

(2004) 06 MAD CK 0090
In the Madras High Court
Case No : C.R.P. (NPD) No. 1472 of 1997

S. Nagarajan

APPELLANT

Vs

Gudlu K. Ranagasamy Chettiar @ Rangasamy (Deceased)
and Others

RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Limitation Act, 1963 — Article 136

Citation : (2004) 3 MLJ 329

Hon'ble Judges : T.V. Masilamani, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; B.T. Seshadri, for the Respondent

Final Decision : Allowed

Judgement

Masilamani, J.—This revision is filed by the petitioner/third party in the execution petition initiated against the fair and decretal orders passed in E.P. No. 286 of 1993 in O.S. No. 88 of 1962 dated 22.7.1996 on the file of the II Additional Subordinate Judge, Coimbatore.

2. The revision petitioner/third party filed the execution petition in E.P. No. 286 of 1993 on the file of the II Additional Subordinate Court, Coimbatore on the basis of the registered sale deeds dated 7.10.1992 and 31.3.1993 executed by the 13th defendant in the suit on the ground that he has stepped into the shoes of his vendor and that therefore the possession of the properties purchased by him has to be delivered by the respondent/9th defendant in suit as per the final decree. The respondent resisted the execution proceedings by filing a counter and after analysing the evidence of both the parties and upon hearing the arguments advanced by them, the learned Subordinate Judge dismissed the execution petition without costs. Hence, the revision.

3. The facts leading to the filing of the revision petition may be stated briefly as under: In the suit for partition in O.S. No. 88 of 1962, the final decree was

passed in I.A. No. 563 of 1996 on 27.9.1966 on the file of the Subordinate Judge, Coimbatore and the properties mentioned in the schedule to the execution petition were allotted to the 13th defendant, deceased husband of Konammal who sold the said properties to the revision petitioner herein under the said registered sale deeds. After the death of the 13th defendant, his wife Konmmal filed the execution petition in E.P. No. 206 of 1982 against the 9th defendant for delivery of possession of the properties as per the final decree. While so, the executing court passed an order dated 19.10.1984 on merits directing the 9th defendant to deliver vacant possession of the petition mentioned properties to the petitioner, the said Konnammal.

4. The respondent being aggrieved by such order, preferred the revision petition in C.R.P. No. 4809 of 1984 on the file of this Court which had been allowed by setting aside the impugned order and the matter was remitted back to the executing court on 16.7.1985 for fresh disposal. Subsequently, the execution petition was posted for hearing and in the course of the proceedings, an endorsement was made by the counsel for the petitioner as well as by the petitioner on 29.7.1986 that the execution petition may be closed for the present and therefore the execution petition was dismissed as not pressed on 29.7.1986.

5. The revision petitioner preferred the execution petition in E.P. No. 286 of 1993 on 2.12.1993. The respondent/9th defendant resisted the petition on the ground that under Article 136 of the Limitation Act, the execution petition was barred by limitation and that therefore the same was liable to be dismissed. The learned Subordinate Judge having analysed the facts and evidence came to the conclusion that the execution petition should have been reviewed within 12 years from the date of the appellate decree made on 23.12.1976, (i.e.,) on or before 23.12.1988 and that since the petition was filed on 2.12.1993, the same was barred by limitation. Hence, he dismissed the execution petition.

6. The learned counsel for the petitioner has argued at the outset that the disposal of the execution petition on the basis of the endorsement made by the petitioner therein cannot be said to be a final order and that since such disposal was made for statistical purpose, the order passed by the Executing Court has not become final. In this context, he has placed reliance on the decision rendered by the Apex Court, *Pentapati Chinna Venkanna and Others Vs. Pentapati Bengararaju and Others*, wherein (vide) paragraph 6, the dictum was laid as under:-

"It is true that Courts have condemned the practice of executing courts using expressions like "closed", "closed for statistical purposes", "struck off", "recorded", etc., and they also pointed out that there was no provision in the CPC for making such orders: but assuming that the Court has no such power, the passing of such an order cannot tantamount to an order of dismissal, for the intention of the court in making an order "closed" for statistical purposes is manifest. It is intended not to finally dispose of the application, but to keep it pending. Whether the order was without jurisdiction or whether it was valid, the

legal position would be the same; in one case it would be ignored and in the other, it would mean what it stated. In either case the execution petition would be pending on the file of the court. That apart, it is not the phraseology used by the executing court that really matters, but is really the substance of the order that is material. Whatever terminology may be used, it is for the court to ascertain, having regard to the circumstances under which the said order was made, whether the court intended to finally terminate the execution proceedings. If it did not intend to do so, it must be held that the execution proceedings were pending on the file of the court."

7. Similarly, he has argued that the appropriate provision of law under the Limitation Act, 1963 is Article 136 which governs execution of the decree or order directing delivery of a immovable property within 12 years from the date when the decree or order become enforceable. It is appropriate to extract the said provision of law hereunder to appreciate the facts of the case:-

For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court

Twelve years

When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default periods when default in making the payment or delivery in respect of which execution is sought takes place:

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

8. The learned counsel for the petitioner has further cited the decision rendered by a Division Bench of this Court consisting of K.A. SWAMI, Chief Justice and Dr. A.R. LAKSHMANAN, J., (as then they were leading the Bench) in N.S. Karuppanna Gounder Vs. Nagammal and Another, and it was held in paragraph 5 as follows:-

"Article 136 of the Limitation Act is a specific Article requiring all applications for the execution of decrees and orders of courts. There might be a succession of execution applications within the period prescribed by this Article."

9. Similarly, the decision rendered by RATINAM, J. (as he then was) in PUKURAJ RATANJEE v. GANESH MULL ADAJI 1983 1 M.L.J. 443 had been referred to in the said Division Bench decision and ultimately, it was held (vide) paragraphs 9 and 10 that the impugned execution petition having been filed within a period of 12 years from the respective dates on which earlier orders for delivery was made, it cannot be said that the said application is barred by limitation under Article 136 of the Limitation Act, 1963.

10. Hence, the learned counsel for the petitioner has argued rightly on the basis of the ratio laid down in the said decision that in view of the order for delivery of

the property as per final decree made by the executing court on 19.10.1984 in E.P. No. 206 of 1982 in O.S. No. 88 of 1962 on the file of the II Additional Subordinate Judge, Coimbatore, the execution petition in E.P. No. 286 of 1993 had been filed within 12 years and that therefore in view of Article 136 of the Limitation Act, 1963, the said execution petition is not barred by limitation.

11. Even otherwise, the learned counsel for the petitioner has contended that since the previous execution petition in E.P. No. 206 of 1982 was not disposed of finally either on merits or on account of laches on part of the petitioner therein, the same should be held as pending despite the order of closure passed by the executing Court on 29.7.1986 as per the ratio laid down by the Hon"ble Supreme Court in Pentapati Chinna Venkanna and Others Vs. Pentapati Bengararaju and Others, referred supra. A careful reading of the said decision in the light of the facts involved in the said execution proceedings, this Court is of the considered view that the ratio is applicable to the facts of this case. Hence, I am constrained to hold that since the previous execution petition in E.P. No. 206 of 1982 was not disposed of on merits, the same should be held to be pending so as to enable the petitioner to work out his rights under appropriate provisions.

12. Though the learned counsel for the respondent has relied on the decision Duraisami and Another Vs. Rasayammal (dead) and Others, in support of his contention that the execution petition filed beyond 12 years from the date of decree is barred by limitation as per the provision under Article 136 of the Limitation Act, 1963, as has been rightly pointed out by the learned counsel for the petitioner, the facts involved in the said case are different from that of the proceedings under consideration herein. It is relevant to point out that the last execution petition in the case involved in the said decision was dismissed for failure on the part of the decree-holder to file the sale papers and therefore such an order cannot be taken advantage of by the decree-holder so as to claim exemption from limitation.

13. On the contrary, in this case, as pointed out above, the impugned order was not passed in the previous execution petition either on merits or on account of default on the part of the petitioner therein. It follows necessarily that the ratio enunciated in the said decision cited by the learned counsel for the respondent is not applicable to the facts of the present case.

14. For the reasons stated above, this revision petition is allowed setting aside the impugned order in E.P. No. 286 of 1993 dated 22.7.1996. However, there will be no order as to costs. The Executing Court is directed to dispose of the petition in accordance with law within three months from the date of receipt of copy of this order.