(1971) 01 MP CK 0003

Madhya Pradesh High Court

Case No: Miscellaneous (Second) Appeal No. 86 of 1970

Brulal		APPELLANT
	Vs	
Dulichand		RESPONDENT

Date of Decision: Jan. 29, 1971

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 11, Order 21 Rule 16

Citation: (1977) ILR (MP) 1010 : (1972) MPLJ 826

Hon'ble Judges: P.K. Tare, J

Bench: Single Bench

Advocate: R.P. Verma, for the Appellant; B.C. Verma, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.K. Tare, J.

This is an appeal by the judgment-debtor against the order, dated 18-2-1970, passed by the District Judge, Damon in Misc. Civil Appeal No. 22 of 1969, affirming the order, dated 9-7-1969, passed by the Second Civil Judge, Class II, Damoh in execution of the decree passed in Civil Suit No. 18-B of 1955, as affirmed by the High Court in Second Appeal No. 47 of 1958.

The decree of the High Court in Second Appeal No. 47 of 1958 was passed on 6-11-1959. The respondent decree-holder did not file an execution application within 3 years of the passing of the decree as required by Article 182, column 3, item 1 of the Indian Limitation Act, 1908 i. e. from the date of the decree However, in the meantime, the judgment-debtor appellant filed an application on 23-12-1959 for grant of instalments under Order 20, rule 11, Civil Procedure Code. That application was registered as Misc. Judicial Case No, 1 of 1960 and by order, dated 23-3-1963, the Court of first instance rejected that application. Against that order of the trial

Judge, the judgment-debtor filed an appeal in the Court of Additional District Judge, Damoh which was registered as Misc. Civil Appeal No. 3 of 1963. By an order, dated 21-10-1963, the learned Additional District Judge granted instalments to the judgment-debtor by making the decretal amount payable in two instalments of Rs. 1,000 each on 15-7-1964 and 15-7-1965. In the event of a single default the entire decree was to become eligible.

As the first instalment due on 15-7-1964 was defaulted, the respondent filed an execution application on 10-11-1964. In reply to that application the appellant raised two objections. One was that the earlier execution having already become barred by time, the present execution application was not tenable. It is pertinent to note that the respondent had earlier filed an execution application on 8-4-1963 which was ultimately dismissed by order, dated 30-11-1963 on the ground that it was infructuous. The second objection of the judgment-debtor appellant was that the decree-holder himself had stated that he had assigned the present decree in favour of the defence fund and that the Defence Department through Bal Vidyalaya, Mahar Sainik Kendra, Sagar was the done of the decree. Therefore according to the appellant, the respondent decree-holder could not continue the execution. Both these contentions were negatived by the learned Judges of the Courts below. Hence this appeal by the judgment-debtor.

As regards the question of limitation the learned counsel for the appellant emphasized the fact that the decree of the High Court in Second Appeal No. 47 of 1958 had been passed on 6-11-1959. As per Article 182 (1) of the Indian Limitation Act, 1908 the execution application ought to have been filed within 3 years of the date of the decree i. e. on or before 6-11-1962. But as the first execution application itself was filed on 8-4-1963 beyond limitation, the same was bound to be dismissed on that ground alone and the mere fact that by the ultimate order, dated 30-11-1963, it was dismissed as infructuous is of no avail to the decree-holder respondent. Consequently according to the learned counsel for the appellant, any subsequent execution will also be barred by time.

So far as this contention of the learned counsel for the appellant is concerned, it is partly correct in principle. If the respondent had been executing the decree, dated 6-11-1959, passed in Second Appeal No. 47 of 1958, the first execution application filed on 8-4-1963 was certainly barred by time and if the decree-holder respondent tries to execute that decree on any subsequent occasion without anything more the subsequent execution application would have to be thrown out on the ground of limitation. But one thing intervened and which, according to me, makes the amended decree executable.

In this connection it may be noted that the appellant judgment-debtor himself filed an application on 23-12-1959 in the executing Court for grant of instalments. That application was registered as Miscellaneous Judicial Case No. 1 of 1963. By order, dated 23-3-1963, the Court of first instance refused to grant instalments. There was

no stay order passed in those proceedings. Had the matter stopped there, the respondent''s remedy to execute the decree, dated 6-11-1959, having already become barred by time, he would have had no further remedy. But the appellant himself had filed an appeal before the Additional District Judge registered as Miscellaneous Civil Appeal No. 6 of 1963 and the appellate Judge by order, dated 21-10-1963, granted instalments to the appellant and as such, the decree, dated 6-11-1959, which might have become barred by time would actually be executable after its amendment and for that limitation will be according to item 4 read with item 7 of Article 182, Schedule 1 of the Indian Limitation Act, 1908. The starting point would be the date of the amendment of the decree under item 4 and under item 7 it will be the date when the amount is made payable by the order granting instalments. As such, the order of the Additional District Judge granting instalments on 21-10-1963 actually amended the decree of the High Court, dated 6-11-1959 and it Will be the amended decree that will be executable. There can be no doubt that if the amended decree is allowed to be executed there will be no question of limitation and moreover with effect from 1-1-1964 after enactment of the Limitation Act, 1963 Article 182 of Schedule I of the Indian Limitation Act, 1908 stands repealed and, therefore, also the question of limitation will not arise. In this connection I might advert to the pronouncement of a Division Bench of the Madras High Court in Allada Lakshmikanta Rao Vs. Nadella Ramayya, wherein the learned Judges made the following observations:

It is argued here that the amendment of the decree was merely a formal one and that the final decree was an executable one even in its un-amended form. In our view, we are not concerned with that. The fact that the final decree had already become barred or that the amendment applied for was unnecessary were matters to be dealt with by the Court to which the application had been made for the amendment and we agree with the view of the District Judge that the effect of Article 182 (4), Limitation Act, must be that it is an answer to any objection taken with regard to the plea of limitation so far as the earlier final decree is concerned. The words of Article 182 (4), Limitation Act, are. where the decree has been amended a period of three years'' limitation is given starting from the date of amendment of the decree. It was the amended decree that the decree-holder sought by his subsequent applications to execute. We propose to give the words of that Article of the Limitation Act their plain meaning following the principle of construction laid down by the Privy Council in Yogendra Nath Dey v. Suresh Chandra Dey. AIR 1932 PC 155.

Therefore it is clear that although the un-amended decree might have become barred by time, it is only the remedy of the decree-holder that would be barred. The decree itself would continue to be a good decree and it would be for the Court purporting to amend that decree to consider the question of limitation and so on. But once the Court before which the instalment application had been pending decided to amend the decree, limitation will be either under Article 182 (4) or under

Article 182 (7) of Schedule I of the Indian Limitation Act, 1908 and the present execution application for executing the amended decree can, in no sense, be said to have become barred by time, despite the fact that the un-amended decree might have become barred by time under Article 182 (1) of the old Limitation Act. This would dispose of the question of limitation raised on behalf of the appellant.

As regards the other question that the decree-holder could not execute the decree as he had assigned his rights in favour of the Defence Department which alone could execute the decree, I may observe that the assignment was incomplete. Moreover it was not the assignee who had come forward to execute the present decree. Order 21, rule 16, CPC merely permits the executing Court to allow the assignee to execute the decree. But if the assignee does not come forward, the executing Court can by no stretch of imagination prevent the decree-holder from executing his decree. That is the right of every decree-holder. Thus Order 21, rule 16, Civil Procedure Code, will not at all be attracted to such a situation and although the respondent might have declared that he had assigned the right under the decree in favour of the Defence Department, he cannot be prevented from executing the decree. If the assignment be valid the execution will be for the benefit of the assignee. If the same be invalid it will be for the benefit of the respondent himself. In this connection I might refer to the observations of a Division Bench of the Nagpur Judicial Commissioner''s Court in Radhakisan v. Daudas and others AIR 1935 Nag. 230 wherein the learned Judges made the following observations :

It is well established that the person appearing on the face of the decree as a decree-holder is the only person entitled to execute it. Therefore if a transferee of a decree does not apply under Order 21, rule 16, Civil Procedure Code, for execution the executing Court cannot refuse to allow execution at the instance of the transferor till the transferee is formally recognised by the Court by the substitution of his name for that of the original decree-holder.

To the same effect are the observations of the Calcutta High Court in Sambhunath Auddy Vs. Tarak Nath Auddy and Others, wherein the question was whether the mortgagor having assigned his redemption rights could continue the proceedings and apply for extension of time even after the assignment. The learned Judges held that the assignment itself would not put an end to the rights of the mortgagor to continue the proceedings. It is only when the executing Court recognizes the right of an assignee to execute a decree as required by Order 21, rule 16, Civil Procedure Code, in that event only the decree-holder himself may be denied the privilege of executing the decree. Otherwise till then it is the right of the decree-holder to execute the decree and he cannot be denied that right merely because of an assignment or transfer. Thus this contention raised on behalf of the appellant also is without substance.

As a result of the discussion aforesaid this appeal fails and is accordingly dismissed with costs. Counsel''s fee in this Court shall be according to schedule or certificate,

whichever be less. The costs of the Courts below shall be borne as directed by the first appellate Court.