
(1968) 01 AP CK 0001

In the Andhra Pradesh High Court

Case No : Spl. Tribunal Appeal No's. 21 to 23 of 1964

R.D.K. Sita Devi

APPELLANT

Vs

C. Anna Rao and Others

RESPONDENT

Date of Decision : 19-01-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 151, 48
Limitation Act, 1908 — Article 181, 182, 192

Citation : AIR 1970 AP 43

Hon'ble Judges : Narasimham, J;A.D.V. Reddy, J

Bench : Division Bench

Advocate : K. Ramachandra Rao, for the Appellant; A. Bhujanga Rao, for the Respondent

Judgement

Reddy, J.—These are appeals by the petitioner in I. A. Nos. 157, 158 and 159 of 1960 in O. P. No. 2452 of 1953 on the file of the Estates Abolition Tribunal, Nellore.

2. Pamur group and other Estates in Nellore and Chittoor districts had been taken over by the Government and compensation amounts were deposited before the Estates Abolition Tribunal. After the deposit of the compensation, there were several claims made against the Estate by charge decree-holders as well as others and the Tribunal held that the charge decree-holders who are 12 in number were entitled to priority and again divided the 12 charge decree-holders into seven categories as per priority among them. The petitioner who is common in these petitions, is one Srimathi Sita Devi, wife of Shri R. D. K. Venkat Mahipal Bahadur Varu. She had obtained a charge decree in O. S. 56 of 1927 on the file of Sub Court, Chittoor towards her maintenance, on the Estate and thereupon she filed O. P. 2542/53 claiming the monies due to her from the Estate and her claim was recognised by the Tribunal for a sum of Rs. 38,472/- and the Tribunal directed that a sum of Rupees 7553/- should be paid immediately out of the amount of Rs. 16, 143/- then available in deposit leaving the balance of Rupees

30,919/- still due to her. She along with some three other similar charge decree-holders, was placed in category 2. She contends in the petitions that the first category of creditors were paid in full, while the second category of creditors including herself were only paid in part and the remaining categories of creditors could not be paid any amount and the balance due to her has to be paid to her. The three respondents in these petitions, viz., Sri C. Annarao, Sri R. D. K. V. Varma and Sri M. V. Apparao had been paid certain amounts from the compensation amount available with the Tribunal, as successors-in-interest of the mortgages who had obtained a mortgage decree against the Estate. Sri Annarao had drawn Rs. 4950/- Sri Apparao had drawn a sum of Rs. 4950/- and R. D. K. V. Varma had drawn a sum of Rupees 3000/-. It was subsequently found on enquiry by the Tribunal that they were not entitled to these sums and they were directed to redeposit the amounts and out of this sum, the tribunal had ordered in O. P. 2452/53 on 25-4-55 that the petitioner Srimathi Sita Devi should recover Rupees 2284/- from Sri Annarao and an equivalent amount from Sri Apparao and a sum of Rs. 1384/- from Sri R. D. V. Varma.

3. The petitioner had thereupon filed these three petitioner had thereupon filed these three petitions u/s 151 CPC., on 2-3-60 to direct the respondents in each of these petitions to redeposit the amount to enable her to withdraw the same. The Respondents contended that the orders to redeposit the amounts were passed on 25-4-55 behind their back and the petitions filed on 2-3-60, beyond three years from the date of the orders of the Tribunal, were all barred by time. The Tribunal found that Article 182 of the Limitation Act applies and these applications having been filed beyond three years from the date of the orders of the Tribunal, are barred by time and dismissed the petitions. hence these appeals.

4. The only point to be determined in these appeals is whether the applications are in time?

5. These three applications are for directing the respondents to redeposit the monies paid to them by the mistake of the Tribunal. the compensation monies with regard to Pamur group and other estates were ink deposit with the Tribunal and the respondents, claiming to be successors-in-interest of a mortgage decree-holder by reason of gift deeds in their favour had applied for payment and without first enquiring into their claims, the monies were paid and subsequent of the enquiry as it was found that they were not entitled to moneies, they were asked to redeposit the monies by an order of the Tribunal. these applications are by a charge decree-holder whose claim has been recognised by the tribunal and who was also found to be entitled to a certain proportion of the monies taken by the respondents. in these petitions, the petitioner who is common, has approached the Tribunal to direct the Respondents to redeposit those monies into Court. The Tribunal in its order found that though Section 144 CPC., in terms does not apply to the proceeding, still Article 182 of the Limitation Act would apply and as these applications had not been filed within 3 years of the order of the Tribunal, they are barred by time.

6. In this regard, it would be relevant to notice the remarks in A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others, which are as follows:

"The Limitation Act is a consolidating and amending statute relating to the limitation of suits, appeals and certain types of applications to Courts and must, therefore, be regarded as an exhaustive Code. It is a piece of adjective or procedural law and not of substantive law, Rules of procedure, whatever they may be, are to be applied only to matters to which they are made applicable by the legislature expressly or by necessary implication. They cannot be extended by analogy or reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication."

The Estates Abolition and Conversion into Ryotwari Act (Act XXVI of 1948) is a special enactment and the disputes there under are adjudicated by the Settlement Officer and the Tribunal which are not Courts. Article 182 of the Limitation Act will not therefore apply to the proceedings before the Tribunal, as that provision relates to execution of a decree or order of any Civil Court.

7. It has next to be seen whether Article 181 of the Limitation Act will apply to proceedings under the Estates Abolition and Conversion into Ryotwari Act. In Wazirchand Mahajan and Another Vs. Union of India (UOI), it was pointed out that applications u/s 20 of the Arbitration Act will not be governed by Article 181 of the Limitation Act, unless any provision in the Arbitration Act indicates a contrary intention. In Sha Mulchand and Co. Ltd. (In Liquidation) Vs. Jawahar Mills Ltd., it was pointed out that Article 181 of the Limitation Act, has in a long series of decisions been held to govern only applications under the CPC and with approval extracted the passage from Abdullah Ashgar Ali v. Ganesh Das, AIR (20) 1933 PC 63 wherein it was again pointed that a series of authorities commencing with bai Manekbai v. Manekji Kavasji, ILR (1883) Bom 213 have taken the view that Article 181 only relates to applications under the CPC and would not apply to applications under the Indian companies Act.

8. Even the scheme of the Estates Abolition and Conversion into Ryotwari Act shows that periods of limitation with regard to certain proceedings under the Act itself are prescribed in the Act itself. Section 42 prescribes a period of six months for claims to be made before the Tribunal on the deposit of compensation. Section 51 prescribes a period of 3 months for filing an appeal before the High Court against the decision of the Tribunal. There are rules prescribing periods of limitation for applications to be made before the Settlement Officer for the issue of Ryotwari pattas, for publication of notice, for enquiries to be held and for appeals to be filed before the Tribunal against the orders of the Settlement Officer. But, no rules had been prescribed prescribing any time limit for filing applications of the type which we are considering here. There is a rule which says that the provisions of Section 4, 5, 12, (1) and (2), 17 (1) and 18 of the Indian Limitation Act of 1908 shall apply to all the proceedings under the Madras Estates Abolition and Conversion into Ryotwari Act of 1948 or under the rules made thereunder, before the Tribunals, authorities and officers having jurisdiction

under the Act. But it has not been stated that Article 181 of the Limitation Act would apply. It would therefore mean that the application of the other provisions of the Limitation Act had been deliberately excluded. As pointed out in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, the failure of the Legislature to make any provision, for limitation cannot be deemed to be an accidental omission. In that case considering that no limitation had been prescribed for applications u/s 33C (2) of the Industrial Disputes Act of 1947, it was observed:

"It may have been thought that the employees who are entitled to take the benefit of Section 33C (2) may not always be conscious of their rights and it would not be right to put the restriction of limitation in respect of claim which they may have to make under the said provision".

Therefore we cannot import into the Act a provision regarding limitation that has not been stipulated either in the enactment or in the Rules. Article 181 of the Limitation Act will not therefore apply to the proceedings under the Estates (Abolition and Conversion into Ryotwari) Act of 1948.

9. We have then to see whether there is any period of limitation prescribed for the applications of the type we are not considering. One of the rules framed u/s 67 of the Act, published in Fort St. George Gazette dated 17-1-1950, reads as follows:

"2. The proceedings of a Tribunal shall be summary and shall be governed as far as practicable by the provisions of the Code of Civil Procedure, 1908, particularly in regard to-

- (a) the issue and service of summons;
- (b) the examinations of parties and witnesses;
- (c) the production of documents;
- (cc) the payment of compensation or any other money to one person on behalf of another under disability, and in particular to a guardian on behalf of a minor;
- (d) the passing of orders."

This would mean that the provisions of the Code at Civil Procedure can be applied to the proceedings before the Tribunal as far as it is practicable.

10. In *Chairman, Estates abolition tribunal, Chittoor, 1955 Andh Lt 92* it was held that although there are no provisions similar to Section 114 or Section 151 of the CPC., in Act XXVI of 1948 (Madras Estates Abolition and Conversion into Ryotwari Act), the Tribunal can nevertheless pass on order of restitution in view of Rule 2 of Section 67 of the Act. In proceedings before the Tribunal therefore the provisions of the CPC will become applicable. u/s 48 of the CPC., no application can be filed for executing an order or decree of a Court, not being a decree granting an injunction, after the expiration of 12 years from the date of order. This means that an application for the execution of the order of the court can be

filed within 12 years from the date of the court's order and as this provision would apply to the proceedings under the Estates Abolition and Conversion into Ryotwari Act as per the rules, the application before the Tribunal for redepositing the monies by any of the parties before it as directed by the Tribunal, can also be filed within 12 years from the date of passing of the order.

11. Sri Bhujangarao, the learned counsel for the respondents contended that Section 48 of the CPC., only prescribes the outer limit for execution proceedings and it should be read with Article 182 of the Limitation Act., as they go together. for this contention, he sought to rely on a remark in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, cited above, which runs as follows:-

"Besides, even if the analogy of execution proceedings is treated as relevant, it is well known that a decree passed under the CPC is capable of execution within 12 years, provided, of course, it is kept alive by taking steps in aid of execution from time to time as required by Article 182 of the Limitation Act."

It has been held in this very decision that the provisions of the Limitation Act cannot be made applicable by way of analogy to special enactments, unless this was intended by the Legislature. In this case, as already pointed out, there is no such provision prescribing any period of limitation or making Article 181 of the Limitation Act applicable to application of this type. The working of Section 48 CPC., itself does not show that what is prescribed is only the outer limit and that there must necessarily be an inner limit. If there is any provision in any particular enactment making Art, 182 of the Limitation Act applicable, then section 48 CPC., can be considered to be the outer limit. In the absence of any such provision, the 12 year period which Section 48 CPC, prescribes will be the only limit. This particular question did not arise for determination in the decision cited above, relied on by the learned counsel for the respondents and the remark relied on was only a chance observation. We therefore find that in so far as the rules framed under the Estate s Abolition and Conversion into Ryotwari Act make the provisions of the CPC applicable to the proceedings under the Act as far as practicable and Section 48 CPC., prescribes a period of 12 years within which applications filed by the petitioner five years after the order of the Tribunal to direct the respondents to redeposit the monies paid to them by mistake are within time. The orders of the Tribunal in the above three applications are therefore set aside. The respondents will redeposit the amounts drawn by them as directed by the Tribunal, within one month from the date of communication of this order to the lower court.

In the result, these three appeals are allowed with costs.

12. Appeals allowed.