
(1923) 07 AHC CK 0032
In the Allahabad High Court

Surajman Chaube

APPELLANT

Vs

Anjore Shukul

RESPONDENT

Date of Decision : 31-07-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 48
Government of India Act, 1915 — Section 107

Citation : (1924) ILR (All) 73 : 79 Ind. Cas. 605

Hon'ble Judges : Kanhaiya Lal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kanhaiya Lal, J.—In this case a preliminary objection has been taken to the hearing of the appeal that no second appeal is maintainable. The suit was one of a Small Cause Court nature below Rs. 500 in value and as held in Harakh Ram Sarup ILR (1890) All. 579 and Narayan Parmanand v. Nagindas Bhaidas ILR (1905) 30 Bom. 113, no second appeal lies against an order of execution of a decree in a suit of that kind. The petition of appeal can, however, be treated as a petition in revision. Let the petition be therefore, removed from the register of second appeals and registered as a petition in revision and dealt with as such.

2. The case was then heard as an application in revision.

3. Hafiz Mushtaq Ahmad, for the applicant.

4. Munshi Haribans Sahai, for the opposite party,

Kanhaiya Lal, J.

5. On the 11th of November, 1918, a decree for money was obtained by the decree-holder applicant against Musammat Rajwanti as a legal representative of her husband Mahip Shukul in accordance with a compromise which provided that the money should be repayable without interest within six months and that if no such payment was made, the decree-holder should be entitled to recover his

money with interest at Re. 1 per mensem from the date of the decree. The terms of the compromise were embodied in the decree.

6. According to the above decree, the money fell due on the 11th of May, 1919. An application for execution was made by the decree-holder on the 7th of November, 1921, against the estate of Mahip Shukul in the hands of Ram Sumer who was described having obtained possession of the property of the deceased on the death of Musammat Rajwanti as his reversionary heir. Ram Sumer denied that he was in possession of any property of Mahip Shukul or that he, was his reversionary heir. He pointed out that Musammat Rajwanti had an adopted son named Ram Anjore and that the decree-holder should obtain execution against him. Ram Anjore appeared and stated that he had been adopted by Mahip Shukul. The name of Ram Anjore was, therefore, substituted in place of Ram Sumer in the application for execution.

7. Ram Anjore thereupon filed an objection, stating inter alia that he was not bound by the decree, as he had been adopted by Mahip Shukul and had not been made a party to the suit and that the decree was, in any case, barred by limitation against him. That objection was dismissed for default. The court in which the execution proceeding was pending, however, proceeded to determine the question of limitation and came to the conclusion that the decree was barred by time, because the substitution of the name of Ram Anjore was made after the expiry of more than three years from the date of the decree. On appeal that order was upheld. Both the courts below omitted to notice that the decree was not capable of execution till the 11th of May, 1919, that is, till after the expiry of six months from the date of the decree, because the judgment-debtor had been allowed the option of paying the decretal money within that period without interest. No payment was, however, made; and, as held by their Lordships of the Privy Council in *Rameshwar Singh v. Homeshwar Singh* (1920) 19 A.L.J. 26, Article 181 is applicable to such a case, under which the period of limitation is three years from the time when the right to apply accrues. Their Lordships pointed out that when the Limitation Act of 1908 prescribed three years from the date of a decree or order as a period within which it must be enforced, the language read with its context referred only to an order or decree made in such a form as to render it capable in the circumstances of being enforced. In *Aiyasamier v. Venkatachela Mudali* ILR (1916) Mad. 989, the date of the decree in Clause (a) of Section 48 of the CPC was similarly interpreted as meaning the date when the decree became executable. The decree in the present case did not become capable of execution till a default had been made by the judgment-debtor in paying the decretal money within the period allowed; and whether Article 181 or Article 182, Clause (7) of the Indian Limitation Act (No. IX of 1908) was applied, the time from which the period of limitation began to run would not be deemed to have commenced till after the expiry of that period. The amount to which the decree-holder (sic) became then determinable and recoverable.

8. It is contended on behalf of the judgment-debtor that Article 181 does not apply to cases covered by Section 48 of the CPC and that Article 182, Clause (7), similarly does not apply where no certain date is fixed for the payment of the decretal money. But Section 48 of the CPC deals with the maximum limit of time provided for execution and does not prescribe the period within which each application for execution is to be made. The right to apply for execution accrues under it from the date when the default in making the payment occurs; and there is nothing in that section governing the provisions applicable to periodical applications for the execution of a decree which can be made after the right to apply for execution has accrued, so long as the decree subsists and is capable of execution. A date capable of being made certain by the computation of the time provided for payment is as certain for the purpose of Article 182 of the Indian Limitation Act as a specific date entered in or provided for by a decree or order. The decision in *Yusuf Khan v. Sirdar Khan* ILR (1883) Mad. 83, to which a reference has been made during the hearing, has been considered in *Kaveri v. Venkamma* ILR (1890) Mad. 396 and *Lakshmibai Bapuji Oka v. Madhavrav Bapuji Oka* ILR (1887) 12 Bom. 65. Whatever might be said as regards a decree directing the payment of an annuity, no such consideration would arise, where a specific period is fixed for the payment of the money and the right to apply for execution is postponed till default is made in payment within that period.

9. A reference has also been made to the decision in *Lalta Prasad v. Sheo Sahai* Weekly Notes, 1885, p. 193, but in that case the decree, though purporting to have been passed in accordance with the terms of a compromise, did not specify the limit of time within which the decretal money was to be paid.

10. In any case the substitution of the name of Ram Anjore in the original application for execution of the 7th of November, 1921, had the effect of validating the application for execution made against the estate of Mahip Shukul, though a legal representative, who was not in possession of that property, was wrongly entered as having been in possession thereof.

11. The lower appellate court has referred to the decision in *Gyanendra Nath Basu v. Rani Nihalo Bibi* ILR (1910) All. 404, but in that case the second application was made for execution against certain property against the legal representative after the previous application for execution against other property had been dismissed against persons who were not really the legal representatives of the deceased judgment-debtor. The decree in the present case was passed against the estate of Mahip Shukul and it was against that estate that the present application for execution was made, though the legal representative was wrongly described as Ram Semer instead of Ram Anjore, who was eventually substituted in the place of the former.

12. It is also urged that an erroneous decision on the question of limitation cannot be challenged in an application for revision whether Section 115 of the CPC or Section 107 of the Government of India Act is applied. The decision of the courts below, which ignores that the decree, as it was originally passed, was not

capable of execution till the expiry of six months from the date of the decree, is so palpably erroneous as to amount almost to an improper refusal to exercise the jurisdiction which was vested in the court to execute the decree to the prejudice of the party entitled to execute the same.

13. The application is, therefore, allowed and the execution case remanded to the court of first instance with a direction to reinstate it under its original number and to proceed to dispose of it in the manner provided by the law. The costs here and hitherto will abide the result.