

Kumar Daulat Singh and Others

Vs

Prahlad Rai Tulsain and Others

Civil Appeal No. 276 of 1969

(CJI Y. V. Chandrachud, V. D. Tulzapurkar, A. P. Sen JJ)

09.01.1979

JUDGMENT

CHANDRACHUD, C.J. -

1. The only question for determination in this appeal by certificate is whether Execution Petition No. 35 of 1959 filed by the decree holder is barred by time as contended by the appellants. A decree in the sum of Rs. 71,636 and costs was passed in favour of the decree holder on April 28, 1953. In execution of that decree, certain properties belonging to the judgment debtors were purchased by the decree holder in an auction sale held on May 2, 1955. The sale was confirmed on June 3, 1955, but since the decree holder did not supply the necessary stamps for the sale certificate within the time specified in that behalf, the sale was set aside and the execution petition was consequently dismissed.
2. On August 13, 1955, the decree holder filed an application under Section 151, Code of Civil Procedure, for restoration of the sale but that application was dismissed on March 2, 1956. The revision application filed by the decree holder was dismissed by the High Court on September 21, 1956. Within three years thereafter, that is on September 19, 1959 the decree holder filed Execution Petition No. 35 of 1959 and as stated above, the narrow question for decision is whether, as contended by the appellants, this petition is barred by limitation.
3. It is not disputed that the time taken in the prosecution of the restoration application from August 13, 1955 to March 2, 1956 shall have to be excluded in counting the period of limitation for filing the execution petition, since the application is a step-in-aid of execution. But learned Counsel on behalf of the appellants contends that the time taken thereafter in prosecuting the Civil Revision application in the High Court cannot be similarly excluded because, the filing of the Civil Revision Application is not a step-in-aid of execution. The contention in other words is that if the execution petition were to be filed within three years of March 2, 1956, it would have been within limitation but not if it is filed within three years of September 21, 1956. Learned Counsel relies in support of this submission on certain decisions, particularly the one reported in Chandrachud Kalar v. Baidyanath Banerjee (AIR 1946 Pat 471).
4. We are, however, unable to accept this submission because though it may be true to say that whereas an appeal is a continuation of suit a revision application is not, we are concerned with the limited question as to whether the revision application filed by the decree holder is a step-in-aid of execution. We are unable to appreciate that if the proceedings out of which that revision application arose were in aid of execution how the revision application itself would not be so. It is indisputable that if the High Court were to allow the revision application it could have, within the legitimate

exercise of its jurisdiction, restored the sale which was confirmed on June 3, 1955. That is a fair test for deciding whether the remedy by way of revision application which was adopted by the decree holder could be considered as a step-in-aid of execution. Since it was competent to the High Court to grant to the decree holder the relief asked for by him in his application under Section 151 of the Code of Civil Procedure, we are in agreement with the High Court that the entire period between August 13, 1955 being the date on which the decree holder filed his application under Section 151 and September 21, 1956 when his revision application was dismissed by the High Court should be excluded for counting the period of limitation for filing the Execution Application. The Execution Petition No. 35 of 1959 having been filed within three years of the date of the dismissal of the Revision Application, the High Court, in our opinion, was justified in holding that it was within time.

5. For these reasons we affirm the judgment of the High Court and dismiss this appeal with costs.

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