
(1985) 01 KAR CK 0014
In the Karnataka High Court
Case No : CRP No. 269 of 1980

Union of India (UOI)

APPELLANT

Vs

Sripad Shankar Kulkarni

RESPONDENT

Date of Decision : 15-01-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54, 144

Citation : (1985) ILR (Kar) 1630

Hon'ble Judges : Kulkarni, J

Bench : Single Bench

Advocate : J. Nagaraj, for the Appellant; B.V.K. Rao, for the Respondent

Final Decision : Allowed

Judgement

Kulkarni, J.—This Decree holders" Revision is directed against the order dated 12-12-1978 passed by the Additional Munsiff. Jamkhandi, in Execution Case No. 39/1978 dismissing the same.

2. The Judgment-Debtor had filed a suit in Special Civil Suit No. 13/62 against the Decree-holders in the Court of the Civil Judge, Senior Division, Sangli and obtained a decree. During the pendency of the suit Rs. 5743-75 on 17-4-1964 and Rs. 379-50 on 8-12-1967 had been deposited by the Decree-holders. The present Decree-holders approached the High Court of Bombay in First Appeal No. 93/1964 challenging the decree passed by the Civil Judge, Senior Division, Sangli in Special Civil Suit No 13/62. The High Court of Bombay allowed the appeal on 6-8-1968 and the Judgment and decree of the Civil Judge, Senior Division, Sangli, were set-aside. The present Decree-holders filed a restitution application u/s 144 C.P.C., in the Court of the Civil Judge, Senior Division, Sangli, on 12-1-1973. The Civil Judge, Senior Division, Sangli, by his order dated 26-4-1974 ordered that the present Decree-holders do recover Rs. 6123-25 from the original plaintiff, that is, the present judgment-debtor together with interest at 6 per cent from the date of filing the application until its realisation. That Execution ordered was transferred to the Munsiff, Jamakhandi. That Execution is

numbered as Execution Case No. 39/78 and was filed on 15-4-1978. The decree-holders, it appears, had filed an application for attachment of judgment-debtor's land situated in the village of Jamakhandi Taluk, under Order 21 Rule 54 C.P.C.

3. The Judgment-debtor raised a contention that the application filed u/s 144 C.P.C. for restitution by Decree-holders was barred by limitation and therefore, it was a decree passed without jurisdiction and it was a nullity and therefore, it was incapable of execution.

4. The said contention appealed to the Munsiff and he held that the order passed by the Civil Judge, Senior Division, Sangli, was without jurisdiction and it was a nullity and therefore, he dismissed the Execution Case. Hence, this Revision.

5. The facts are not in dispute. It is undisputed that the High Court of Bombay allowed the present Decree-holders appeal on 6- 8-1968. It is also undisputed that the application for restitution u/s 144 C. P.C. was filed on 12-1-1973. It is also undisputed that Article 137 of the Limitation Act prescribes a period of limitation of three years and is applicable to the facts of the case. Thus, it appears, that the application filed u/s 144 C.P.C. in the Court of the Civil Judge/ Senior Division, Sarngli, was apparently barred by limitation.

6. Now, the question is whether the decree passed by the Court ignoring the provisions of the Limitation Act can be called in question by the Executing Court?

7. The Supreme Court in the case of Ittavira Mathai Vs. Varkey Varkey and Another, has held :

"Even assuming that the suit was barred by lime, it is difficult to appreciate the contention of learned Counsel that the decree can be treated as a nullity and ignored in subsequent litigation. If the suit was barred by time and yet, the Court decreed it, the Court would be committing an illegality and therefore the aggrieved party would be entitled to have the decrees set-aside by preferring an appeal against it. But it is well settled that a Court having jurisdiction over the subject-matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject-matter and it had the jurisdiction over the party and, therefore merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, Courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullities. Learned Counsel, however, referred us to the decision of the Privy Council in AIR 1935 89 (Privy Council) and contended that since the Court is bound under the provisions of Section 3 of the Limitation Act to ascertain for itself whether the suit before it was within lime, it would act without jurisdiction, if it fails to do so. All that the decision relied upon says is that Section 3 of the Limitation Act is peremptory and that it is the duty of the Court to take notice of this provision and give effect to it even though the point of limitation is not referred to in the pleadings. The

Privy Council has not said that where the Court fails not to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity."

8. The Trial Court has referred to *Ferozi Lal Jain Vs. Man Mal and Another*, The said ruling does not decide the question in dispute. It appears to be a wrong quotation. Instead of page 794 it ought to be 907. I have already in detail referred to that decision of the Supreme Court which, in short, holds that even if a Court decides a matter and does not decide the point of limitation, it would be a decision rendered by the Court having jurisdiction. At the most, the decision can be considered to be an erroneous decision and an erroneous decision is not a nullity. Therefore, the view taken by the Court below by relying on these decisions runs contrary to the principle in the decision itself.

9. The Executing Court cannot go behind the decree at all. It is not open to the Executing Court to go into the validity of the order which is sought to be executed. The Executing Court cannot refuse to execute a decree on the ground that the decree is improper and erroneous.

10. It is undisputed that the Court of the Civil Judge, Sangli, had got jurisdiction to decide the restitution application filed u/s 144 C.P.C. Therefore, the order sought to be executed in the present application is an order passed by the Competent Court having jurisdiction though its decision might be erroneous.

11. Therefore, in the circumstances, the order passed by the Court below is set aside. This Civil Revision Petition is allowed. The matter is remanded to the Court of the Munsiff, Jamkhandi, for fresh disposal according to law.