

CASE NO.:
Appeal (civil) 14559 of 1996

PETITIONER:
ANTONYSAMI

Vs.

RESPONDENT:
ARULANANDAM PILLAI (D) BY LRS & ANR.

DATE OF JUDGMENT: 30/10/2001

BENCH:
D.P. Mohapatra & K.G. Balakrishnan

JUDGMENT:

D.P.Mohapatra, J.

Is the execution petition filed by the appellant barred by limitation is the question that arises for determination in this appeal. The High Court having answered the question in the affirmative the decree-holder has filed this appeal assailing the order of the High Court.

The factual backdrop of the case relevant for appreciating the points raised may be shortly stated thus :

The predecessor in interest of the decree-holder filed the suit against the judgment-debtor, O.S.No.35/1965, for specific performance of the contract of sale dated 7.2.1964. The suit property was described as 13 grounds and 491 sq. ft. on measurement and demarcation. The suit was decreed on 23rd July, 1966. The said decree reads as follows:

(1) The defendant do measure and demarcate the boundaries for 13 grounds and 491 sq. ft. in the property described hereunder on or before 23.9.1966.

(2) That the plaintiff do deposit into court on or before 23.9.1966 the balance of the sale price for 13 grounds and 491 sq. ft. on measurement and demarcation.

(3) That on such measurement and demarcation and fixation of the price and on deposit the defendant do execute the sale deed in respect of the suit house-sites in favour of the plaintiff at her costs as agreed and in default the court do execute the sale deed on application of the plaintiff and the cost of the execution of such sale deed be recovered from the defendant.

(4) That the defendant do pay to the plaintiff the sum of Rs.1,423/- being costs of

this suit and do bear his own costs of Rs.507.50.

The decree-holder deposited the balance of the sale price by 23.9.1966 but the measurement and demarcation was not done by the judgment-debtor on or before 23.9.1966, the time fixed for the purpose. After a lapse of more than six years the measurement and demarcation of the land was done by the judgment-debtor in the year 1973. Thereafter the decree-holder filed the execution petition on 19.4.1980 being E.P. No.346/1981 for executing the decree for specific performance of the contract praying therein to direct the judgment-debtor to execute the sale deed as per the draft sale deed produced in the Court by the decree-holder and in default to cause the execution of the sale deed by the court.

The judgment-debtor in the objection filed against the execution petition raised the question of limitation. It was the case of the judgment-debtor that the decree became enforceable on and from 23.9.1966 by which date the decree-holder had deposited the balance consideration. If the judgment-debtor had failed to measure and demarcate the land the decree-holder should have moved the executing court for the purpose.

It was the contention of the decree-holder that since the condition regarding measurement and demarcation of the land was complied by the judgment-debtor only in 1973 the period of 12 years is to be computed from that date and on such computation the execution petition filed on 19.4.1980 was within time.

The Executing Court accepted the case of the decree-holder and held that the decree under execution was a conditional decree which became enforceable when the judgment-debtor measured and demarcated the land in 1973 and therefore the execution petition was not barred by limitation vide the order dated 16.2.1982.

On appeal by the judgment-debtor the Additional District Judge, Tiruchirapalli, by the order passed on 6.8.1985 allowed the appeal and set aside the order passed by the Executing Court holding, inter alia, that it was not possible to conclude that just because the judgment-debtor had not measured and demarcated the property the decree-holder had not acquired any right to execute the decree. The appellate court was of the view that if the contention of the decree-holder is accepted it would mean that in case the judgment-debtor intentionally did not fulfil the condition imposed on him in the decree he could defeat the fruits of the decree for the decree-holder and avoid the execution of the sale deed in his favour. The appellate court took the view that since the decree-holder after obtaining the decree on 23.9.1966 has not executed the decree within 12 years from that date the petition is barred by limitation.

Feeling aggrieved by the order of the appellate court the decree-holder filed the revision petition before the High Court at Madras assailing the said order.

The High Court on consideration of the points raised confirmed the order passed by the appellate court. The High Court observed that there is no condition in the decree that the judgment-debtor can measure and demarcate the land

as and when she pleases and the decree-holder could approach the Execution Court only after such measurement and demarcation. Therefore, the Execution Petition filed on 19.4.1980 was beyond the period of 12 years from 23.9.1966 and hence it was liable to be dismissed as time barred. The revision petition filed by the decree-holder was dismissed. The said order is under challenge in this appeal filed by the decree-holder.

The provision of Limitation Act, 1963 which is applicable in this case is Article 136 which reads as under:

Description
of application

Period

of

Limitati

on

Time from which
period begins to
run

136. For the

execution of

any decree

(other than a

decree

granting a

mandatory

injunction) or

order of any

civil court.

Twelve

years

(When) the decree or

order becomes

enforceable or where the

decree or any

subsequent order directs

any payment of money

or the delivery of any

property to be made at a

certain date or at

recurring periods, when

default in making the

payment or delivery in

respect of which

execution is sought,

takes place:

Provided that an

application for the

enforcement or

execution of a decree

granting a perpetual

injunction shall not be

subject to any period of

limitation.

As per the above statutory provision the period of 12 years is to be computed from the date when the decree or order becomes enforceable. The question is when did the decree sought to be executed in the present case become enforceable ? Was it from 23.9.1966 when the period of two months for measurement and demarcation of the land by the judgment-debtor fixed under the decree expired or was it

from the date in 1973 when according to the decree-holder the judgment-debtor measured and demarcated the land ? For consideration of this question it is necessary to have a close look at the decree. On reading the decree in its entirety it is clear to us that in paragraph 1 thereof the Court specifically issued a direction to the judgment-debtor to measure and demarcate the boundaries of 13 grounds and 491 sq. ft. of land on or before 23.9.1966. In para 2 the Court directed the plaintiff to deposit in the Court on or before 23.9.1966 the balance of the sale price for 13 grounds 491 sq. ft. of land measured and demarcated. In paragraph 3 of the decree is incorporated the direction that on such measurement and demarcation and on deposit of the amount fixed in the decree, the judgment-debtor was to execute the sale deed in respect of the suit sites in favour of the decree-holder at her cost as agreed and in default the Court would execute the sale deed on application of the decree-holder and the cost of the execution of such sale deed was to be recovered from the judgment-debtor. The Court took care to fix the same date i.e. 23.9.1966 for both the parties to comply with the respective directions issued to them under the decree; the judgment-debtor to measure and demarcate the boundaries of the property and the decree-holder to deposit in Court the balance of the sale price of the property so measured and demarcated. The execution of the sale deed was to be done after the parties carried out the directions issued to them and that is what has been stated in paragraph 3 of the decree, with the default clause that in case the defendant failed to execute the sale deed, on application of the plaintiff, the executing court was to execute the same and the cost was to be recovered from the defendant. Such a decree cannot be said to be a conditional one, in the sense that the plaintiff could not enforce his rights under the decree till defendant carried out the direction under the decree for measurement and demarcation of the land.

The position is well settled that ordinarily a decree becomes enforceable immediately after the judgment is pronounced. However, there may be situations when a decree may not be enforceable on the date it is passed. Usually this situation arises where in the decree itself the right of the decree-holder depends on happening of certain event or on fulfillment of certain other conditions by the parties in the case or by an external agency, under any provision of law. This position has been clarified in the case of W.B. Essential Commodities Supply Corpn. Vs. Swadesh Agro Farming & Storage Pvt. Ltd. and Another (1999) 8 SCC 315). Therein this Court repelling the impression that a decree becomes enforceable only when it is drawn up and signed, observed:

From a perusal of the article extracted above, it is clear that for execution of any decree (other than a decree granting a mandatory injunction) or order of a civil court, a period of 12 years is prescribed; column 3 contains two limbs indicating the time from which the period of limitation begins to run, that is, the starting point of limitation; they are (i) when the decree or order becomes enforceable, and (ii) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought, takes place.

The proviso says that there shall be no period of limitation for enforcement or execution of decree granting a perpetual injunction. We are concerned here with the first of the above-mentioned starting points, namely, when the decree or an order becomes enforceable. A decree or order is said to be enforceable when it is executable. For a decree to be executable, it must be in existence. A decree would be deemed to come into existence immediately on the pronouncement of the judgment. But it is a fact of which judicial notice may be taken of that drawing up and signing of the decree takes some time after the pronouncement of the judgment; the Code of Civil Procedure itself enjoins that the decree shall be drawn up expeditiously and in any case within 15 days from the date of the judgment. If the decree were to bear the date when it is actually drawn up and signed then that date will be incompatible with the date of the judgment. This incongruity is taken care of by Order 20 Rule 7 CPC which, inter alia, provides that the decree shall bear the date and the day on which the judgment was pronounced.

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It follows that the decree became enforceable the moment the judgment is delivered and merely because there will be delay in drawing up of the decree, it cannot be said that the decree is not enforceable till it is prepared. This is so because an enforceable decree in one form or the other is available to a decree-holder from the date of the judgment till the expiry of the period of limitation under Article 136 of the Limitation Act.

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Under the scheme of the Limitation Act, execution applications, like plaints have to be presented in the court within the time prescribed by the Limitation Act. A decree-holder does not have the benefit of exclusion of the time taken for obtaining the certified copy of the decree like the appellant who prefers an appeal, much less can he claim to deduct time taken by the court in drawing up and signing the decree. In this view of the matter, the High Courts of Patna and Calcutta in Chandra Mouli Deva v. Kumar Binoya Nand Singh (AIR 1976 Pat 208) and Sunderlal & Sons v. Yagendra Nath Singh (AIR 1976 Cal 471) have correctly laid down the law; the opinion to the contra expressed by the High Court of Calcutta in Ram Krishna Tarafdar v. Nema Krishna Tarafdar (AIR 1974 Cal 173) is wrong. Section 5 of the Limitation Act has no application; Section 12(2) of the Limitation Act is also inapplicable to an execution petition. If the time is reckoned not from the date of the decree but from the date when it is prepared, it would amount to doing violence to the provisions of the Limitation Act as well as of Order 20 and Order 21 Rule 11 CPC which is clearly impermissible.

Taking note of exceptions in certain cases to the general rule referred to above this Court observed:

There may, however, be situations in which a decree may not be enforceable on the date it is passed. First, a case where a decree is not executable until the happening of a given contingency, for example, when a decree for recovery of possession of immovable property directs that it shall not be executed till the standing crop is harvested, in such a case time will not begin to run until harvesting of the crop and the decree becomes enforceable from that date and not from the date of the judgment/decreed. But where no extraneous event is to happen on the fulfilment of which alone the decree can be executed it is not a conditional decree and is capable of execution from the very date it is passed (Yeshwant Deorao Deshmukh v. Walchand Ramchand Kothari (AIR 1951 SC 16)). Secondly, when there is a legislative bar for the execution of a decree then enforceability will commence when the bar ceases. Thirdly, in a suit for partition of immovable properties after passing of preliminary decree when, in final decree proceedings, an order is passed by the court declaring the rights of the parties in the suit properties, it is not executable till final decree is engrossed on non-judicial stamp paper supplied by the parties within the time specified by the court and the same is signed by the Judge and sealed. It is in this context that the observations of this Court in Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande (1995) 3 SCC 413) have to be understood. These observations do not apply to a money decree and, therefore, the appellant can derive no benefit from them.

(Emphasis supplied)

The learned counsel for the appellant placed strong reliance on a Full Bench decision of the Allahabad High Court in the case of Abdul Rashid v. Sri Sitaramaji Maharaj Brajman and ors. (AIR 1974 All 275). In para 8 of the judgment the High Court observed that the basic test is whether there is a right available to the decree-holder to apply for execution immediately or the fulfilment of some condition is a condition precedent and further, whether the terms of the decree cast any obligation on the decree-holder to comply with that condition within a specified period; where no such period is specified the execution of the decree must be deemed to remain in abeyance and the limitation would commence only from the date when the plaintiff chooses to comply with the condition. The High Court drew support from the language of Article 136 of the Limitation Act as giving a legislative approval to the view that the Limitation remains in abeyance so long as the contingent condition is not performed. Interpreting the decree in that case the High Court observed In the instant case there was a clear obstacle to the immediate execution of the decree. Under the terms of the compromise decree it was obligatory for the decree-holder to serve two months notice on the judgment-debtor calling upon him to remove the constructions and delivering possession that the decree-holder was entitled to execute the decree for possession; immediate execution of the decree was therefore negatived by the terms of the compromise decree.

This decision in our view is clearly distinguishable on facts. Even accepting the principles referred to therein it cannot be said that in the present case the decree passed was a conditional or contingent one.

The fixation of periods of limitation are bound to be to some extent arbitrary and may at times result in hardship. But in construing such provisions equitable considerations are out of place and the strict grammatical, meaning of the words is the only safe guide. (See AIR 1932 PC 165). The decree was enforceable immediately after the date specified in the decree i.e. 23.9.1966 for the decree-holder to deposit the consideration money. If the direction given in the decree to the judgment-debtor to measure and demarcate the land by that date (23.9.1966) was not complied with the decree-holder was free to execute the decree. The steps to be taken by the decree-holder in this regard are provided in Order 21 Rule 34(1) CPC.

In the case in hand a specified date was mentioned in the decree for the judgment-debtor to carry out the aforementioned direction i.e. 23.9.1966 and if he failed to carry out the direction it was open to the decree-holder to seek help of the executing court for measurement and demarcation of the land, and thereafter, to get the sale deed executed by the judgment-debtor if possible or by the Court if necessary. The decree-holder for reasons best known to him did not choose to execute the decree till April 1980. In the facts and circumstances of the case and on a fair reading of the decree in the context of the provisions of Article 136 of the Limitation Act the conclusion is inescapable that the execution petition was filed after expiry of the period of limitation prescribed under the Act. The Appellate Court was right in dismissing the execution petition as time barred and the High Court committed no illegality in confirming the said order.

In the result this appeal being devoid of merit is dismissed. There will however be no order as to costs.

..J.
(D.P.Mohapatra)

..J.
(K.G.Balakrishnan)

October 30, 2001