**MYSORE HIGH COURT**

Basamma

Vs

Shivamma

Second Appeal No. 177 of 1959, Mysore in R.A. No. 142 of 1958

(Mir Iqbal Husain, J.)

21.09.1962

**JUDGMENT**

**Mir Iqbal Husain, J.**

1. An interesting question as to whether a decree in a partition suit not engrossed on a non-judicial stamp paper could be executed, arises in this appeal. Plaintiff filed a suit O. Section 487 of 1949-50 in the Court of the Munsiff, Nanjangud for partition and possession of half share in the schedule properties, against the defendants, who are respondents before this Court. The suit was ultimately compromised and the compromise decree was passed on 16-2-1950. This decree was not engrossed on a stamp paper. On 14-10-1957, the learned Munsiff ordered the decree to be drawn up on a stamp paper on application I. A. No. 1 filed by the decree-holder and it was so drawn up.

2. The plaintiff decree-holder took out several executions to which I will refer a little later, all of which were dismissed excepting the fourth one viz. Ex. 1623 of 57 filed on 29-11-1957. To this last application viz. Ex. 1623/57, filed by the decree-holder, objection was taken by the judgment-debtors viz. respondents 1 and 2 that the execution was barred by limitation. The learned Munsiff held that the execution application was not barred by limitation. On appeal by the judgment-debtors (respondents) the learned Civil Judge, Mysore, held that the said application was barred by limitation and dismissed the same. Hence this appeal. Plaintiff-decree-holder is the appellant before this Court. The defendants-judgment-debtors are the respondents.

3. The only point for decision in this appeal is whether the said execution application is barred by time as contended by the respondents or is saved on account of the intermediate steps for execution taken by the decree-holder as contended by Sri Gulur Srinivasa Rao, the learned Advocate for the appellant.

4. It is necessary to refer to a few relevant dates for arriving at a proper decision in the case. The important date to be borne in mind is the date of the compromise decree viz. 16-2-1950. That decree was not engrossed on a stamp paper. The decree-holder filed Ex. 203/53 on 13-2-1953. That application was dismissed on 29-5-1953. A second execution petition viz. Ex. 917/56 was

filed on 31-7-1956 and dismissed on 23-11-1956. The third execution viz., No. 582/57 was filed on 3-6-1957 and dismissed on 11-10-57. Thereupon the appellant filed I. A. No. 1 praying that the decree be drawn up on stamp paper and it was so ordered by the learned Munsiff on 14-10-1957. The last viz., the fourth execution application viz. 1623 of 1957 which is the one under consideration was filed on 29-11-1957. That is the only execution petition which was filed after the decree was engrossed on stamp paper.

5. Sri Gulur Srinivasa Rao, the learned Advocate for the appellant urges that the compromise decree dated 16-2-1950 is still a decree in the eye of law and cannot be regarded as a mere waste paper. It could be validated by the addition of stamp paper. Hence the series of execution applications filed by the appellant are steps-in-aid of execution, which save the last execution application Ex. 1623/57 filed on 29-11-57 from being barred by limitation. Per contra, it is urged by Shri Doraiswamy, the learned advocate for the respondents that until the compromise decree in a partition suit was engrossed on a stamp paper, it is inexecutable. Hence all the intermediate execution applications 1 to 3 in number filed by the appellant are of no value whatsoever for, they seek to execute an inexecutable decree. Hence the only correct conclusion that could be arrived at, as it has been arrived at by the learned Civil Judge, is to dismiss the application as being barred by limitation.

6. Some High Courts took the view that a partition decree unless engrossed on non-judicial stamp paper cannot be considered to be a decree in the eye of law. In other words, a final decree in such a suit drawn up on plain paper must be deemed not to exist. On this basis these Courts proceeded to hold that limitation for the execution of such a decree started from the date of the decree when so engrossed on stamp paper. This position appears to me to be an extreme one. Decree is defined as a formal expression of the 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. If a final decree is passed in a suit just because it is not engrossed on a stamp paper could it be said that it does not conclusively determine the rights of the parties with regard to the matters in controversy in the suit? The further consequence of such an interpretation would be that in the absence of any period of limitation prescribed for supplying of the stamp paper, it would be left to the sweet will and pleasure of the decree-holder to supply the same whenever he pleased as there is no fear of limitation running against him for failure to do so.

7. This aspect has been considered in a recent decision of our own High Court in the case of *Laxman Minaji v. Narayan Appayya*[1], where His Lordship Somnath Iyer, J. has held as follows :

> "The decree in the partition suit which was made in this case was capable of execution from the very date on which it was made since the decree-holder could have supplied the stamped paper on which it has to be engrossed immediately after it was made and there was nothing to prevent him from so doing. Any other view would lead to the strange result that there being no statutory period of limitation within which a decree-holder has to supply the

[1] AIR 1961 Mys 172

> requisite stamped paper on which the decree for partition has to be engrossed, it would be within the power of the decree-holder to indefinitely postpone the supply of such stamped paper and arrest the commencement of limitation."

A similar view is taken in a recent decision of the Andhra Pradesh High Court in the case of *Appa Rao v. Nagan Veeraju*[2], where His Lordship Chandra Reddy C. J. has held as follows :

> "There is a long series of decisions which have enunciated the principle that limitation commences on the date of the final decree and the non-supply of non-judicial stamps for the purpose of drafting the final decree does not arrest the running of limitation..... In the case of final decrees in partition suits or partnership actions there is no obstacle in the way of the decree-holder proceeding with the execution of the decree after supplying non-judicial stamps for drafting the decrees or after paying the Court-fee as required by Section 11 of the Court-fees Act."

8. Sri Gulur Sreenivasa Rao for the appellant while accepting this principle as the one applicable even to the facts of the present case has contended that the running of the limitation is saved by the previous execution applications filed by the decree-holder. In particular he relies upon the first execution application No. 203 of 1953 filed on 13-2-1953 and which was dismissed on 25-9-1953. The learned counsel argues that this execution application was filed within three years of the passing of the compromise decree on 16-2-1950. The subsequent applications the second and third were filed on 31-7-56 and 3-6-57 respectively. Hence the final or the fourth application which is the one under consideration filed on 21-9-1957 is not barred by limitation. It may be stated that these first three execution applications were filed prior to the supply of stamp paper for engrossing the final decree. It is only the last one that was filed after the decree was duly stamped.

9. There is no force in the contention of the learned Advocate. There is difference between a mere final decree that is passed in the case and a final decree engrossed on stamp paper. It is only the latter that can be executed. Until it is so done, the decree obtained though a valid one, is inexecutable. If the decree-holder files execution applications to execute an inexecutable decree, such applications are useless. They will not save the running of limitation against the decree-holder.

10. Again Sri Srinivasa Rao urges that the decision of this Court in the case of AIR 1961 Mysore 172 is distinguishable from the facts of the present case inasmuch as the running of limitation is saved in the latter by the previous execution applications filed by the decree-holder. His contention would have great force if the previous execution applications could be regarded as steps-in-aid of execution. Step-in-aid presupposes an executable decree. This phrase viz. step-in-aid of execution, is used in Article 182(5) Limitation Act. It connotes such a step which permits or advances or accelerates the execution of the decree. In the present case, however, none of the previous executions of the decree before it was engrossed on a stamp paper could he held to satisfy this test. If so, how could they be rightly termed as steps-in-aid of the

[2]1961 (2) Andh WR 409

execution of the decree?

11. Sri Srinivasa Rao next contended that in order to see whether these previous execution applications serve the purpose of step-in-aid or not, the test to be applied is whether they are in accordance with law. That is exactly the term which is used in Article 182(5) Limitation Act. It is

urged that these applications satisfy all the requirements of Order 21 Rule 11, Civil Procedure Code They are made to the proper Court having jurisdiction. They are in proper form. Why then, it is argued, should they not be regarded as steps-in-aid of execution? In other words, the learned Advocate emphasises that these previous executions satisfy the procedural formality. To my mind, the test is not a mere procedural formality but something more than that. The very idea of steps-in-aid of execution connotes that they should be, the further steps in the execution of the decree. Putting it differently they must advance the execution, i.e., the decree-holder by means of such applications asks the Court to do something in execution which by law that Court is competent to do. In the instant case, it is within the knowledge of both the decree-holder and the Court that the unstamped decree cannot be executed. To put it differently, it is not within the legal competence of the Court to grant the relief sought for as a step-in-aid. This aspect has been considered in a number of decisions. I will refer presently, to some of them.

12. In the case of *Gopal Parasharam v. Damodar Janardan*[3], it has been held as follows :

> "A mere compliance with the formal requirements of the Code of Civil Procedure as to the manner of filing, and the particulars to be shown in an application for execution would not suffice to make it an application in accordance with law ..... The expression 'not in accordance with law' cannot be construed so as to mean 'not in accordance with law on the face of the application.' The expression 'in accordance with law' must have some reference to the material content, apart from the form and the formal content, of the application for execution. So far as the provisions of Order 21 Rule 11, Sub-rule (2) clause (i) are concerned the Legislature did not intend that a mere formal compliance with the form and procedure prescribed should be enough. The main test of an application for execution being in accordance with law is, whether it is possible for the Court to issue execution upon it, i.e., whether it is within the power of the Court to grant the kind of relief asked for, though in the particular case the relief may not, on the merit, be granted, e.g., owing to some finding on facts, not to the nature of the application itself."

This case emphasizes that both the form as well as the content of the application should be taken into consideration to determine whether it is a step-in-aid of execution in accordance with law. In the case of *Durga Prasad v. Dalpat Ram*[4], it was held "the words 'step-in-aid of execution' mean what they say. There must be a step to further or to help an execution of the decree or order to be taken put or proceeded with. But if the step in question does not or cannot help either in the starting of the execution proceeding or in the further progress of a pending execution proceeding or

[3] AIR 1943 Bom 353
[4] AIR 1952 All 645

in removing an obstacle that lies in the way of execution proceedings, it cannot be said to be a step-in-aid." In that case the execution proceedings had terminated by a final order of dismissal. In an application made thereafter, the decree-holder merely asked the Court to send for the record from the record room and send it to the Collector without at the same time asking for the setting aside of the order of dismissal and restore execution. Such an application was held not to further the progress of the execution proceedings and hence not a step-in-aid of execution.

13. Reliance is placed by Sri Srinivasa Rao on the decision of the Punjab High Court in the case of *Gian Chand v. Jagnnath*[4], That was a Letters Patent Appeal from the judgment of his Lordship Kapur, J. sitting as a single Judge. His Lordship Kapur, J. in his judgment in *Sri Ram v. Jagannath*[5], held that even in the case of a partition decree which has not been formally drawn up for nonpayment of the requisite stamp duty, an application made within three years of the date of the passing of the decree which would be the date of the judgment would stop the running of time as against the judgment-debtor. He further held that an application made to the Court for determination of the amount of stamp duty required for engrossing the decree on a stamp paper is a step-in-aid of execution and would stop the running of time and give a fresh period of limitation as from the date the application was made.

14. Two applications were made by the decree-holder Jagannath on 8-3-1952 (1) for the execution of the decree; and (2) for determination of the value of the stamp paper to be supplied for the decree so that a formal decree could be drawn up. It was contended that as the decree-sheet had not been prepared on 8-3-1952, no application for its execution was competent and the second application made for the determination of the stamp duty payable was not a step-in-aid of execution within the meaning of Article 182. But the learned Judge held that the execution application filed on 8-3-1952 was competent and further that even if it was not, the application made by the decree-holder for the determination of the stamp duty payable was a step-in-aid of execution. Perusing the judgment of the Letters Patent Appeal in AIR 1959 Punjab 482, it appears to me that their Lordships of the Punjab High Court have relied not only on the second application filed on 8-3-1952 for determination of the value of the paper to be supplied for the decree so that a formal decree could be drawn up, but also on the further application filed by the decree holder on 18-3-1952 by which the stamp payable was tendered to Court so that the decree might be prepared. These respective applications were within three years of the date of the decree viz., 9-4-1949. Hence it is evident that the step-in-aid relied upon was one which actually furthered the execution.

15. Lastly assistance was sought to be taken from certain observations made by his Lordship Srinivasachari, J. in the case of *Smt. Mahalakshamma v. Ganeswara Rao*[6], Sri Srinivasa Rao, however, submits that he does not seek support from the following observations of his Lordship viz.

> "It is the duty of the Court when passing final decrees for partition to call upon the parties to furnish the requisite stamp paper for engrossing the decree on such stamp paper. The decree-holder cannot be made to suffer for the omission of the Court on making such direction."

[4] AIR 1959 Pun 482
[5] AIR 1957 Pun 65
[6] AIR 1960 And Pra 54

If the decree-holder is absolved from the duty to furnish the stamp paper within the stipulated time but a duty is cast upon the Courts, it will lead to very strange results. Sri Srinivasa Rao, however relies upon the following observations :

> "At the outset we must point out that the order of the learned Subordinate Judge of 13th February 1952 was erroneous when he held that the decree was inexecutable for not

having been engrossed on non-judicial stamp."

This appears to me, with very great respect to the learned Judge, to be an unacceptable proposition. As stated by me supra, the decree passed by the Judge in a partition suit is no doubt a valid one even though not engrossed on the requisite stamp paper. But such a decree unless so engrossed is inexecutable. In a later decision of the same Court in the case of (1961) 2 Andh WR 409 , His Lordship Chandra Reddy, C. J. who was also a party to the previous decision in Mahalakshmamma's case, AIR 1960 Andhra Pradesh 54 while referring to it has stated that certain observations in that case were not necessary for its disposal. As such, they were merely obiter. Those remarks run counter to the principles adumbrated in several of the decisions on the point and also the decision of the Supreme Court. Hence reliance on Mahalakshmamma's case, AIR 1960 Andhra Pradesh 54 hardly advances the plaintiff's case.

16. For the above reasons, this appeal is liable to be dismissed and it is so ordered.

17. In the circumstances of this case, I order each party to bear his own costs of this Court.

Appeal dismissed.