
(1977) 10 MAD CK 0013
In the Madras High Court

Raman Nadar alias Chellakannu Nadar	APPELLANT
Vs	
Kanakammal Nadachi and Others	RESPONDENT

Date of Decision : 25-10-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152

Citation : (1977) 10 MAD CK 0013

Hon'ble Judges : P. Govindan Nair, C.J

Bench : Division Bench

Judgement

P. Govindan Nair, C.J.—These appeals arise from orders passed in execution of a decree for partition. The final decree was passed on

20th June, 1955, and this fact is admitted by both sides. As per the final decree item 4 of the plaint schedule was allotted to the 7th and 12th

defendants in the case. The 7th defendant died and his legal representative the 14th defendant was impleaded. The 14th defendant sold item 4 on

26th Septembers. 1966 to the 16th defendant, who is the appellant before us in both these appeals. Proceedings were taken for what is called

amendment of the decree, namely the decree, dated 30th June, 1955 by stating that item 4 in the plaint has to be allotted exclusively to the 14th

defendant and not to his predecessor the 7th defendant and the 12th defendant together. The request for amendment was allowed on 27th

September, 1961 and the decree was passed in favour of the 14th defendant, the legal representative of the 7th defendant, allotting item 4

exclusively as the share of the 7th defendant. An execution petition, E.P. No. 192 of 1966 was filed on 12th March, 1966 by the appellant in these

two appeals. L.P.A. No. 57 of 1971 relates to the question of limitation regarding that execution petition. The appellant therein, who is also the

appellant in L.P.A. No. 58 of 1971, has filed another application, E.A. No. 285 of 1966, for recognising him as the representative of the 14th

defendant by reason of the sale of item 4 in his favour by the 14th defendant. The prayers in E.P. No. 192 of 1966 and E.A. No. 285 of 1966

were refused by the execution Court, by the first appellate Court and also by this Court in civil miscellaneous second appeals.

2. The judgment of this Court in the civil miscellaneous second appeals relied on a Full Bench decision of this Court reported in Paladugu Veera

Ramachandra Rao Vs. Paladugu Parasuramayya and Another, , in support of its conclusion that the decree was barred by limitation. With great

respect we are unable to agree with this view.

The first question that arises for consideration is whether there has been an amendment of the decree. Counsel for the respondents contended, on

the basis of the decisions reported in Ramayan Dubey and Others Vs. Chitradeo Rai and Others, and Sureshwar Prasad Bhakat Vs. Maharaj

Bahadur Sinha, , that the amendment effected in this case cannot be considered to be substantial or material. He said that the changes effected

were clerical in nature and unsubstantial and have not really effected any substantial change in the decree. In the Patna decision, the first decree

itself provided, that in default of the payment of the amount agreed by the compromise, the terms of which had been accepted and a decree passed

in terms thereof the plaintiff amount and interest thereon at 8 annas per cent, per mensem as further interest on that amount would have to be paid.

What was called an amendment was really an incorporation of the terms of the decree when default of payment of the amount in the compromise

had not been made. There was thus no change at all in the decision in that case and it was idle to have contended that there was an amendment of

the decree, because no change at all was effected.

3. In the Calcutta case, one of the defendants-judgment-debtors was wrongly described and also the suit number had been given wrongly. These

were corrected and were treated as purely clerical errors not resulting in the amendment of the decree. The Court also observed that

notwithstanding these errors, nothing prevented the decree being executed and held the view that there was really no amendment of the decree for

the purpose of item 4 in column 3 of Article 182 of the Limitation Act, 1908. It is

not for us to consider whether that view is correct or not and we express no opinion thereon. But we are clear in our minds that the decree which has provided that item 4 will be allotted to the 7th and 12th defendants is a decree quite different and distinct from the decree which allotted that item exclusively to one of them. A change made by virtue of an application, which gave the item of property exclusively to one of the defendants created a new position which is quite different - from the original position under the original decree. We have no hesitation in holding that the original decree was amended. It is on this basis that we have to consider, the provisions of law that are applicable. When the amendment was made on 27th September, 1961, the Indian Limitation Act, 1908, was in force. It was conceded by counsel for the respondents that if there was an amendment of the decree, and we hold so, from 27th September, 1961 a fresh period of limitation will commence attracting item 4 of column 3 of Article 182 of that Limitation Act. So, the decree holder would have had time till 26th September, 1964 to file an application for executing the decree, whether the decree to be taken is the one passed on 30th June, 1955 or the one passed on, 27th September, 1961, when E.P. No. 192 of 1966 was filed, the 12 year period from 30th June, 1955 had not elapsed and Section 48, Civil Procedure Code, even if it had been available, would not have stood in the way of the execution being proceeded with. But Section 48 was not available having been deleted by the Limitation Act of 1963 with effect from 1st January, 1964. So, the implication of the rule contained in that section of the Code of Civil Procedure, need not be considered by us, and we are of the view that the Full Bench decision relied on by counsel for the respondents, where the implication of that section had been considered, is of no application whatever. The sentence in the judgment that was relied on, namely, "'A correction u/s 152, Civil Procedure Code, made in a time-barred decree still leaves the decree time-barred and does not have the effect of starting a fresh period of limitation'" can apply only for the purpose of Section 48. The learned Judges cannot be understood to have said that a correction u/s 152, Civil Procedure Code, which would amount to an amendment of the decree, would not have the effect of providing a fresh starting point of limitation as specifically provided for in item 4 of Column 3 of Article

182 of the 1908 Limitation Act, and we do not think that there is anything in the judgment to indicate that they have said so. The decision can only

be of use for the purpose of determining the ambit of scope of Section 48 of the Civil Procedure Code. By virtue of Section 31 of the Limitation

Act of 1953 the decree not having been barred, when that Act came into force on 1st January, 1964 a fresh period would have commenced on

27th September, 1961 and there was time to file an execution application till 26th September, 1964. It is the provisions of the Limitation Act of

1963 that will have to be applied in determining whether E.P. No. 192 of 1966 dated 12th March, 1966 was barred by limitation or not. Under

Article 136 of the Limitation Act of 1963 the period is 12 years from the date on which the decree or order has become enforceable. We will

assume that the decree to be considered is the one that has been passed on 30th June, 1955. We have already said that that was not barred on 1st

January, 1964. So Article 136 has to be attracted. The execution petition has been filed within 12 years of the final decree dated 30th June, 1955.

No other question arises and so the application is within time and the execution should have been allowed to proceed.

4. The appellant being a transferee of the rights of the 14th defendant, who, as the legal representative of the 7th defendant, got the right to have

item 4 in the plaint, is entitled to execute the decree and by virtue of the sale in his favour he should have been recognised and he should have been

allowed to execute the decree. In other words, E A. No. 285 of 1966 also should have been allowed.

5. In the light of the above, we set aside the orders of all the three Courts and allow these appeals and hold that the decree is not barred by

limitation and allow E.A. No. 285 of 1966 and direct the execution Court to proceed with E.P. No. 192 of 1966 dated 12th March, 1966. These

appeals are disposed of on the above terms.

6. We direct that the appellant be paid his costs in all the Courts by the plaintiff-respondent. C.M.P. Nos. 4209 to 4216 of 1974 ordered.