
(2005) 09 KL CK 0064

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14987 of 2005

Sarojini Thankapan

APPELLANT

Vs

D. Thayammal

RESPONDENT

Date of Decision : 07-09-2005

Acts Referred:

Limitation Act, 1963 — Article 135

Citation : (2006) 1 CivCC 630 : (2005) 3 KLJ 349 : (2006) 1 RCR(Civil) 199

Hon'ble Judges : J.M. James, J

Bench : Single Bench

Advocate : M. Rajagopalan Nair and Mr. G. Biju, for the Appellant; K.S. Hariharaputhran, for the Respondent

Final Decision : Allowed

Judgement

J.M. James, J.—Whether the period of commencement of the limitation, for an execution of a decree, would be from the date of the decree, or on the date of engrossment of the decree, or the signing of the decree by the Presiding Officer of the Court, is the question mooted before this Court for consideration and decision.

2. The bare facts required for the disposal of this writ petition are that, a decree in O.S.No. 1096/1980, on the file of the III Additional Munsiff's Court, Thiruvananthapuram, was passed on 30.11.1995. But the copy of the decree showed, erroneously, the date as 30.09.1995. At the instance of the writ petitioner herein, who is the 1st judgment debtor, the decree was allowed to be corrected on 1.4.1998. But the correction was carried out in the decree only on 13.09.2004. The writ petitioner had made Ext.P2 application for issuance of the copy of the decree, with the date corrected as 30.11.1995, on 2.4.2003. It was received on 25.9.2004. The decree holder filed Ext.P4 execution petition, E.P.No.438/2004, which is the second one, on 8.10.2004, as the execution petition filed at the 1st instance was dismissed on 3.3.2003 under Ext. PI order. The writ petitioner took up contention that the execution petition is barred by

limitation, under Article 135 of the Limitation Act, 1963, in short" the Act", the period of limitation being only three years, for enforcement of the decree of mandatory injunction. The lower court accepted the contention of the judgment debtor and dismissed E.P. No.438/2004, holding that the same is, barred by limitation, as could be seen from Ext.P4. The same is under challenge through this writ petition.

3. I heard both sides. Article 135 of the Limitation Act, 1963, as contained in the schedule to the said Act, is given below :-

135. For the enforcement of a decree granting a mandatory injunction

Three years

The date of the decree or where a date is fixed for performance, such date.

4. In the case at hand, the decree was passed on 30.11.1995. directing the defendants "to remove the sheds bearing T.C. No. 13/703 and 13/705 in the plaint schedule property in Survey No.2703/2 within three months. In case of non-compliance, plaintiffs are entitled to remove the same through Court at the costs of the defendants. The plaintiffs are entitled to the costs of the suit."

5. Thus, the date fixed for performance was, three months from the date of the decree. Thus calculated the date from 30.11.1995, for further period of three months, would come on 29.02.1996. Thus, the period of limitation would be complete on 28.2.1999.

6. The contention of the decree holder is that, as the date in the decree was erroneously recorded as 30.9.1995 and corrected only on 13.9.2004, the period of limitation of three years would start from that date 13.9.2004.

7. In Shankar Balwant Lokhande (dead) by L.Rs. Vs. Chandrakant Shankar Lokhande and Another, , the Supreme Court was dealing with article 182 of the old Limitation Act, the Limitation Act, 1908, in which the Court held that the starting point of limitation is the drawing of the decree. Contrary to this decision in Hameed Joharan (d) and Others Vs. Abdul Salam (d) by L.rs. and Others, . as well as in West Bengal Essential Commodities Supply Corporation Vs. Swadesh Agro Farming and Storage Pvt. Ltd. and Another, , where the Apex Court was dealing with article 136 of the Act, the Court held that the starting point of the period of limitation is the date of pronouncement of the judgment. When Dr. Chiranjil Lal (Dead) by LRs.v. Hari Das (D) by LRs, 2005 ACJ 21 (S.C.): 2005(2) CCC 574 (S.C.): (2005) 2 SCC 261) came up before the Apex Court, the above conflicting decisions were placed before the court. The Apex Court was of the view that there should be a finality to the issue and, therefore, resolved to refer the case to a larger Bench.

8. The facts of Chiranjilal's case in brief are that a final decree was passed on 7.8.1981, in a suit for partition. The required stamp papers, for engrossing the decree, were furnished by the respondent on 25.5.1982, and the decree was

engrossed thereafter. The execution application was filed on 21.3.1994, before the High Court. Objection was raised that the execution was barred by limitation, in view of article 136 of the Act. The execution court rejected the objection. This decision was upheld by the Division Bench of the High Court in appeal, holding that unless and until the decree is engrossed on the stamp paper, it is merely a judgment of the court and there is no decree available for execution. Therefore, the starting point of limitation in case of execution of a decree in a partition suit, is the date when the decree is engrossed on the requisite stamp papers as that would be the date when the decree become enforceable. The Apex Court considered the decisions in Shankar Balwant Lokhande, Hameed Joharan as well as in West Bengal Essential Commodities Supply Corporation cases (supra) and various other authorities. The Court, thereafter, held that the date of furnishing stamp paper is an uncertain act, within the domain, purview and control of a party, as there is no period fixed for furnishing stamp papers and no rule, requiring the court to call upon for furnishing stamp papers. If the proposition that the period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereon and only thereafter the period of 12 years under article 136 of the Act will begin to run, would lead to absurdity. Therefore, the court further held that the starting point of the period of limitation for execution of a partition decree cannot be made contingent upon the engrossment of a decree on stamp paper. The engrossment of a decree on a stamp paper would relate back to the date of the decree. Therefore, the Apex Court held that the execution application was time barred under article 136 of the Act. Hence, reversed the findings of the High Court.

9. In the case at hand, though the provision applicable is article 135 of the Act, the principle contained in Dr. Chiranjilal's case (supra) could be applied. The judgment debtors were directed to remove the shed from the plaint schedule property within three months. Thus, from 30.11.1995, the date of the decree, three months time would come to an end on 29.2.1996, that being a leap year. Computing three years under article 135 of the Act, the period of limitation would be complete on 28.2.1999. The correction of the date of the decree and issuance of the copy of the decree, with corrected date, which was received on 25.9.2004, cannot be held as the date of commencement of the period of limitation.

10. In view of the above facts and law, Ext. P4 execution petition filed before the court below for execution of the decree dated 30.11.1995 is hit by article 135 of the Act and accordingly barred by limitation. Hence, I dismiss Ext. P4 execution petition.

This writ petition is accordingly allowed.