

(1936) 08 MAD CK 0040
In the Madras High Court

Sri Rajah Tyada Pusapati Simhadriraju Dakshinakavata
Dugarajulum Garu and Another

APPELLANT

Vs

The Unlimited Aryan Bank of Vizagapatam

RESPONDENT

Date of Decision : 06-08-1936

Acts Referred:

Limitation Act, 1963 — Section 14

Citation : AIR 1937 Mad 357 : (1937) ILR (Mad) 161 : (1937) 45 LW 270 :
(1937) 1 MLJ 303

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This is an appeal against the decree in a mortgage suit filed in the Court of the Agency District Judge of Vizagapatam

and the only point pressed before us is one of limitation.

2. This suit became necessary by reason of the rule laid down by the Privy Council in Ramabhadra Raju Bahadur v. Maharaja of Jeypore (1919)

37 M.L.J. 11 : L.R. 46 IndAp 151 : ILR 42 Mad. 813 that where a mortgage comprises property situate within the jurisdiction of the ordinary civil

Courts in British India and also property situate in the Agency Tracts which are subject to the special jurisdiction of the Agent under Madras Act

XXIV of 1839, the ordinary Civil Courts have no jurisdiction to take cognisance of the suit so far as it relates to the property situate within the

Agency tracts. In the present case the two mortgages executed in November, 1895 and May, 1897, respectively, comprised properties partly

situate in the Vizagapatam District proper and partly in the Vizagapatam Agency. The date fixed for payment was the 29th November, 1901; and

within six years of that date, an action was commenced in the Subordinate

Judge's Court of Vizagapatam for relief in respect of both sets of properties. A decree nisi followed in due course and also a final decree. Between February, 1911 and July, 1918, several applications for the execution of the decree were presented to and entertained by the Subordinate Judge of Vizagapatam but these attempts at realisation of the decree proved infructuous either for want of bidders or for other reasons not attributable to the default of the decree-holder. In July, 1918, the Subordinate Judge of Vizagapatam passed an order proclaiming for sale the properties situate within his jurisdiction and proposing to transfer the matter to the Agent so far as the properties within the jurisdiction of the Agent had to be sold. On the next application, however, which was made after the judgment of the Privy Council in *Ramabhadra Raju Bahadur v. Maharajah of Jeypore* (1919) 37 M.L.J. 11 : L.R. 46 IndAp 151 : ILR 42 Mad. 813 had been reported, he held that this part of the decree was futile and there was accordingly nothing to transfer to the Agent. It appears from the record that the properties situate in the regular jurisdiction were actually sold only some time in January, 1923; and as the amount then realised fell far short of the amount due on foot of the mortgage decrees, this suit was instituted in the Agency Court in October, 1923.

3. On the facts above stated, the question arises whether the plaintiffs are by reason of Section 14 of the Limitation Act entitled to deduct the period during which the decree obtained by them in the Subordinate Judge's Court of Vizagapatam was sought to be executed and if so on what basis the period of such deduction is to be calculated. No question has been raised as to their right to deduct the period between the institution of the suit and the date of the decree. The learned Agency District Judge has held that the plaintiffs are entitled to deduction of the whole period from 17th August, 1907 (the date when the first suit was instituted) to January, 1920, when he thought the plaintiffs must be deemed to have become aware of the pronouncement of their Lordships of the Judicial Committee. It has not been contended before us that if during this period the plaintiffs could be held to have "been prosecuting another civil proceeding" within the meaning of Section 14 of the Limitation Act, they are nevertheless disentitled to the benefit of that section by reason of any lack of bona fides or due diligence on their part. It has been argued only as a

point of law, first, that proceedings in execution of the decree in one suit are not within the contemplation of Section 14 when calculating the period

of limitation for the institution of another suit and, secondly, that if the period occupied by the proceedings in execution could be deducted at all, it

must be calculated only with reference to the time during which each execution application presented by the plaintiffs was pending and not by

taking into account the interval between the dismissal of one execution application and the presentation of another. The answer to both these

arguments seems to us to depend upon the true interpretation of the expression ""prosecuting another civil proceeding"".

4. The legislature has not, for purposes of computation, drawn any distinction in the first clause of Section 14 between the suit stage and later

stages in execution, though for purposes of initiation of proceedings, a distinction has been made between a suit dealt with by the first clause of

Section 14 and an application provided for in the second clause. This latter distinction relates to the suit or application in respect of which the

question of limitation arises and not to the prior proceeding in respect of which deduction is claimed. The concluding words of the first clause of

Section 14 no doubt provide that the previous proceeding should be founded upon the same cause of action as the later. And it is also true that so

far as proceedings in execution following upon a decree are concerned, there is no question of their being founded upon a particular "cause of

action"; it is the suit in which the decree was passed that must be looked to, for determining the identity of the causes of action between the two

suits. It seems to us that if the two suits are founded on the same cause of action, the fact that ""no cause of action"" can be predicated in respect of

proceedings in execution is no reason for holding that the time bona fide but infructuously taken in executing the prior decree should not be

deducted u/s 14.

5. In determining the true scope of the indulgence allowed by Section 14(1) of the Limitation Act, we think the Court may well bear in mind the

principle applied in cases arising u/s 52 of the Transfer of Property Act, especially as the wording of that section (prior to its recent amendment)

was practically identical with the language employed in Section 14 of the Limitation Act. Till 1929, its language was:

That during the active prosecution of a contentious suit or proceeding in which any right to immovable property is in question the property cannot

be transferred by any party to the suit so as to affect the rights of any other party to the suit under the decree made in the suit.

6. The question was frequently raised whether, for the purpose of Section 52, the Us continued only up to the date of the decree in a mortgage suit

or up to the realisation of the mortgage decree by proceedings in execution; and the preponderance of authority was certainly in favour of the view

that the lis continued up to the realisation of the mortgage decree by proceedings in execution. Cf. *Surjiram Marwari v. Barhamdeo Persad* (1905)

2 C.L.J. 288 , *Ghanshyam Das v. Ragho Singh* I.L.R.(1930) 10 Pat. 234, *Ramasami Aiyangar Vs. Govinda Iyer and Another*, and *Abdul*

Muhammad Rowther v. Seethalakshmi Ammal (1930) 130 I.C. 666 This principle has now received legislative recognition in the explanation

added to Section 52 by the amending Act of 1929. It has been suggested that Section 52 of the Transfer of Property Act is not a provision in pari

materia with Section 14 of the Limitation Act and the analogy therefore is not true. The purport of the two provisions is no doubt different but the

underlying policy seems to us to be the same in both cases. The principle of Section 14 of the Limitation Act is that if and so long as a person has

been bona fide and with due diligence seeking the relief that he was entitled to in a Court which he believed to be a Court competent to grant him

that relief, he ought not to be penalised for having instituted that action in the wrong Court. The reason of the rule seems to us equally to apply to

the steps taken by him after the decree as to the steps taken by him prior to the decree. The fact that for processual purposes the Code makes a

distinction between steps prior to the decree and steps subsequent to the decree does not affect the underlying principle of Section 14 of the

Limitation Act. A party is seeking the relief that he was entitled to as much in the execution stage as during the pre-decree stage; and in a mortgage

suit, the relief that he is entitled to is the sale of the property and till that has been carried out, all steps taken by him, provided they were taken with

due diligence and in a Court which he bona fide believed to be the Court competent to grant him that relief, may legitimately be held to be steps

taken in another "civil proceeding" within the meaning of Section 14. That is the reason why in the earlier part of Clause 1 of Section 14 the

Legislature has advisedly used the expression "civil proceeding" and does not use the word "suit". The section specifically refers to the possibility of proceedings being taken in the Court of first instance or in the Court of appeal; this obviously rests on the theory that an appeal is merely a continuation of the proceedings in the first Court. No express reference has been made to proceedings in execution, apparently because under the law proceedings in execution have to be taken in the Court of first instance. We are accordingly of opinion that both the points urged on behalf of the appellants must be held to be untenable. In this view, it is unnecessary to examine another possible line of argument that notwithstanding the formal existence of several execution petitions in this case, they must all be regarded as a single proceeding in execution and the so-called "dismissal" must only be regarded as disposals for statistical purposes because the earlier petitions did not prove effective and their dismissal was not attributable to any default on the plaintiff's part. It is sufficient to say that on this line of reasoning, the question of intervals between the dismissal of one petition and the presentation of another will not arise.

7. Reliance was placed by Mr. Ramaswami Aiyangar (on behalf of the appellants) on an unreported judgment of Jackson, J., in C.M.S.A. No. 76

of 1923 and another judgment of the same learned Judge in Koganti Veerayya v. Narra Sreesilam (1927) 110 I.C. 47. The judgment in the former

case was reversed in Letters Patent Appeal on another point. We do not therefore have the opinion of the Appellate Court on the point u/s 14 of

the Limitation Act. The question arose before Jackson, J., with reference to the successive stages in execution of the same decree. Some

intervening execution applications had according to the opinion of the learned Judges been presented to the wrong Court and the question he had

to consider was on what basis the period of exclusion u/s 14 should be calculated in respect of a later application filed in the proper Court. That

question had to be decided with reference to the language of Clause 2 of Section 14. Obviously on the facts of that case, the theory that a suit and

proceedings in execution of the decree obtained therein altogether constitute a single proceeding when considered in relation to a later suit founded

on the same cause of action as the prior suit, cannot apply. The learned Judge had to decide a point of limitation with reference to different

applications for execution presented in respect of the same decree. In such a case he was of opinion that each execution application should be

treated as a proceeding by itself and it was only the period of actual pendency of each of such applications that could be taken into account u/s 14

in determining whether a later application for execution was in time or not. We do not think it necessary for the purpose of this case to differ from

that view Cf. *Maqbul Ahmad v. Onkar Pratab Narain Singh* (1935) 68 M.L.J. 665 : L.R. 62 IndAp 80 : ILR 57 All. 242 because, in a case of

that kind, the principle on which we have rested our present decision is obviously unavailable. The decision in *Koganti Veerayya v. Narra*

Sreesilam (1927) 110 I.C. 47 throws very little light on the question now under consideration; if anything, it is at variance with the appellants"

contention in so far as it recognises that even the period between the passing of the decree in a suit and the filing of an appeal therefrom may in

certain circumstances be deducted u/s 14 of the Limitation Act. Such a deduction is inconsistent with the appellants" contention that it is only the

actual period between the presentation of a proceeding and the disposal of that particular proceeding that can be allowed u/s 14. Jackson, J.,

recognised the theory that provided the suit had been rightly initiated, the appeal is really a continuation thereof and for reasons we have already

given we think the same principle ought to be applied to proceedings taken in the execution department for realisation of the decree.

8. A point was suggested by Mr. Ramaswami Aiyangar that the Judge should not have taken January, 1920, as the date up to which the plaintiffs

were entitled to deduction, because the Subordinate Judge's order dated 5th July, 1918, differentiated the properties within his jurisdiction from

the properties in the Agency jurisdiction and no further proceedings were taken by the plaintiffs after that date for the sale of the properties in the

Agency jurisdiction. We do not pause to examine the correctness of this argument, because even if it should be held that the plaintiffs were entitled

to deduction of the time only up to the 5th July, 1918, the present suit would nevertheless be in time if they are entitled to exclude the period from

17th August, 1907 to 5th July, 1918.

9. It was brought to our notice that the lower Court has declared that the plaintiffs are entitled to proceed against the other family properties of the

defendant not comprised in the mortgages. The plaintiffs will be entitled to such a decree only if the suit has been instituted within the time allowed by law for a personal decree. But it is clear from the dates--and it is not disputed on the other side--that the personal remedy on the bond had become barred before the institution of this suit. That portion of the decree which relates to the liability of the other family properties of the defendants must accordingly be omitted. Subject to this variation, the decree of the lower Court is confirmed and the appeal is dismissed with costs. The appellants will pay the court-fee payable on the memorandum of appeal.