18-11-1938 or 1-9-1939. The executing court held in favour of the former date with the result that E. P. No. 124 of 1951 was dismissed. On appeal this court in C. M. R. 643 of 1953 held that it was 1-9-1939, which would render E. P. No. 124 of 1951 as one filed in time. E. P. No. 124 of 1951 was thereupon remanded by this court to the trial Court.

(6) As we stated already, the question whether the date of the decree was 1-9-1939 or 30-7-1946 did not arise for adjudication in that case. Mr. R. Gopalaswami Aiyangar appearing for the judgment-debtors before us placed strong reliance on the finding given in C. M. R. 643 of 1953 and contended that 1-9-1939 should be taken to be the date of the decree. But that finding has to

be read in the light of the only question then put forward Wore the court. that is, whether E. P. No. 124 of 1951 was within Time or not. No question was raised and indeed it was not relevant for the purpose of that case whether the real date of the decree was 30-7-1946. While E. P. No. 124 of 1951 was pending, the decree-holder applied to the lower court in E. A. Nos. 194 and 306 of 1957 for transmission of the decree to the sub-court, Kumbakonam, for execution and also for leave to levy concurrent execution with prejudice to E. P. No. 124 of 1951. Both the applications, as already stated, were granted. Me, transferee court in which execution proceedings were taken considered the plea raised by the judgment-debtors before it that the execution petition was barred by the provisions of Sec. 48 C.P.C. That court came to the conclusion that the date of the decree should be deemed to be 1-9-1939 and that the execution petition filed in 1957 offended the provisions of S. 47 C.P.C. As a result of that finding, the execution petition was dismissed.

(7) From what we have stated above, it will be clear that the actual date of the decree should be held to be only 30-7-1946 when only the matter can be said to have been finally adjudicated between the decree-holder and the concerned judgment-debtors. If that were so, it is not disputed that the application for execution E. P. No. 68 of 1957, will not be barred under the provisions Of Sec. 48 C. P. Code.

(8) Mr. R. Gopalaswami Aiyangar learned counsel appearing for the judgment-debtors, relied on the circumstance that in all the execution applications filled by the decree-holder the date of the decree has been given as 1-9-1939. We do not, however, understand the learned counsel as suggesting that the decree-holder is estopped from showing that some other date should be considered as the real date of the decree. There is no doubt the fact that the decree-holder gave 1-9-1939 as the date of the decree. But he cannot be stated to be wholly incorrect in that regard. The appellate decree was undoubtedly passed on 1-9-1939. That, however, as stated already was subject to the further adjudication as to the liability of the defendants. It is only that liability was finally ascertained it can be said that there is a conclusive decree.

(9) Learned counsel next contended that the order of the lower court amending the decree being one under S. 19 of Madras Act IV of 1938, it is a case of amendment of decree and will not amount to passing of a fresh decree; he referred to certain decisions to show that in a case where a decree is amended, it is the date of the original decree and not the date of the amendment that should be taken into account for the purpose of S. 48 C.P.C. It must be remembered, that this is not a case of amendment under S. 19 of Act IV of 1938. The decree that was passed in the case, namely, the decree in A. S. No. 237 of 1934, was passed after Act IV of 1935 came into force. Section 19 of that Act as it stood then, would not apply to that case. When relief was asked for in such a case before the court in which the appeal is pending for giving the debtor the benefit of Act IV of 1938, it was in substance a prayer for ascertaining the liability as in

accordance with the provisions of Act IV of 1938. When the Court made the adjudication on the question raised before it, it should be deemed to have passed a fresh decree, as the suit must be held to have been reopened for the purpose. That cannot be stated to be a case of amendment of an existing decree. The final order passed, upholding or rejecting the plea, is the ultimate decree in the suit. The date of that decree would alone furnish the starting point of limitation, whether it be for the purpose of Sec. 48 C.P.C. or for Art 182 of the Limitation Act. We are therefore unable to uphold the view taken by the learned Subordinate Judge of Kumbakonam that the execution petition is barred by the provisos of Section 48.

(10) The result is C. M. A. 55 of 1958 is allowed with costs and E. P. 68 of 1957 is remanded to the sub-court, Kumbakonam for disposal in accordance with law. C. M. A. 207 and 208 of 1957 are dismissed. There will be no order as to costs.

(11) Order accordingly.