
(1947) 08 MAD CK 0012
In the Madras High Court

Rachapudi Ranga Rao

APPELLANT

Vs

Balabhadrapatruni Subba Rao and Others

RESPONDENT

Date of Decision : 22-08-1947

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : (1948) 2 MLJ 461

Hon'ble Judges : Govinda Menon, J

Bench : Division Bench

Judgement

Govinda Menon, J.—The appellant is a transferee decree-holder and the second appeal arises out of the dismissal by the lower appellate

Court of his application (E. P. No. 306 of 1942) to execute the decree in O.S. No. 177 of 1930, District Munsiff's Court, Bapatla.

2. O.S. No. 177 of 1930 was a decree for a sum of money passed against the respondents on the 9th of July, 1930. Applications in the nature of

steps-in-aid of execution had been made on five prior occasions by the original decree-holders and finally the execution petition out of which this

civil miscellaneous second appeal arises was filed on 9th July, 1942, by the present appellant in the District Munsiff's Court of Tenali, wherein he

stated that the decree has been assigned to him and the Court was requested to execute it by attachment and sale of Immovable property. In the

meanwhile on 14th June, 1942, the appellant had filed E.A. No. 756 of 1942, in the District Munsiff's Court, Bapatla, for recognising the

assignment in his favour and for transmitting the decree together with the certificate to the District Munsiff's Court, Tenali, for the purpose of

execution. The service of notices of this application was a procrastinated one and finally on 12th August, 1942, the Court which passed the decree

(District Munsiff's Court, Bapatla) ordered its transmission to the District Munsiff's Court, Tenali, wherein the records were received on 17th

August, 1942. By this time 12 years had elapsed from the date of the decree. That Court allowed the execution to proceed on the ground that the

judgment-debtor had committed fraud and therefore the decree-holder was entitled to an extension of the time lost by him on account of the fraud

played by the judgment-debtor. On appeal, the learned Subordinate Judge found that there was no fraud committed by the judgment-debtor and

hence the decree cannot be executed after the lapse of 12 years.

3. The question for determination is whether the application for execution dated 9th July, 1942, made to the District Munsiff's Court, Tenali, was

one made to the proper Court and within the time allowed, so that the assignee decree-holder may proceed with the execution. Mr. K.

Krishnamurthi, the learned Counsel for the appellant contends that on the authority of Sireddi Venkatraju and Others Vs. Allam Gangaraju and

Others, the execution of the decree is not barred. Cornish, J., in that case did not go to the length of holding that an application made to a Court at

a time when it had no jurisdiction to receive the same can be availed of by the applicant to save the period of limitation if he had already filed a

transmission petition within time to the Court which passed the decree. This case is only authority for the proposition that if an execution petition is

filed within 12 years of the date of decree, but notice to the judgment-debtor was served only after the period of 12 years, it cannot be held that

the execution is itself barred or that an application made within 12 years" limit cannot be proceeded with after the lapse of that time. As this second

appeal is not against the execution petition filed on 14th June, 1942, before the District Munsiff's Court, Bapatla, the decision of Cornish, J., is

distinguishable. At that time E. P. No. 306 of 1942 was filed before the District Munsiff's Court, Tenali, that Court had no jurisdiction to entertain

the application or had the applicant (the present appellant) any locus standi to make the same since he was recognised as an assignee decree-

holder only on 12 th August, 1942. There is authority for the position in a decision of Jackson, J., in Nanjunda Chettiar v. Nallakaruppan Chettiar

(1928) 55 M.L.J. 1202 that until a Court has received the decree transferred to it for execution it has no jurisdiction to entertain an application for

execution. Following this decision it has to be held that when E.P. No. 306 of 1942 was filed in the District Munsiff's Court, Tenali, that Court had

no jurisdiction to entertain the same even though the decree was transmitted to it later on and therefore it was not an application made to a proper

Court as provided by law.

4. Mr. K. Krishnamurthi further contends that when once the Bapatla Court made the order dated 12th August, 1942, recognising the transfer in

favour of the appellant and directing the transmission to the District Munsiff's Court, Tenali, the latter Court is entitled to proceed with the

application made to it on 9th July, 1942, as if a proper application had been in existence before the 12 years' period had expired. I find it

impossible to accede to this contention. E.A. No. 756 of 1942, dated 14th June, 1942, was merely an application for recognising the assignment

and for transmission. There was no prayer as to the mode in which the decree has to be executed. The transmission application cannot therefore

be deemed to be a petition on which the decree can be executed.

5. The lower appellate Court has found that the respondent has not committed any fraud in order that Section 18 of the Limitation Act can be

invoked. Mr. Krishnamurthi concedes that he cannot successfully attack this finding of the learned Subordinate Judge. The second appeal is

dismissed with costs.

6. Leave refused.