
(2008) 08 OHC CK 0115
In the Orissa High Court

Smt. Urmila Kumari Mohanty

APPELLANT

Vs

Bijay Kumar Mohanty

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Hindu Marriage Act, 1955 — Section 25

Citation : (2008) 2 OLR 585

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Judgement

Sanju Panda, J.—In this writ petition challenge has been made to the order dated 30.7.2005 passed by the learned Civil Judge (Senior Division), Nimapara in Execution Misc. Case No. 62/06 of 2000/1999 rejecting the application of the petitioner to execute the decree for enhanced rate of maintenance from Rs. 200/- to Rs. 400/- on the ground that the execution case was not maintainable as the same was barred by limitation.

2. The case of the petitioner is that she is the wife of opposite party. She got an ex parte decree of maintenance of Rs. 200/- per month in Original Suit No. 38 of 1982 and the ex parte decree was passed on 29th September 1984 by the learned Civil Judge (Senior Division), Puri. Thereafter, she filed Execution Case No. 21 of 1988 before the said Court for execution of the decree. While the matter stood thus, she filed Misc. Case No. 20 of 1994 before the said Court for enhancement of maintenance. The Court below enhanced the maintenance from Rs. 200/- to Rs. 400/- by order dated 3.12.1994. After getting the order of enhanced maintenance on 15.4.1999 she filed an execution case to execute the order granting enhanced maintenance which was registered as Execution Misc. Case No. 62/06 of 2000/1999. In the said execution case, the opposite party-judgment-debtor filed his objection taking a specific stand that the petitioner was not entitled to execute the decree as she filed the execution case at a later stage and the same was barred by limitation.

3. During the subsistence of the earlier execution case, the decree holder should not have filed a fresh execution case which was not maintainable. On the said grounds, the Court below rejected the application of the petitioner.

4. The learned Counsel appearing for the petitioner submitted that the Court below erroneously held that Article 105 of the Limitation Act was applicable to the facts of the present case and rejected the application of the petitioner to execute the order passed by the Court enhancing the maintenance. Article 136 of the Limitation Act was applicable to the present case as it related to execution of a decree/order passed by the civil Court and the period of limitation for execution of such decree/order was twelve years. The Court enhanced the award of maintenance on 3.12.1994 and from that date, the period of limitation to execute the decree was 12 years as per Article 136 of the Limitation Act. Therefore, the order passed by the Court below was erroneous and the earlier execution case was dismissed for default. Therefore, the petitioner again filed the execution case against the judgment-debtor. Hence, the second execution case was maintainable.

5. This Court examined the record and from the above facts it appears that the petitioner got an order of enhanced maintenance on 3.12.1994 as provided in Section 25 of the Hindu Marriage Act and as such she filed the execution case. Therefore, the said execution case is coming under Article 136 of the Limitation Act which reads as follows:

Description of suit Period of Time from which period limitation begins to run

136. For the execution of Twelve years [When] the decree or order any decree (other than a becomes enforceable or decree granting a mandatory whether the decree or any injunction) or order of any subsequent order directs Civil Court any payment of money or the delivery of any property to be made at a certain date or at recurring 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.

6. Therefore, it appears that the period of limitation to execute such a decree is 12 years. So far as Article 105 of the Limitation Act is concerned, it appears that if the wife is a Hindu, she can claim arrear maintenance and in that case, the period of limitation will be three years. Article 105 of the Limitation Act is applicable only where the maintenance is claimed on the basis of the plaintiff's status as a Hindu governed by Hindu Law. In a suit for maintenance, when a Hindu, who had been living separately from the spouse, files a suit for arrear maintenance, his suit would be governed under Article 105 of the Limitation Act and the arrear maintenance can be claimed for three years before filing of the suit. However, under Article 136 of the Limitation Act the period of limitation prescribed is twelve years for execution of a decree (other than a decree granting a mandatory injunction) or order of any civil Court. Article 136 of the

Limitation Act being a specific Article, the application for execution of the decree or order of civil Court will not be governed by the residuary Article 137 of the Limitation Act. It applies to execution of a decree or order of the civil Court either under the CPC or under any special statute under which the order is deemed to be decreed by virtue of some provisions requiring the execution of the decrees.

7. Since the present application is coming under the meaning of a "decree/order passed by the civil Court", Article 136 of the Limitation Act is applicable and not Article 105 of the Limitation Act and the petitioner has executed the said order by filing the execution case. Since the Court below came a finding of fact by making an erroneous appreciation by approaching the question in an improper manner, the said finding cannot be aid to be one rendered with jurisdiction. Failure to render necessary findings to support such order would also be a jurisdictional error liable to be corrected in exercise of the jurisdiction under Article 227 of the Constitution.

8. Considering the facts and circumstances of the case, this Court sets aside the impugned order dated 30.7.2005 passed by the learned Civil Judge (Senior Division), Nimapara in Execution Misc. Case No. 62/06 of 2000/1999 and directs the executing Court to execute the decree after issuing notice to the judgment-debtor.

The writ petition is disposed of accordingly.