

(1944) 09 MAD CK 0010
In the Madras High Court

Satti Parasa Reddi, minor by mother and guardian, Saraswathi	APPELLANT
Vs	
Kovvuri Satyanarayanamurthi and Others	RESPONDENT

Date of Decision : 04-09-1944

Acts Referred:

Citation : AIR 1945 Mad 147 : (1945) 1 MLJ 39

Judgement

1. This appeal arises out of proceedings in execution of the decree in O.S. No. 1 of 1934 on the file of the Subordinate Judge of Rajahmundry.

The appellant was the third defendant in the suit. The decree sought to be executed was a decree for sale of hypotheca. The appellant happened to

be a purchaser of the equity of redemption. The preliminary decree is dated the 16th November, 1934, and the final decree was passed on the

16th March, 1936. The Madras Agriculturists' Debt Relief Act was passed in 1938. The first execution petition was filed on the 16th December,

1937, and it was dismissed on the 22nd November, 1938. After the Madras Agriculturists' Debt Relief Act was passed, this appellant (third

defendant) filed a petition, I.A. No. 524 of 1938, for scaling down the decree" on the ground that he was an agriculturist and so entitled to have

the decree scaled down. The petition was ordered in his favour on the 3rd November, 1938. As the third defendant only was a party to the

petition for scaling down, the, decree was scaled down only so far as he was concerned. Subsequently, the first defendant also filed a petition

under Act IV of 1938 which was ordered on the 13th December, 1939. It was disputed that he was an agriculturist; but the Court found that he

was an agriculturist entitled to have the decree scaled down to the same extent as it was scaled down in favour of the third defendant. In 1942 an

application was filed by the decree-holder to have the decree amended as per the scaling down order and that was ordered on the 3rd October,

1942. The appellant before this Court (third defendant) filed a petition for reviewing this order on the ground that the execution had become barred

so far as he was concerned and that the amendment was likely to prejudice him as it may be claimed that the amendment would give a fresh

starting point for limitation. That was dismissed and the execution petition out of which this appeal arises was filed on the 2nd November, 1942.

The appellant's contention was that it was barred by limitation as the decree so far as he was concerned was scaled down as early as 3rd

November, 1938, more than three years prior to the date of (his execution petition and no petition was filed for executing the decree as against him

or even as against the first defendant, within three years from 3rd November, 1938. The learned Subordinate Judge found that the starting point of

limitation was the date of the amendment of the decree and as this petition was filed within three years after the 3rd October, 1942, the petition

was not barred by limitation.

2. It is urged before me for the appellant that at the time when the decree was scaled down, so far as the third defendant was concerned, there

was a splitting up of the decree and what was once a joint decree became a several one and that secondly the starting point of limitation will not be

the date of the amendment of the decree in favour of the first defendant. Reliance was placed for the former contention on a decision of this Court

in *Ramier v. Srinivasier* ILR (1928) Cal. 1210. Their Lordships had no occasion to deal with the question as to whether the joint liability of the

mortgagor and the puisne mortgagee had become a several one by reason of the fact that the decree was scaled down so far as the puisne

mortgagee was concerned. It was pointed out in that case that the mortgage being one and indivisible, it was wrong in theory and difficult in

practice to scale down the decree against an agriculturist judgment-debtor, while leaving it unamended as against a non-agriculturist judgment-

debtor. That argument was met by stating that it was possible to word the decree so as to indicate that the puisne mortgagee was to pay a

specified amount and that if he paid the amount payable by him his interest in the property will be absolved. There is nothing in the judgment in that

case to indicate that by scaling down the decree in such a case the joint liability would become a several one.

3. The other question in this case is as to the applicability of Article 182 of schedule 2 of the Indian Limitation Act. Under Sub-clause (4) of that

article, the starting point of limitation is the date of the amendment where the decree has been amended. In this case, the decree was amended with

regard to the scaling down of the debt as against the first defendant and the third defendant only on 3rd October, 1942. That is made clear in the

amended decree itself. With regard to Clauses 2 and 3 of Article 182, it has been held both by the Privy Council and by this Court that the

starting point of limitation would be the date of the appellate order or the date of the decision passed on review, even though some of the parties to

the suit are not parties to the appeal or to the petition for review--vide N.A.S.T. Chidambaram Chettiar Vs. Venkatasubba Naik, and Ramayya v.

Kotqyya ILR (1882) Mad. 169. The language of Clauses 2 and 3 is the same as that of Clause 4. If the fact that the party who objects to the

execution was not a party to the appeal or to the review will not help him in resisting a petition for execution filed within three years from the date

of the order on the appeal or on the petition for review to which he was not a party, the same rule of construction has to be applied with regard to

Sub-clause 4 also. The fact that this appellant was not a party to the proceeding relating to the scaling down of the decree which resulted in the

amendment as the result of the order dated 13th December, 1939, on the application filed by the first defendant, cannot help the appellant in his

contention that that date will not furnish a starting point of limitation. It is true as stated by the learned Counsel for the appellant that it would be a

hardship if after the execution of the decree as it stood had become barred against one of the judgment-debtors an amendment should be made

which will resuscitate the decree and enable the decree-holder to execute the decree as against the other also. But, then as pointed out by the Privy

Council in N.A.S.T. Chidambaram Chettiar Vs. Venkatasubba Naik, "the fixation of periods of limitation must always be to some extent arbitrary

and may frequently result in hardship." But in construing such provisions, equitable considerations are out of place, and the strict grammatical

meaning of the words is, their Lordships think, the only safe guide. Since the language of Clause 4 is the same as that of 2 and 3, and as in respect

of those two clauses it has been held that the starting point of limitation will be the date of the order on appeal or on review even against persons

who are not parties to the appeal or to the petition for review, I have no other alternative but to find that the learned Judge was justified in finding

that the starting point of limitation is the date of the amendment on the application of the first defendant though the decree so far as the appellant is

concerned was scaled down as early as 3rd November, 1938.

4. The appeal fails and is accordingly dismissed with costs.

5. Leave to appeal is refused.