(1951) 10 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Appeal No. 24 of 1950

Mangal Singh		APPELLANT
	Vs	
Court of Wards		RESPONDENT

Date of Decision: Oct. 4, 1951

Hon'ble Judges: Chopra, J

Bench: Single Bench

Advocate: Kidar Nath Tiwari, for the Appellant;

Final Decision: Dismissed

Judgement

Chopra, J.

The only point involved in this second appeal is one of limitation. The Court of Wards, respondent in this appeal, obtained a money decree against the appellant on 17-10-1980. Execution proceedings were taken out a number of times. The last application was presented on 25-5-1990 and after protracted proceedings some agricultural land of the judgment-debtor was ordered to be leased out to the decree-holder for a period of ten years in satisfaction of the entire decretal amount. The Collector was required to put the decree-holder in possession of the land and the file was directed to be consigned to the record room.

This order of the executing Court was made on 9-1-2000. In spite of some efforts made by the decree-holder the possession, however, was not delivered to him. On 11-11-2003 he approached the Civil Court with an application for revival of the execution proceedings and for an order to be put in possession of the land leased out to him. This application was objected to by the judgment-debtor on the ground of limitation and it was urged that since the application was presented more than three years after the order, it was barred by time. The objection found favour with the executing Court and the application was dismissed as barred by time No reason was, however, given nor any provision of the Limitation Act according to which the application was found to be beyond time, was referred to. On appeal by the decree holder the learned District Judge, Patiala, set aside the order of the Executing court

and held the application to be within time. This is judgment-debtor''s second appeal.

2. It is contended on behalf of the appellant that the application for restoration of the execution proceedings was in substance a fresh application for execution of the decree or at least of the order of the executing Court. The argument is that the decree holder wanted to get possession of the land which had been leased out to him by order of the executing Court made on 9-1-2003 and since the decree-holder wanted compliance of that order the application should be considered as one for execution of that order. On these grounds it is urged that the application fell under Art. 182 and the limitation of three years for the same started from the date of the order. In the alternative, it is contended that since it was a fresh application for execution of the decree it was barred under the said Article, because it had been presented more than three years after the final order on the prior application. On a perusal of the order dated 9-1-2000 leasing out the land to the decree-holder and the prayer made in the present application, I am of the opinion that Art. 182 has got no application to the present case. The present application can neither be said to be one for the execution of the decree nor of the order of the executing Court. An application for execution is a substantive application by which proceedings in execution are commenced, and it does not cover applications for revival or continuance of proceedings already commenced. Execution had already been taken out and towards satisfaction of the decree land of the judgment-debtor had been ordered to be leased out to the decree-holder for a particular period. The decree could not be said to have been satisfied or the execution proceedings finally terminated, till the possession of the land had been delivered to the decree-holder and also till he had utilised the fruits of the land towards the decrial amount by remaining in possession of it for the full term of that period. The order was to the effect that the Collector would deliver possession of the land to the decree-holder. So long as this was not done the execution case could not be considered to have been finally disposed of. The mere fact that the file was ordered to be consigned to the record room does not necessarily mean that it had been finally disposed of. The question whether an execution case is still pending and has not been terminated depends on the interpretation of the order passed by the Court and the inference to be drawn from it as to the Court''s intention. An order to consign a case to the record room is not always a Judicial order, but sometimes it merely operates as an administrative order. Unless the matter had been finally and completely disposed of, consigning of the file to the record room did not amount to a final disposal of the case. The matter in dispute remained pending till possession had been delivered to the decree-holder and the decree had been fully satisfied. In view of these facts, the application in question cannot be considered to be in substance a fresh application for execution of the decree. It was merely an application to revive a former one which had not yet been completely disposed of or one for an order reminding the Collector to comply with the order that had already been made and left umcompiled with. It was the duty of the Court and of the Collector in compliance of that order, to

deliver the land to the decree-holder and the latter was to remain in unobstructed possession of it for a period of ten years before the execution proceedings could be said to be finally disposed of and the decree fully satisfied. I am, therefore, of the opinion that Art. 182 of the Limitation Act has no application to the present case. In view of these facts, the learned counsel for the appellant has conceded that the residuary Art. 181 also has no application. Where it is the duty of the Court to do a particular thing suo motu independently of any application that may be made, or where the thing to be done is purely of a ministerial character an application, though made, is not governed by the residuary article. After the order of the Court dated 9-1-2000 all that was to be done was purely of a ministerial character. No fresh mode of execution was prayed for by the decree-holder. The order already made by the Court was only to be complied with and it was then for the Collector, acting as an administrative officer, to do the needful. If the executing Court was reminded by the decree-holder that its order had not been carried out and prayed that it should be done, the application cannot be considered to be a fresh application for execution or an application which would be governed by the residuary article. The application was simply to draw the attention of the Court to do what it was itself bound to do. The residuary article applied only to applications where the Court is not bound to exercise its powers and do the particular thing, unless moved by an application. For all these reasons, I am of the opinion that the present application did not fall under either of these articles and was, therefore, not barred by time.

3. In the result the appeal is dismissed. Since no one has put in appearance on behalf of the respondent, no order is made with respect to costs.