KERALA HIGH COURT

Govinda Bhatta

Vs

Krishna Bhatta

C.R.P. No. 497 of 1965, Kasargod in S.E.A. No. 97 of 1961

(K.K. Mathew, T.S. Krishnamoorthy Iyer and V. Balakrishna Eradi, JJ.)

05.09.1967

JUDGMENT

Balakrishna Eradi, J.

1. The first defendant-judgment debtor in S. C. No. 236 of 1952 on the file of the Munsiffs Court, Puttur is the petitioner in this Civil Revision Petition. He challenges the correctness of the order passed by the lower Court holding that the Execution Petition S. E. A. No. 97 of 1961 filed by the decree-holder Is not barred by limitation.

2. S. C. 236 of 1952 was a suit filed by the respondent herein against the revision petitioner for recovery of money on the strength of a promissory-note dated 5-1-49. The suit was decreed on 3-10-52. The Execution Petition was filed by the decree-holder only on 28-8-61 and the question for consideration is whether or not the said petition was barred by limitation. According to the decree-holder, in computing the period of limitation, he is entitled to exclude the period from 15-1-55 till 31-10-60 on the ground that during the said period the decree had been rendered unexecutable as a result of the judgment in O. Section 219 of 1952 evidenced by Ext. A-3 which was subsequently set aside on 31-10-60 by the appellate Court.

3. O. Section 219/52 was a suit filed under Section 53 of the Transfer of Property Act by two persons claiming to be creditors of the present Judgment-debtor (first defendant) praying for a declaration that a sale-deed dated 7-11-50 executed by the latter was fraudulent and hence not binding on the plaintiffs and the other creditors. The present decree-holder had also been impleaded as the fifth defendant in the aforesaid suit on the allegation that he was one of the creditors of the first defendant. The suit was decreed by the trial court by judgment Ext. A-3 dated 15-1-55. The 4th defendant in the suit who was a transferee under the impugned document had raised a contention that neither the plaintiffs nor the 5th defendant (present decree-holder) was in fact, a creditor of the first defendant and that therefore, the transfer in his favour was not

liable to be challenged by any of them as being in fraud of creditors. In the judgment Ext. A-3 the trial court found that both the plaintiffs were creditors of the first defendant and that they were therefore competent to maintain the suit. With respect to the contention that the 5th defendant was not a creditor, the trial court held that it was not satisfied that the promissory-note in his favour was in existence at the time of the sale-deed Ext. A-18 and that therefore, the 5th defendant could not be held to be a creditor of the first defendant on the date of Ext. A-18 (7-11-1950). Notwithstanding this finding, the suit was decreed as prayed for with costs. The 5th defendant took up the matter in appeal to the District Court (A. S. No. 31 of 1957 District Court, Tellicherry) challenging the aforesaid finding recorded against him by the trial court. The appeal was allowed by the learned District Judge by judgment dated 31-10-60 and the impugned finding recorded by the trial court was set aside.

4. The contention of the decree-holder which has been accepted by the court below, is that as a result of the finding recorded against him in Ext. A-3 judgment, the decree obtained by him in S. C. 236/52 on the "strength of the promissory-note dated 5-1-48 became in executable and that his right to execute the decree revived only when the adverse finding contained in Ext. A-3 was set aside by the District Court on 31-10-60 under its judgment Ext. A-1. The argument is that since both the decree-holder as well as the judgment-debtor were parties to the suit O. Section 219 of 1952 and by Ext. A-3 judgment the Court had declared that the decree-holder was not a creditor of the judgment-debtor, no useful purpose whatever would have been served by the decree-holder's filing an execution petition because he was certain to be met with the plea that there was no longer any executable decree. The lower court accepted this contention and held that in computing the period of limitation for filing the Execution Petition the decree-holder is entitled to exclude the interval between the dates of Ext. A-3 and Ext. A-1 judgments on the ground that there was no executable decree in existence during the said period. Accordingly, the said period was excluded and the execution petition was held to be within time taking into account also the period during which there was temporary bar on execution imposed by Kerala Act 31/58. The first defendant judgment-debtor has preferred this revision petition challenging the correctness of the view so taken by the executing court.

5. The learned counsel for the petitioner disputes the correctness of the proposition enunciated by the lower court that whenever by reason of any supervening event the decree has been rendered in-executable there will be a cessation of the running of time under the Limitation Act with respect to the decree-holder's remedy to put the decree in execution. Counsel contends that the Indian Limitation Act is a self-contained enactment and that the grounds for exclusion of time in calculating the period of limitation prescribed by the Act must be found within the four corners of the statute itself. It is urged that it will be totally wrong for the Court to invent a new ground of exclusion of time beyond what is specifically contained in the statute, on equitable considerations. Learned counsel further submits that, in any event, there is no warrant for invoking any such principle in the present case because, the right of the decree-holder to put his decree in execution was not in any manner affected by the finding recorded in Ext. A-3

Judgment.

6. On behalf of the respondent-decree-holder his learned counsel submitted that Ext. A-3 judgment had declared that nil client was not in law a creditor of the Judgment-debtor. It is argued that as a direct consequence of this declaration made by a court of competent jurisdiction, the decree-holder ceased to have any further rights to execute the decree obtained by him in S.C. 236/52 particularly because the promissory-note, on the strength of which the said decree was passed, was the very transaction with reference to which the Subordinate Judge's Court had recorded the adverse finding. Counsel, therefore, urged that this is a case where there was a temporary extinguishment of his client's cause of action and a subsequent revival of the same consequent on the appellate court setting aside Ext. A-3 judgment on 31-10-1960. He sought to support this contention by reference to several decided cases wherein the period between the date of the extinguishment of a cause of action and that of its subsequent revival hat been held to be liable to be excluded in computing the period of limitation.

7. The aforesaid contentions of the learned counsel for the respondent depend essentially on the soundness of his first proposition as to the effect of Ext. A-3 judgment. According to him, by reason of the finding recorded on issue No. 1 in Ext. A-3 judgment, the decree-holder ceased to have any right to execute the decree and the decree was consequently rendered unexcitable at his instance. The entire reasoning of the lower court is also based on its acceptance of the above contention. The suit O. Section 219/52, as already noticed, was one filed under section 53 of the Transfer of Property Act by two other persons claiming to be creditors of this judgment-debtor. They challenged the validity of a sale-deed executed by the judgment-debtor in favour of the 4th defendant in that suit. The trial court held by Ext. A-3 judgment that plaintiffs 1 and 2 were both creditors of the first defendant. In regard to the 5th defendant, it recorded a finding that it was not possible to hold that the promissory-note in his favour was In existence at the time of the impugned sale-deed Ext. A-18 dated 7-11-50 and that therefore, the 5th defendant was not a creditor of the first defendant on the date of Ext. A-18. The validity of the decree obtained by the 5th defendant as against the first defendant on the strength of the promissory-note was never put in issue in the said suit and nothing whatever has been stated in the judgment affecting the legality or binding nature of the said decree. All that the trial court' found in Ext. A-3 judgment under issue 1 was only that the 5th defendant therein was not a creditor of the first defendant on the date of Ext. A-18. It appears to us that the court took special care to limit the said finding to the state of affairs as on the date of Ext. A-18 because it had been made aware that a decree had been passed by a court of competent jurisdiction against the first defendant based on the promissory-note executed by him in favor of the 5th defendant. In fact, the decree in SC 236/52 had been produced in evidence before that court as Ext. B-1 and no challenge had been made by any party as against its validity. This is further clear from the following sentence extracted from paragraph 23 of Ext. A-3 Judgment :

> "The evidence in this case Roes to show that even if Exts. B-1 to B-3 are genuine

documents under which money is due to defendants 5 and 6 from the first defendant, these debts could not have been in existence at the time of the sale-deed Ext. A-18."

The actual finding recorded by the trial court under the relevant issue in Ext. A-8 is :-

"I find that the defendants 5 and 6 are not the creditors of the first defendant on the date of Ext. A-18."

It is, therefore, not possible for us o accept the contention of the decree-holder that his right to execute the decree had been in any manner affected much less extinguished, by reason of the finding contained in Ext. A-3 judgment. The said finding, in our opinion, did not affect to any extent the validity or the executabllity of the decree in S.C. 236/52 and it was perfectly open to the decree-holder even after Ext. A-3 judgment to execute the decree obtained by him in SC 236/52 as against the first defendant. We find absolutely no substance in the decree-holder's contention that so long as the finding recorded against him in Ext. A-3 judgment stood, no purpose would have been served by his filing any execution petition to our view, the finding recorded in Ext. A-3 judgment to the effect that the decree-holder herein was not a creditor of the first defendant on the date of Ext. A-18 sale-deed could not have been validly relied on by the judgment-debtor as a defence to the execution petition since the validity or excitability of the decree was not at all touched by that finding.

8. It is not disputed before us that if the decree-holder is not entitled to exclude the period between Exts. A-3 and A-1 the execution petition is time barred and has to be dismissed on that ground. In the view that we have taken regarding the effect of Ext. A-3 judgment. It has to be held that the lower court was wrong in holding that the Execution Petition was within time.

9. The Civil Revision Petition is accordingly allowed and S. E. A. No. 97 of 1961 is dismissed. In the circumstances of the case, we direct the parties to bear their respective costs.

Revision allowed.