
(2008) 06 MP CK 0001

In the Madhya Pradesh High Court

Case No : Civil Revision No. 933 of 2002

Smt. Kamla Bai Patel

APPELLANT

Vs

Smt. Vidhyawati Patel and Others

RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18, Order 20 Rule 18(2), 151
Limitation Act, 1963 — Article 137

Citation : (2009) 2 CGLJ 1

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : S.K. Verma, for the Appellant; P.N. Patel, for the Respondent

Final Decision : Allowed

Judgement

K.K. Lahoti, J.—The applicant has challenged order dated 1-3-2002 passed by 3rd Additional District Judge, Jabalpur in Execution Case No. 127-A/85 by which the execution application filed by the Petitioner was dismissed on the folio wing grounds:

a. That after the preliminary decree the applicant had not taken steps for final decree proceedings as required under Order 20 Rule 18 of CPC 1908 (hereinafter referred to as "the Code").

b. That even if the application filed by the applicant is treated as an application for final decree, then it was not filed within a period of 3 years from the date of preliminary decree dated 7-9-1987 and was filed on 18-1-1996 which was beyond a period of 3 years as provided by Article 137 of the Limitation Act, 1963.

2. On the aforesaid ground, the Court below rejected the application. The order has been assailed by the applicant on the ground that on 4-9-1987 a preliminary decree was passed. On 21-10-87, an execution of decree was filed but it was dismissed in default on 22-12-1995. On 17-1-1996, 2nd application was filed in which a Commissioner was appointed on 22-9-1999 to give effect to the

preliminary decree. The Commissioner submitted his report on which on 22-11-2000 objections were filed and the Trial Court again on 24-7-2001 directed the Commissioner to file report. The judgment debtor filed two applications dated 3-8-2001 and 4-9-2001 seeking review of the earlier orders but the executing Court rejected the applications and fixed the case for Commissioner's report. Thereafter, various applications were decided by the impugned order.

3. It was submitted by Shri Verma, learned Counsel for the applicant that Article 137 of the Limitation Act does not apply in the final decree proceedings. Final decree proceedings may be initiated at any point of time. Reliance is placed to a recent judgment of the Apex Court in Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and Others, . It is submitted that the preliminary decree finalises the matter relating to declaration of rights and interest and final decree works out those rights so the final decree concludes the proceedings before the Court and suit comes to an end for all practical purposes, till then the proceedings of the suit continues. In these circumstances, there was no question of applicability of Article 137 of the Limitation Act as held by the Trial Court.

4. That though the proceedings were initiated by the applicant as an execution proceeding but in fact these proceedings were none less but the proceedings for final decree. The Trial Court appointed a Commissioner to give effect to the preliminary decree and proceeded in the matter. The other party on the Commissioner's report submitted objections which were considered by the Trial Court and again the Trial Court on 24-7-2001 directed the Commissioner to submit his report. These proceedings are in fact steps for the preparation of the final decree and the proceedings before the Trial Court may be treated as proceedings for final decree. Reliance was placed to the Apex Court judgment in Mool Chand and others Vs. Dy. Director, Consolidation and others, . That the impugned order dismissing the proceedings may be set aside and the Trial Court be directed to conclude the proceedings treating the proceeding as final decree proceedings and to conclude it by passing a final decree in the matter.

5. Shri Patel, learned Counsel appearing for the non-applicant/judgment-debtor submitted that the impugned order is in accordance with law. The applicant ought to have filed an application for preparation of final decree and an application for execution of the decree was not maintainable. Before the Trial Court an application for execution was filed which has been rightly dismissed by the Trial Court. The preliminary decree was passed under Order 20 Rule 18 of the Code which requires an application for final decree, in the absence of which the Trial Court passed the impugned order in which there was no error. In the alternative Shri Patel submitted that if proceedings before the Trial Court are treated as proceedings for final decree then the non-applicant be permitted to raise objections because the preliminary decree itself was not in accordance with law and the aforesaid objection deserves to be considered by the Trial Court.

6. To appreciate the aforesaid contention, firstly factual aspect of the matter may

be looked into. The applicant Kamla Bai filed a suit against the Respondent for partition and possession. A preliminary decree was passed by the Trial Court in Civil Suit No. 127-A/05 on 4-9-1987 by which Plaintiff's 1/5th share was found in respect of the houses and she was found entitled for the possession after partition. The aforesaid decree was put to an execution by the Plaintiff decree holder on 27-10-1985 but the application was dismissed in default on 22-12-1995. Thereafter, another application was filed that too for the execution of the decree on 18-1-1996 in which the proceedings were initiated. A notice was issued to the judgment-debtor and the record of earlier execution was sent for. During the pendency of the execution, judgment-debtor No. 1 Diwakar Patel passed away and his legal heirs were directed to be brought on record on 6-9-99. On 22-9-99, the executing Court found that decree was for partition of the immovable property in which the properties were to be divided in five equal share and each one was entitled for 1/5th share and Shri Subhash Gupta was appointed as the Commissioner to give effect to the decree. A writ of commission was issued in the matter. The Commissioner submitted his report on 22-2-2000 and the parties were extended opportunity to submit their objections. The decree holder filed the objections. The aforesaid objections were decided on 20-12-2000 and the executing Court appointed another Commissioner Shri Shailendra Shrivastava and directed to submit his report. The Commissioner submitted his report on 15-2-2001. On 14-3-2001, the Commissioner submitted that the sons of judgment-debtor were creating hurdle in the measurement of the properties so Police help be provided to him. On 4-7-2001, the Commissioner, Shailendra Shrivastava was directed to execute the commission by the help of Police.

7. In the meantime, the judgment-debtor filed an application under Order 47 read with Section 151 of the Code. The executing Court rejected the objection by an order dated 22-9-2001. Thereafter, the judgment-debtor filed an objection on the Commissioner's report and on 1-3-2002 the impugned order was passed by which the execution application was rejected.

8. Now in the background of these facts some provisions may be referred.

In this case, a preliminary decree was passed under Order 20 Rule 18 of the Code. For ready reference Rule 18 is referred thus:

Order 20 Rule 18. Decree in suit for partition of property or separate possession of a share therein

18. Decree in suit for partition of property or separate possession of a share therein.- Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,-

(1) if and insofar as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions

of Section 54;

(2) if and insofar as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

9. The aforesaid provision specifically provides that where the partition and separation cannot be conveniently made without further inquiry, the Court shall pass a preliminary decree declaring the rights of the several parties interested in the property and issue such further directions as may be required. The judgment and decree dated 4-9-1987 was under Order 20 Rule 18(2) of the Code. So the aforesaid judgment and decree were preliminary in nature.

10. For final decree no limitation is provided and final decree proceedings may be initiated at any point of time. The Apex Court in Hasham Abbas Sayyad (supra) considering this question held thus:

9. A final decree proceeding may be initiated at any point of time. No. limitation is provided therefor. However, what can be executed is a final decree, and not a preliminary decree, unless and until final decree is a part of the preliminary decree.

11. In view of the settled law by the Apex Court, it is found that the Trial Court erred in arriving at a finding that the present application was barred by limitation and such application ought to have been filed within a period of 3 years as required under Article 137 of the Limitation Act. The aforesaid findings of the Trial Court are hereby set aside.

12. In so far as initiating the proceedings for final decree are concerned, the aforesaid proceedings could have been initiated at any point of time. The Apex Court in Mool Chand (supra) considering the question held that a preliminary decree in a partition suit, is steps in the suit which continues until the final decree is passed. So the proceedings shall be continued to be pending before the Court until and unless a final decree is passed in the matter, The Trial Court can therefore, pass a final decree either suo motu or on an application by any of the parties such order as is necessary for giving effect to the preliminary decree and to conclude the proceedings. As no procedure is prescribed in the Code of Civil Procedure, hence the Court can proceed in the matter for drawing a final decree in the suit. In these circumstances if any such application was filed by the applicant then it cannot be treated as barred by limitation. See A. Manjundappa v. Sonnappa and Ors. AIR 1965 Mys 73.

13. In this case, on filing of the application by the applicant though in the shape of execution, the Trial Court proceeded further in the matter, appointed a Commissioner to give effect to the preliminary decree. The Commissioner's report was filed in the matter in which objections were filed by the parties.

14. Looking to the entire nature of the proceedings before the Trial Court, these proceedings may be treated as final decree proceedings though the application was filed as an execution of preliminary decree.

15. The learned Counsel for the Respondents submitted that in case order passed by the trial is set aside then the Respondents are entitled to submit their objections which may be directed to be decided by the Trial Court. It was also submitted that in this regard the non-applicant be permitted to submit their objections which may be directed to be decided by the Trial Court.

16. Considering the facts as stated hereinabove, impugned order is set aside and the matter is remitted back to the Trial Court with an opportunity to the non-applicant to submit their objection before the Trial Court. If any objections are filed by the non-applicant, the Trial Court shall be free to consider the aforesaid objections in accordance with law.

17. In the result, this revision is allowed and following directions are issued:

(i) The impugned order dated 1-3-2002 passed by the executing Court is hereby set aside.

(ii) The execution application filed by the applicant shall be treated by the Trial Court as an application for final decree and accordingly the Trial Court shall proceed in the matter.

(iii) The Trial Court after considering the objections on the Commissioner's report shall proceed in the matter in accordance with law.

(iv) The non-applicants shall be entitled to submit their objections before the Trial Court and if any objections are filed by the non-applicant, the Trial Court shall consider the aforesaid objections in accordance with law after extending due opportunity of hearing to both the parties. Both the parties present herein are directed to remain present before the Trial Court on 21-7-2008 for which date no fresh notice shall be necessary to the parties. On the aforesaid date, the Trial Court shall restore the file and proceed in the matter in accordance with law.

Considering the peculiar facts of the case, there shall be no order as to costs.