
(1957) 11 AP CK 0008
In the Andhra Pradesh High Court
Case No : A.A.A.O. No. 72 of 1954

Varanasi Padmanabham and Another	APPELLANT
Vs	
Inaturi Joga Rao	RESPONDENT

Date of Decision : 13-11-1957

Acts Referred:

Citation : AIR 1958 AP 402

Hon'ble Judges : K. Subba Rao, C.J.;Ranganadham Chetty, J

Bench : Division Bench

Advocate : V.V. Krishnamurthy, for the Appellant; A. Rama Rao, for the Respondent

Judgement

K. Subba Rao, C.J.—The only question in this Civil Miscellaneous Second Appeal is whether E. P. No. 209 of 1953 on the file of the District Munsif's Court, Kakinada, is barred by limitation.

2. The respondent obtained a money decree against the appellants in O. S. No. 504 of 1953 (D. M. C Kakinada) on 20-1-1944. On 17-1-1947, he filed an application (E. P. No. 35 of 1947) for attachment and sale of the properties belonging to the judgment-debtors. The executing Court directed attachment of the properties to be effected by 27-3-1947 and also directed the decree-holder to pay batta within three days from the date of its order, namely, 5-3-1947. The decree-holder failed to pay batta within the prescribed time. On 14-3-1947 the execution petition was advanced and was dismissed on the ground that batta was not paid. The decree-holder did not get that order set aside by appropriate proceedings. He filed a second execution petition (E. P. No. 116 of 1950) on 27-3-1950 a that was dismissed for non-payment of batta 10-5-1950. He then filed a third execution petition (E. P.No. 209 of 1953) on 12-6-1953. The judgment-debtors, inter alia, pleaded that this execution petition was barred by limitation on the ground t(sic) the second execution petition i.e., E. P No. 116 1950, was filed more than three years from date when the first execution petition was dismiss viz., 14-3-1947. The trial Court held that E. P. (sic) 209 of

1953 was barred by limitation, while lower appellate court, following the judgment of Horwill J. in *V. Venkatappiah Vs. V. Seetharamavarma*, that the execution petition was within time. Here the second appeal.

3. The only question in this second appeal whether the present E. P. was barred by limitation Under Art. 182 (5) of the Indian Limitation Act an execution petition should be filed within three years from the date of the final order passed on application made in accordance with law to proper Court for execution, or to take some steps in aid of execution of the decree. The learned counsel for the appellants contends that the final order within the meaning of that Article was made on 14-3-1947 whereas the learned counsel for respondent argues that the said order must be deemed to have been made on 27-3-1947. From narration of the aforesaid facts, it is manifest, factually, a final order was made by the execution Court dismissing E. P. No. 35 of 1947 on 14-3-1947. That order was either good or bad. If that order was bad, the decree-holder should have got it aside by taking appropriate proceedings. So as that order was allowed to stand, it appeals to us that it is not possible to contend that the Court did not make a final order against the decree-holder. The decision of Horwill J. in 1944-1 Mad LJ *V. Venkatappiah Vs. V. Seetharamavarma*, turned upon the order made in that case. The execution petition was posted to 29th January 1937, but the District Munsif dismissed it on 15th January 1937 for non-payment of batta behind the parties. The learned Judge held that the order made on 15th January, 1937 must be deemed to have been made on 29-1-1937 to which the E. P. was posted. We find it difficult to follow the reasoning of the learned Judge. In effect learned Judge held that, though a final order been made on a particular date, it must be deemed to have been made constructively on a different date. In our view, law does not permit any such fiction and if the order was passed illegally, it would be open to the decree-holder to get the E. P. set aside or otherwise to get the order set aside by appellate Court. That apart, in the present case does not appear from the B - diary that the execution petition was posted to any particular date. The B - diary also discloses that the execution petition was advanced and was disposed of finally on a particular date for the reasons mentioned in the order. We cannot say that, when a Court dismissed an application on a particular date, it dismissed it on that date. In our view, the order on 14-3-1947 was the "final order" within the meaning of Art. 182 (5) of the Limitation Act. If E. P. No. 116 of 1950, having been filed more than three years from the date of the final order previous execution petition, was clearly barred by limitation. It follows that the present E. P. (E. P. No. 209 of 1953) was also barred by limitation. The Order of the Lower Appellate Court is set aside and the order of the first Court is restored. The appellants will have their costs throughout.