

Kalyan Singh Vs Ajudhya Prasad

None

Court: Allahabad High Court

Date of Decision: April 26, 1938

Acts Referred:

Agriculturists Relief Act " Section 6#Civil Procedure Code, 1908 (CPC) " Section 48

Citation: AIR 1938 All 502

Hon'ble Judges: Mushtaq Ahmad, J; Bajpai, J

Bench: Division Bench

Judgement

Bajpai, J.

This is a reference by the Munsif of Tilhar through the District Judge of Shahjahanpur on two questions of law on which the

Court below entertains a reasonable doubt and they have been sub-mitted to us for our opinion. The facts are that one Kalyan Singh held a simple

money decree, No. 939 of 1929 of the Small Cause Court of Tilhar against Ajudhia Prasad. The first application for execution of the decree was

made on 11th March 1932, and the application which has given rise to the present reference is an application for execution dated 19th March

1937, and execution is sought by attachment and sale of the agricultural produce of Ajudhia Prasad, the judgment-debtor. Presumably the decree

has been kept alive. Ajudhia Prasad has objected, and his contention is that he is an agriculturist within the meaning of the U.P. Agriculturists"

Relief Act, Local Act 27 of 1934, and u/s 6 no decree passed by a Civil Court against an agriculturist shall be executed by attachment or sale of

agricultural produce after a period of four years calculated from the date of the filing of the first application for execution. As we said before, the

first application for execution was made on 11th March 1932, and the present application dated 19th March 1937 has been filed more than four

years after the first application and is for attachment and sale of the agricultural produce of the judgment-debtor. The learned Munsif has therefore

asked us to give an opinion on the following two points:

(1) Whether Section 6, Agriculturists' Relief Act, only applies to decrees passed after the commencement of the Agriculturists' Relief Act or also

to decrees passed prior to its commencement?

(2) Whether the "first application for execution" referred to in Section 6 means the first application for execution made after the commencement of

the Agriculturists' Relief Act or the first application for execution of the decree whether made before or after the commencement of the

Agriculturists' Relief Act?

2. It seems that it was argued before the Court below by the decree-holder that the operation of Section 6 was limited to decrees passed after the

commencement of the Act and the first application for execution mentioned in the section applied to the first application after the commencement of

the Act, and the argument seems to be based on the principle that the Legislature has no authority to pass a law which may have the effect of

curtailing or divesting vested rights. The learned Munsif is of the opinion that the Section applies both to decrees passed prior to the

commencement of the Act and after it and that the "first application for execution" referred to in Section 6 means the "first application for execution

made after the commencement of the Act." He holds the view that proviso 2 of Section 6 makes a reference to Section 5 which applies both to

decrees passed prior to the commencement of the Act and also after it and that gives a clear indication that Section 6 was intended to apply to all

decrees whether passed before or after the commencement of the Agriculturists' Relief Act, but the expression "first application for execution" in

Section 6 cannot be given a retrospective effect because that would have the effect of curtailing the valuable period of limitation.

3. The word "decree" and the phrase "first application for execution" occurring in Section 6 are not qualified by any limitations and are general in

their application; the Section, as it reads, would apply to "all decrees" and to "all first applications for execution," and the only question that we

have got to decide is whether we ought to impose any limitations by reason of any well recognized principle. Now it cannot be denied that the

Legislature has full authority to pass retrospective laws even to the divestment of vested rights; but when it intends to do so, it must do so by clear

expression or unmistakable indication on the face of the law itself. It was held in *Lal Mohan Mukerjee v. Jogendra Chunder Roy* (1887) 14 Cal.

636 (F.B.) by a Bench that:

The provision of an Act which creates a new right cannot in the absence of express legislation or direct implication, have a retrospective effect.

4. In the absence of any such guides to the ascertainment of the intention, the presumption is that a statute depriving the subject of a vested right is

not retrospective. Maxwell in his book on the Interpretation of Statutes, Edn. 7, p. 187 says that:

Every statute which takes away or impairs vested rights acquired under existing laws or prejudicially affects the legal character of past transactions

by creating a new obligation, attaching a new disability or imposing a new duty must be presumed to be intended not to have a retrospective

operation.

Such a presumption however does not exist where a statute is remedial and merely affects the procedure in Courts of justice, and where its

language in terms applies to all actions, whether before or after the Act, the new procedure may be retrospectively applied, but where the change

in procedure is complicated by the divestment of preexisting right the presumption against its retrospectively revives in its full strength : see the

observations of Westropp C.J. in In the matter of Ratnsi Kalianji (1877) 2 Bom. 148 at page 180.

5. It is well established that nobody has a vested right in procedure, and statutes of limitation, as distinguished from statutes of prescription, are

generally regarded as Acts regulating procedure and would govern all proceedings from the moment of their enactment even though the cause of

action might have accrued before the Acts came into existence. Section 6, Agriculturists' Belief Act, when it says that a decree shall not be

executed by attachment or sale of the agricultural produce of an agriculturist judgment-debtor after a period of four years from the date of the filing

of the first application for execution, does curtail the limit of time prescribed for execution by Section 48, Civil P.C., which says among other things

that no order for the execution of a decree shall be made upon any fresh application presented after the expiration of 12 years from the date of the

decree sought to be executed. A litigant has no vested right in any period of limitation, and a suit or proceeding is ordinarily governed by the law of

limitation which is, actually in force at the time when it is instituted, and in the absence of any hardship or injustice the provisions of the Section

under discussion have to be construed retrospectively. All that has been enacted is that if a decree-holder wants to execute his decree by

attachment or sale of the agricultural produce of an agriculturist judgment-debtor, he must apply within four years of the "first application for

execution." Any other remedy by way of execution and which might be taken within the limit of 12 years prescribed by Section 48, Civil P.C., still

remains intact. It is to be observed that this limit of 12 years also occurs in a procedural Act, and thus no substantive rights seem to have been

interfered with by the enactment of Section 6, Agriculturists' Belief Act. Like the learned Munsif, we are of the opinion that the word "decree

appearing in Section 6 applies both to decrees passed prior to the commencement of the Act and after it, and unlike the learned Munsif we are of

the opinion that the words "first application for execution" occurring in the same Section also apply to "first applications for execution" made before

or after the commencement of the Act, and these are our answers to the two questions referred to us.