

(2003) 04 BOM CK 0053

In the Bombay High Court

Case No : Civil Revision Application No. 36 of 2003

Ramdas Shriram Chaudhari

APPELLANT

Vs

Guna Kondu Dhanger, Suresh Guna Dhanger and Dyaneshwar
Guna Dhanger

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Limitation Act, 1963 — Article 135, 64

Citation : (2004) 2 ALLMR 518

Hon'ble Judges : D.S. Zoting, J

Bench : Single Bench

Advocate : V.B. Patil, for the Appellant; Arun D. Kulkarni, holding for C.V. Thombre, learned counsel, for the Respondent

Judgement

D.S. Zoting, J.—Heard Mr. V. B. Patil, learned counsel for the petitioner and Mr. Arun D. Kulkarni, advocate, holding for Mr. C.V. Thombre, learned counsel for the respondents.

2. Rule, returnable forthwith, by consent of both the parties.

3. This revision is directed against the order dated 1.7.2002 passed by Civil Judge, J.D., Muktinagar, below Exh. 16 in Regular Darkhast No. 15/2001.

4. Facts relevant for the decision of this case, may be briefly stated as under:-

The petitioner who is the original plaintiff filed Special Civil Suit No. 288/1990 in the court of Jt. Civil Judge, S.D., Jalgaon. Decree passed by the trial court is as under:-

"The suit is decreed with costs. Defendants do put the plaintiff in possession of the suit plot No. 192 situated at Uchande, Taluka: Edlabad, District Jalgaon. A Mandatory injunction be and is hereby granted. Defendants are hereby ordered to remove the temporary house on the suit plot within one month from today. If the defendants fail to do so, the plaintiff will be at liberty to get the house

removed through the Court during the execution of the decree. A prayer for perpetual injunction is dismissed. A decree be drawn up accordingly."

5. No appeal was preferred by the original defendants. The original plaintiff started execution proceeding bearing Regular Darkhast No. 15 / 2001. The Judgment debtor (original defendants) took objections to the execution of the decree by filing application Exh.16. It is the contention of the Judgment Debtor that limitation for enforcement of decree granting mandatory injunction as provided under Article 135 of the Schedule under the Limitation Act is three years from the date of the decree or where the date is fixed for performance, such date. The learned Judge while deciding the said application Exh.16 observed that as the limitation prescribed under the Limitation Act is three years and as no execution for enforcing the decree granting mandatory injunction was filed within three years from the date of the decree, the decree can not be enforced and the execution proceedings are liable to be dismissed. In the result, he allowed the objections raised by the Judgment Debtor and dismissed the execution proceedings initiated by the Decree Holder (present petitioner).

6. Being aggrieved by the said order, the Decree Holder has preferred this revision challenging the legality, correctness and propriety of the said order.

7. After going through the contents of the decree passed by the trial court, it is clear that the main relief granted by the trial court is in respect of putting the plaintiff in possession of the suit plot No. 192, situated at Uchande, Taluka Edlabad. As there is a temporary house on the suit plot, the defendant was ordered to remove the said house within one month and if he failed to do so, it is ordered that the plaintiff will be at liberty to get the house removed through the court during the execution of the decree. After going through the impugned order the learned Judge has not referred to the first part of the decree i.e. the main relief granted infavour of the original plaintiff.

It is to be noted that the first part of the decree relates to putting the plaintiff in possession of the suit plot. The limitation for enforcement of such decree is 12(twelve) years.

8. Mr. Arun D. Kulkarni, the learned counsel for the respondents contended that unless the decree for mandatory injunction is enforced, the plaintiff can not be put in possession of the suit plot and as the decree for enforcement of mandatory injunction is barred by limitation, the decree for putting the decree holder in possession of immovable property can not be enforced. The said contention can not be accepted. The main relief is for putting the plaintiff in possession of the property. It is to be noted that the decree for mandatory injunction is inseparable from the decree for possession and since the decree for possession is the main decree which prescribes 12 (twelve) years limitation for enforcement, the decree for mandatory injunction merges with that relief and the decree holder can enforce the decree for possession along with mandatory injunction within the time limits prescribed for possession.

9. The learned counsel for the petitioner has placed reliance on the decision of Allahabad High Court in a case of Nanwa Vs. Maulana Abdul Mughni, . A similar question under similar circumstances arose before the learned Single Bench of the Allahabad High Court. In the said case, decree for possession was passed along with the decree for mandatory injunction directing the defendant to remove the debris from the land within two months. Date of Decree was 28th April 1961, where as execution was filed for enforcement of the said decree on 12th May, 1973 and it is held that decree for demolition and possession was enforceable. I am fully in agreement with the view expressed by the learned Judge.

10. Similar view has also expressed by the Division Bench of this court in a Judgment dated 10th February 2003 decided in Letters Patent Appeal No. 5 of 1985 in First Appeal No. 595 of 1976 (1. Narayan and others V/s 1. Shantabai and others.)

11. Para 15 of the said Judgment is relevant. It is as under:-

" Coming to the very first point regarding limitation, we have noticed that though the substantial claim in the Special civil suit was for declaration of the orders dated 13.11.1967 and 1.2.1968 as null and void, the plaintiff had also prayed for possession of the suit property by evicting the tenant and this being a composite suit, even if one of the reliefs sought for fell within the limitation, it ought to be held that the suit was in limitation. If the suit is held to be primarily for the relief of declaration, as has been held by the learned Single Judge, we have no doubt in our mind that the suit was barred by limitation in as much as that the landlord had lost possession on 2.2.1968 pursuant to the orders challenged in the said suit and it was filed after a period of three years. However, this being a composite suit, the provisions of Article 64 of the Limitation Act for the relief of possession of immovable property (agricultural land) based on previous dispossession i.e. from 1952 to 1.2.1968, was within limitation of 12 years. We, therefore, hold that the Special civil suit filed by the plaintiff could not be returned on the ground of limitation alone."

12. The execution of the decree should not be made futile on mere technicalities which does not, however, mean that where a decree is incapable of being executed under any provisions of law it should, in all cases, be executed notwithstanding such bar or prohibition. However, if a decree is granted for two reliefs and the second relief is contingent upon the first, a rational approach is necessitated keeping in view the prolonged factum of litigation resulting in the passing of a decree infavour of a litigant. The policy of law is to give a fair and liberal and not a technical construction enabling the decree holder to reap the fruits of his decree. In short, when the decree is passed in respect of two reliefs for which different period of limitation is prescribed and if the second relief is separable from the first relief, then in that case the bar of limitation for enforcing that part of the decree will come in the way of the decree holder.

For example, if the decree is for possession and compensation and if the decree for recovery of the amount of compensation is not enforced within the prescribed time limits, then enforcement of the said part of the decree would be barred by limitation. However, if the second part of the decree is inseparable from the first part of the decree i.e. if the second relief is inseparable from the first relief as in the present case of recovery of possession coupled with the mandatory injunction to demolish the house then the period of limitation for enforcement of the main relief should be treated for enforcement of such type of decree by giving fair and liberal and not technical construction to enable the decree holder to reap the fruits of his decree.

13. In the result, I hold that the decree of possession coupled with mandatory injunction, though the enforcement of decree for mandatory injunction is not claimed within three years prescribed under Article 135 of the Schedule of the Limitation Act, however, the entire decree for possession coupled with mandatory injunction can be enforced as per provisions of Article 136 of the Schedule given in the Limitation Act.

14. It is surprising to note that the learned Judge has not considered the aspect regarding the decree for possession claimed by the petitioner. The approach of the learned Judge is apparently wrong. The order passed by learned Judge holding that the decree is not enforceable thus deserves to be quashed and set aside and it is accordingly quashed and set aside.

15. Rule is made absolute.

16. The execution to proceed.

17. There shall be no order as to costs.