

SUPREME COURT OF INDIA

Shanthi

Vs.

T.D.Vishwanathan

C.A.No.10442 of 2011

(N.V.Ramana and Mohan M.Shantanagoudar,JJ.,)

24.10.2018

ORDER

1. This appeal is directed against the judgment dated 22.01.2007, passed by the learned Single Judge of the High Court of Judicature at Madras in C.R.P. (NPD) No. 1829 of 2006. By the impugned judgment, the High Court while dismissing the revision petition has confirmed the orders of the Executing Court dated 1.11.2006 in E.A. No. 3570 of 2006 in E.P. No. 249 of 2006 in O.S. No. 649 of 1977.

2. The suit was filed by the plaintiffs/respondents for recovery of possession and arrears of rent against the defendant/appellant herein. The appellant was a tenant of the respondents. The property in question is a residential house. The Trial Court, the first Appellate Court and the High Court have concurrently concluded that the plaintiff is entitled to get possession of the suit property and arrears of rent. Thus, the suit was decreed against the tenant by such concurring judgments. Thereafter, an execution petition was filed in 2006 for executing the decree. The only question raised by the learned advocate for the appellant in this appeal is that the execution petition filed in the year 2006 is barred by limitation inasmuch as the same was not filed within 12 years from the date of the judgment of the Trial Court, i.e., dated 14.08.1981.

3. In sum and substance, the case of the appellant is that the execution petition ought to have been filed within 12 years from the date of the judgment of the Trial Court without waiting for the decision of the First Appellate Court or the Second Appellate Court. He has also submitted that there is no interim order granted by the First Appellate Court and the Second Appellate Court. There was no hurdle for the respondents to file the execution petition within the prescribed period of limitation after the judgment of the Trial Court. It is submitted by the decree holder that the decree of the Trial Court and the first Appellate Court have merged in the decree of the High Court passed in second appeal. It is further submitted that the order of stay was operating in favour of the judgment debtor/debtor during the pendency of the appeals and hence the judgment debtor continued in possession.

4. It is not in dispute that the execution petition has been filed within time from the date of the judgment of the High Court. The High Court dismissed the second appeal on 30.12.2003. The execution petition was filed in July 2006. Thus, undisputedly, the execution petition was within the period of limitation from the date of the judgment of the High Court.

5. The aforementioned question raised by the learned advocate for the appellant is no more res-integra, inasmuch as the very question is decided by a Three Judge Bench of this Court, in the case of *Chandi Prasad v. Jagdish Prasad*¹, wherein it was observed that in terms of Article 136, Limitation Act 1963, a decree can be executed when it becomes enforceable. A decree is defined in Section 2(2) CPC, 1908 to mean the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. A decree within the meaning of Section 2(2) of the CPC would be enforceable irrespective of whether it is passed by the Trial Court, the First Appellate Court or the Second Appellate Court. When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When a higher forum entertains an appeal and passes an order on merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time.

6. Since the judgment of the Trial Court was affirmed by the First Appellate Court and was further affirmed by the Second Appellate Court, the decree passed by the High Court becomes enforceable in view of the doctrine of merger. Hence, in our considered view, the execution petition filed by the plaintiffs/respondents is within time, consequently the appeal fails and stands dismissed.

Judgment Referred.

¹(2004) 8 SCC 0724