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(1961) 09 AP CK 0025

In the Andhra Pradesh High Court

Case No : Letters patent Appeal No. 76 of 1958

Yella Appa Rao (died) and Others — APPELLANT

Vs

Nagam Veerraju — RESPONDENT

Date of Decision : 21-09-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 7, 32, 48

Citation : (1961) 09 AP CK 0025

Hon'ble Judges : P. Chandra Reddy, C.J;Narasimham, J

Bench : Division Bench

Advocate : Y. Suryanarayana, for the Appellant; M. Krishna Rao, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—This appeal filed under Clause 15 of the Letters patent against the judgment of our learned brother, Satyanarayana Raju, J., with his leave raises a question relating to the Interpretation of Article 182 of the Indian Limitation Act.

2. The respondent filed O. S. No. 39 of 1944 on the file of the District Munsiff''s Court, Kakinada, against the appellant for dissolution of partnership and settlement of accounts of a joint firm. A preliminary decree was passed for dissolution of partnership and for account. This was followed up by a final decree dated 1-8-1945, under which it was declared that a sum of Rs. 507-13-11 was due to the appellant by the respondent together with costs and subsequent interest. The final decree contained a direction that it should not be executed until the requisite court-fee was paid. The respondent carried the matter in appeal to the Subordinate Judge''s Court, Kakinada, in A. S. No. 202 of 1945 but it was ultimately dismissed on 28-6-1946 for want of prosecution. An application for restoration of the appeal was dismissed by the Subordinate Judge''s Court, Kakinada, and this was confirmed on appeal by the Madras High Court in A. A. O. No. 663 of 1946 on 20-4-1948.

3. On 12-5-1959, the appellant put in execution the final decree and it was rejected on 10-8-1950. Another petition filed on 24-12-1951 shared the same fate. The third execution petition (E. P. No. 228 of 1952) was filed by the appellant on 9-5-1952. On objection being taken that the decree-holder had not paid the court-fee, the appellant deposited the court, fee on 7-7-1952.

4. The petition was opposed inter alia on the ground that it was barred by time, as the first execution petition was filed beyond three years of the passing of the final decree. This plea found favour with the District Munsif, with the result that he dismissed the petition.

5. The appellant took the matter in appeal to the Subordinate Judge''s Court, Kakinada, but without success.

6. The second appeal preferred by him to this Court was dismissed by our Teamed brother, Satyanarayana Raju, J. At the same time, the learned Judge granted leave under Clause 15 of the Letters Patent. It is this order that is now under appeal.

7. The point presented by Sri Suryanarayana in support of this appeal is that for purposes Of Article 182 of the Limitation Act time should be reckoned from the date on which the court-fee was paid by the appellant, i. e., from 7th July, 1952, as per the direction in the final decree. The final decree could not be enforced without the payment of court-fee and, therefore, the date of the decree or order should be deemed to be the date on which the court-fee was paid. Till the court-fee was deposited into court, there was no decree which was capable of execution. Consequently, the execution petition filed in May 1950, would be in time, is the argument of Sri Suryanarayana.

8. In support of his proposition, Sri Suryanarayana relied on the decision of the Madras High Court in Pandivi Satyanandam and Others Vs. Paramkusam Nammayya and Another, That was a case where a decree in a suit for partition of joint family properties directed payment of specific sums to individual members of the joint family and also provided for effecting division of the properties of the joint family. So, the decree operated as a preliminary decree as regards partition of the properties and as a final decree in respect of payment of specific sums of money to the individual members of the joint family. This decree was put in execution without getting it engrossed on non-judicial stamp paper, as required by Article 45 of the Stamp Act. When an objection was taken that the decree could not be executed till it was engrossed on a non-judicial stamp paper, non-judicial stamps were supplied but that was three years after the passing of the decree. The question arose whether this payment would validate the proceedings with retrospective effect on the production of the proper non-judicial stamp paper. Burn and Lakshmana Rao, JJ., who constituted the Bench that decided this case, ruled that since the decree was not engrossed on a stamp-paper in time the execution petition could not be regarded as a valid one and the production of the non judicial stamps would not retrospectively validate the execution petition

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it is in dealing with that question that the learned Judges observed:

It is well-settled that a final decree for partition has no existence as a decree until it is engrossed on the proper non-judicial stamp-paper; till that is done the suit is pending (Vide Jotindra Mohan Tagore v. Bejoy Chand, ILR 32 Cal 483).

It is seen that this observation is merely an obiter.

9. ILR 32 Cal 483 referred to by the learned Judges did not deal with this question. The controversy there was whether a suit for partition could be said to be pending till the final decree was engrossed on a non-judicial stamp paper and whether an order directing a party to be added u/s 32, CPC could be made before the decree was so drafted. A Bench of that Court expressed" the opinion that till the decree was engrossed on stamp paper, the suit could not be said to have actually terminated. The learned Judges in that case were not concerned with the question whether limitation would not start running from the date of the decree or whether it was suspended till the decree was actually engrossed on a non-judicial stamp-paper. So, assuming that the Calcutta case was correctly decided, it does not support the remark made by the learned Judges in Pandivi Satyanandam and Others Vs. Paramkusam Nammayya and Another,

10. There is a long series of decisions which have enunciated the principle that limitation commences on the date of the final decree and the non-supply of non-judicial stamps for the purpose of drafting the final decree does not arrest the running of limitation. A final decree like the present cannot be equated to a conditional decree which could be executed only on the happening of a particular event. In the case of final decrees in partition suits or partnership actions, there is no obstacle in the way of the decree-holder proceeding with the execution of the decree after supplying non-judicial stamps for drafting the decrees or after paying the court-fee as required by section 11 of the Court Fees Act. They are not cases where certain conditions have to be performed before execution could be levied.

11. This is the doctrine of Inturi China Venkatappa Vs. Inturi Peda Venkatappa and Others, It was pointed out by Leach, C. J., who spoke for the Court that Article 182 of the Limitation Act provided a period of three years for the execution of a decree or order of a Civil Court not provided for by Article 183 or by section 48, Civil Procedure Code. So, a person who has a final decree in his favour in a partition suit has to execute it within three years unless a fresh period of limitation arises under one or other of the clauses of Article 182. If the decree-holder does not furnish the necessary stamp-papers for the purpose of drawing up the decree and executing it, it is ''his own fault and despite his want of diligence limitation begins to run. He cannot take advantage of his own fault in not producing the non-judicial stamps.

12. This view was affirmed in Venkataraya Goundan Vs. Mallappa Goundan and Others, another Bench decision of the same Court. These cases were referred to with approval by the same Court in Lakshminarasimham v. Suryanarayana, 1947

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2 Mad LJ 443. The rule stated in Inturi China Venkatappa Vs. Inturi Peda Venkatappa and Others, is in consonance with the opinion of the Calcutta High Court as expressed in Kishori Mohan Pal Vs. Provash Chandra Mondal and Others, The facts of that case were quite similar to those in Inturi China Venkatappa Vs. Inturi Peda Venkatappa and Others, It may be interesting to note that the learned judges in Kishori Mohan Pal Vs. Provash Chandra Mondal and Others, and distinguished it on the ground already mentioned by us. Further also they seemed to doubt the authority of ILR 32 Cal 483.

To a like effect is the judgment of a Bench of the Calcutta High Court in Bhajan Behary Shaha v. Girish Chandra Shaha, 17 Cal WN 959. That was also a case of a final decree in a suit for accounts. The question there was whether limitation started from the passing of the final decree or from the time when the decree was stamped as required by the Court Fees Act. The learned Judges repelled the argument that limitation would start only from the date when the decree-holder chose to comply with the provisions of the Court Fees Act. They took the view that it was the date of the decree that mattered for the purpose of Article 182 of the Limitation Act and not the date on which the requirement as to payment of court-fee was satisfied.

13. The rule stated in Bani Madhub Mitter v. Matungini Dassi, ILR 13 Cal 104 (FB) lends implied support to this doctrine. There a Full Bench of five Judges of the Calcutta High Court observed as follows:-

.........so that whatever may be the day on which the actual signature is made, the date of the decree, for all purposes, is to be the date on which the judgment was pronounced.

This was based on section 205 of the Civil Procedure Code, 1882, which corresponds to Order 20, Rule 7of the present Code. It is clear from Order 20, Rule 7, CPC that the date of the decree and the date of signing it are two different things, the date of the decree corresponding to the date on which judgment was pronounced. The reason underlying this rule, obviously, is that the Court is deemed to have expressed what the decree is when it pronounced the judgment. The decree, therefore, though drawn up afterwards, should bear the same date as the judgment and it should relate back to or operate from the date of judgment. If the decree should be regarded as having been made on the same day as the judgment, though actually drafted at a later date, it does not stand to reason to postulate that no final decree is passed till it is engrossed on a non-judicial stamp.

14. Above all, there is the authoritative pronouncement of the Supreme Court in Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari, . That was a case of final decree in a suit for dissolution of partnership and for accounts. One of the partners was to receive a certain sum of money from others under the final decree. An identical question arose and their Lordships answered it thus:

The decree was not a conditional one in the sense that some extraneous event

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was to happen on the fulfilment of which alone it could be executed. The payment of court-fees on the amount found due was entirely in the power of the decree-holder and there was nothing to prevent him from paying it then and there; it was a decree capable of execution from the very date it was passed.

15. This decision of the Supreme Court puts the matter beyond the pale of controversy. Our attention is drawn to a judgment of this Court in Smt. Kotipalli Mahalakshmamma Vs. Kotipalli Ganeswara Rao and Others, to which one of us was a party. There are certain observations in that case which lend some countenance to the contentions urged by Sri Suryanarayana but they were not necessary for the disposal of that case, and as such were merely obiter. These remarks run counter to the principle adumbrated in several of the decisions referred to above and also in the decision of the Supreme Court which is binding on us.

16. Nor does Rameshwar Singh v. Homeshwar Singh, 40 Mad LJ 1 : (AIR 1921 PC 31) render any assistance to the appellant. The following remarks of their Lordships have to be understood in the context of the case. They remarked:

When the Limitation Act of 1908 prescribes three years from the date of a decree or order as the period within which it must be enforced, this refers only to an Order or decree made in such a form as to render it capable in the circumstances of being enforced.

There, in a suit against one Ekradeshwar and Janeshvar of whom Janeshwar died pendente lite a decree was made which did not provide that Ekradeshwar should be personally liable, but declared that the decretal amount should be realised by the sale of the property of Janeshvar in Ekradeshvar''s possession. Ekradeshvar first Obtained possession of janeshvar''s property in 1914. Within a few months of this, the decree-holder applied to execute the decree. Their Lordships ruled that the execution of the decree was not barred by limitation, although it was filed beyond three years of the passing of the decree, since it was not capable of execution till Ekradeshvar could obtain possession of the property. In such circumstances, their Lord-shins held that it was Article 181 of the Limitation Act that applied and not Article 182.

The situation there was altogether different for the reason that the right of the decree-holder to realise his decree accrued only after Ekradeshvar got possession of the property. Till then he could not put this decree in execution. That case could hold no parallel to a case where the decree-holder could execute the decree after satisfying the order of the court regarding payment of court-fees. In the latter type of cases there is no insuperable difficulty in the way of the decree-holder executing the decree. That being the position, it is Article 182 that applies and Article 181 could not come into operation at all.

17. It follows that the execution petition filed in 1950 was beyond time and the plea of the non-payment of the court-fee would not avail the appellant. It follows that the judgment under appeal is correct and has to be affirmed.

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18. In the result, the appeal is dismissed. In the peculiar circumstances of the case, we direct the parties to bear their own costs throughout.

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