

(1929) 04 MAD CK 0068
In the Madras High Court

Subramania Chettiar and Others

APPELLANT

Vs

Angappa Asari

RESPONDENT

Date of Decision : 30-04-1929

Acts Referred:

Citation : AIR 1930 Mad 328

Hon'ble Judges : Pandalai, J

Bench : Division Bench

Judgement

Pandalai, J.—This second appeal is from an order to deliver property to an auction purchaser in execution. The sale took place in 1917. Its confirmation was opposed but it was confirmed on 5th March 1919, by the appellate Court. From that time onward for a period of more than 10 years the purchaser has been attempting to get possession. In the fourth and last application dated 28th September 1923, he was met by one of the three sons of the deceased judgment-debtor by the plea of limitation under Article 180, Lim. Act. The first application for possession was dated 15th November 1919. An order was made for giving possession on that application but not carried out owing to the obstruction of the daughter-in-law of the judgment-debtor and so the application was treated as "closed". The second application dated 15th December 1919, was for removal of obstruction and possession but removal of obstruction could not be ordered or possession given on account of the pendency of obstruction proceedings followed by a suit filed by the obstructor during which the purchaser was prevented by an injunction and by reason of a stay order from the High Court in Civil Revision Petition No. 1919 filed by the judgment debtors against the order confirming sale. Before those proceedings were closed, however, the application was itself treated as "closed". The third application was made on 12th October 1921, after the termination on 31st August 1922, of the obstructor's suit O.S. No. 287 of 1920. This application was returned to the applicant's vakil for representation with the certificate of the sale in one week. This was not done as the vakil who got back this application was in custody for a long time afterwards. On his release that petition was re-presented by another vakil on 20th July 1923, with

the sale certificate on behalf of the purchaser with another application to excuse the delay in re-presentation caused by the above circumstance. The Munsif by his order dated 24th November 1923, declined to excuse the delay but allowed in the meanwhile a fourth application dated 28th September 1923, to be filed as a continuation of the first and second application and it is this which the judgment debtor's son now says is time-barred as it was filed more than three years after the confirmation of the sale.

2. The District Munsif held that in the circumstances stated above the first application can be treated as "closed" only for statistical purposes as the order for delivery made on that application was not carried out merely on account of the resistance of third parties and that the application, dated 28th September 1923, was a continuation of the previous proceedings. He, therefore, ordered delivery of possession to be given on 1st March 1924. One of the three sons of the judgment-debtor appealed to the District Judge. He held that the application of 28th September 1923 should not be treated as a revival of the earlier proceedings because the third application dated 12th October 1921, must be held to have been dismissed as it was not re-presented in time and the application to excuse delay was refused. But the learned Judge upheld a preliminary objection taken on behalf of the auction-purchaser that the appeal to him was incompetent as the question in dispute did not arise between opposite parties or their representatives and, therefore, do not fall within Section 47, Civil P.C., and, that, therefore, no appeal lay. The judgment-debtor's son has filed the second appeal.

3. Two questions were argued: (1) that the view of the lower appellate Court that no appeal lay to him was incorrect and (2) that the application for possession was barred under Article 180. I do not propose to deal with the first contention as in my opinion there was more than one application for possession made within three years of the confirmation of the sale pending undisposed of before the Court sufficient to support the District Munsif's order. The first three applications were clearly made within three years of the date of the confirmation of the sale. On the first application an order for possession had been made but not carried out owing to no fault of the purchaser. To close such an application because the order made could not be immediately carried out on account of obstruction only means that the execution of the order had necessarily to be postponed not that the application is dismissed. Treating such a matter as "closed" can only be for statistical purposes. Similarly the second application for removal of obstruction and for delivery of possession could not be dealt with finally as the obstructor's suit intervened and an order could only be passed after it terminated and the injunction against the purchaser was dissolved. To "close" such an application on account of the pendency of other proceedings before the termination of which final orders could not be passed has no other meaning than that consideration of the matter is postponed and pending such consideration the application is for statistical purposes closed. The fact that the third application was not represented in time and that the Court refused to excuse to delay, in re-

presentation of that petition does not mean that it was dealing with the previous two applications which were judicially undisposed of, because even before 24th November 1923, the date of the order refusing to excuse the delay in re-presentation of the third petition, the present or fourth application to continue the proceedings under the first two applications had already been filed on 28th September 1920, and it was disposed of only on 2nd February 1924 the date of the order now under appeal. I cannot agree with the learned Judge when he says that the first application was not merely closed for statistical purposes. He has said nothing about the second application. It is well recognized that closing or striking off on statistical or administrative grounds applications for judicial relief do not dispose of them judicially and that for purposes of limitation they must be regarded as still pending. The appellant has absolutely no merits and the appeal is dismissed with costs.

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