ALLAHABAD HIGH COURT

Abdul Karim

Vs

Musammat Islamunnissa

(Piggott,CJ. Walsh, J.)

28.02.1916

JUDGMENT

Walsh, J.

1. In this case an application was made to the Subordinate Judge by the judgment-debtors under Section 47 of the Civil Procedure Code, complaining of a seizure of immoveable property belonging to them, made by the decree-holders in excess of their rights under the decree. The Subordinate Judge, after an elaborate inquiry, has found as a fact that the decree-holders took advantage of some ambiguous language in the decree, and deliberately and dishonestly seized more than their decree entitled them to seize.

2. The decree was dated the 31st March 1911. The improper seizure took place on the 19th November 1911. The application in question was made to the Subordinate Judge on the 7th July 1913. This delay of nineteen months was due to the judgment-debtors having mistaken their rights and wasted time over a fruitless application. The reason, however, for the delay is immaterial. The delay itself has given rise to the question we have to decide.

3. The improper seizure by the decree-holders in excess of their rights under the decree was clearly a question arising between the parties to the suit within the meaning of Section 17. The application of the judgment-debtors was clearly made under that section.

4. On appeals being brought by both the decree-holders and the judgment-debtors, the District Judge, holding himself, as we think quite properly, bound by certain authorities mentioned hereafter, decided that the judgment debtors' application was time-barred, on the ground that Article 165 of the Limitation Act applied to it and that the time limit of 30 days had run out.

5. We are clearly of opinion that when the matter is closely examined this view is untenable.

6. In a technical matter of this kind, when the language relied upon does not in express terms

cover the case, it is of the highest importance to realize the position of the parties and the context in which the language is used. Where the interpretation sought to be put upon the words is arrived at by implication and by reference, the Court ought not to adopt a con-struction which has a restricting and penalizing operation, unless it is driven to do so by the irresistible force of language.

7. Now in the ordinary course of things a person who is wrongfully dispossessed of immoveable property has a remedy by a suit for possession only. In matters arising out of the execution of decrees, possibly because they are the indirect result of the active interference of the Court itself, the Legislature has provided two exceptions. The judgment-debtor must apply to the Court under Section 47. If he is dispossessed of land which is outside the decree, and if he does not so apply, he loses his land. He cannot bring a suit. He is worse off than the ordinary person wrongfully dispossessed. On the other Land, if a third person outside the suit is unfortunately the victim of some mistake in the decree itself, or by the decree-holder, he may apply to the Court in a summary manner, and if he is right he may be put back into possession. That is expressly provided by Order XXI, Rules 100 and 101. Such a person is better off than the ordinary person wrongfully dispossessed. He can bring a suit, of course, within 12 years; but he can, if he pleases, apply summarily for possession. That is a privilege of a peculiar and special character, from which the judgment-debtor is excluded in express terms.

8. It is not surprising to find such a privilege accompanied by certain restrictions. By Article 165 of the Limitation Act of 1908 (the Article now in question) such an application must be made within 30 days. The Article is in these terms:

Description of application.--Under the Code of Civil Procedure, 1908, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession."Period of limitation.--Thirty days, from the date of dispossession.

9. Now that is a precise and compendious description of the right given, and the application allowed, to a person other than the judgment-debtor" by Order XXI, Rules 100, 101. It certainly applies to such an application and there is no other provision in the Code which in the terms it employs at all corresponds to it. We think it quite certain that when the Legislature enacted Article 165, it had the provisions now contained in Order XXI, Rules 100, 101 in mind. That is to say it intended Article 165 to apply to such an application.

10. The argument for the view adopted in the reported cases, and followed by the District Judge in this case, is that the words are wide enough to include a judgment-debtor. Separated from their context this is true. A judgment-debtor is a "person"; in such a case as this, moreover, the judgment-debtor in his application under Section 47 is complaining of the same sort of act as an applicant under Order XXT, Rule 100, would have to complain of. But the moment it is realized

that what the Schedule to the Limitation Act consists of is an enumeration of suits, appeals, and applications of various kinds, and that the language of Article 165 is merely a definition or description of an application, all difficulty as to the use of the word person" disappears. In our opinion the word person" in that context, although wide enough to include a debtor, was never used in any other sense than that of a person who is authorized by Order XXI, Rule 100, to make an application of that description.

11. To hold otherwise would result in this, that if a judgment-debtor applied to the Court under Order XXI, Rule 100, adopting the language of Article 165, his application would have to be dismissed because he is precluded from making an application of that description, and yet if he postpones applying under Section 47 for more than 30 days, the language of the Article is to be applied to him.

12. If anything were required, outside the context in which the Article is used, to assist us to an interpretation of it, we should be entitled, indeed in our opinion we should be bound, to recognize that to hold, as has been held by the District Judge in this case involves depriving the judgment-debtors for ever of all title to a considerable portion of immoveable property, because they did not make a summary application with regard to its seizure within 30 days. Such a result in the case of a person already in straitened circumstances appears to us to be something which it is safe to assume that the Legislature never intended, and which it certainly never enacted in direct terms.

13. We are aware that this decision involves our departing from two authorities of some standing to each of which, we need hardly say, we have given every consideration.

14. The first case is that decided by the Madras Court, *Ratnam Ayyar v. Krishna Boss Vital Doss*[1] No reasons are given in the judgment nor was the decision necessary for the determination of that case. The second case was decided by this Court in the year 1900, liar *Din Singh v. Lachman Singh*[2] In that case the appellant, who succeeded in upholding the view from which we are dissenting, also succeeded on the merits. It is not unlikely that the considerations which have weighed with us were over shadowed by the precedent which the Madras Court had already created, and by the argument on the substantial merits of the case. Another authority was cited to us from *Oudh Raja Earn v. Itraj Kunwar*[3]. There the Judicial Commissioner, while apparently entertaining doubts of his own, seems to have felt himself unable to break away from the two authorities we have mentioned.

15. We may add that we are not unmindful of the fact that in certain other cases of applications which may be made by a judgment-debtor, such as an application for setting aside a sale, the jadgment-debtor is limited to 30 days. There are obvious reasons why such an application, if made at all, should be made promptly. But it is sufficient to say that each case must turn upon the language used, and that in the case of an application to set aside a sale, the limitation is expressly

provided in unmistakable language. The learned District Judge had before him appeals by both parties challenging the decision of the first Court on the merits. He has disposed of both appeals on the preliminary finding that the application of the present appellants was time-barred. We, therefore, set aside the decrees of the lower Appellate Court and direct that Court to re-admit both the appeals on to its pending file and dispose of them according to law. The costs of this appeal on the higher scale and the costs in the Court below will abide the event.

Cases Referred.

121 M. 494 : 8 M.L.J. 75
225 A. 343 : A.W.N. (1900) 59
324 Ind. Cas. 137 : 17 O.C. 94