**PATNA HIGH COURT**

Mohammad Jabir

Vs

Narain Prasad Daruka

A.F.A.O. No. 413 of 1956

(V. Ramaswami, C.J. and Kanhaiya Singh, J.)

20.08.1959

**JUDGMENT**

**V. Ramaswami, C.J.**

1. This appeal is brought on behalf of the decree-holders against an order of the Additional District Judge of Muzaffarpur, dated 6th November, 1956, holding that the execution of the final decree for mesne profits was barred by limitation.

2. It appears that the final decree for mesne profits was made in Title Suit No. 208 of 1939 on the 5th June, 1951, in the following terms :

> "that the commissioner's report is hereby confirmed against both sets of the defendants. Let the decree be prepared for mesne profits as per commissioner's report on plaintiffs' filing requisite court-fee."

A formal decree was prepared in pursuance of this order on the 8th May, 1952, and notified to the parties. It appears that this decree contained no other details except the number of the suit and the names of the parties. On the 3rd February, 1954, the plaintiffs made an application before the Munsif's Court for the preparation of the final decree. On the 12th March, 1954 the plaintiffs were directed by the court to file the requisite court-fee of Rs. 528/12/- and also a petition for amendment of the decree. Acting on the direction of the court the decree-holders paid the requisite court-fee and also made an application for amending the decree. On the 31st March, 1954, the decree was amended by the Munsif and for the first time details of the amount of mesne profits were inserted in the decree. The execution case was taken out on 21-6-1954, and the objection of the judgment-debtors was that the execution case was barred because it was filed beyond three years from the date of the final decree which must be taken to be the 5th June, 1951. The lower appellate court allowed this objection of the judgment-debtors on the ground that the terminus a quo for the execution case was the date of the final decree for mesne profits, namely the date of the order made in Title Suit No. 208 of 1939, that is, the 5th June, 1951, and not the date of the amendment of the decree which was the 31st March, 1954. The lower

appellate court proceeded upon the view that the amendment was not necessary because the order of the 5th June, 1951 finally determined the rights and liabilities of the parties and there was no occasion for the rectification of any other mistake.

3. In support of this appeal the contention put forward by learned Counsel for the appellants is that the view taken by the lower appellate court is wrong and the starting point of limitation is the date of the amendment, namely, the 31st March, 1954, and the execution case was not barred by limitation. It was also pointed out on behalf of the appellants that the amendment of the decree was made within three years from the date of the decree of mesne profits, namely, from the 5th June, 1951. In our opinion the contention put forward on behalf of the appellants is well founded and must be accepted as correct. Article 182 of the Indian Limitation Act provides a period of three years as the period of limitation for the execution of a decree from the date of the amendment of the decree "where the decree has been amended." It was submitted by learned Counsel on behalf of the respondents that the original decree dated 5th June, 1951, did not require amendment because it finally determined the rights of the parties, and the amendment made on the 31st March, 1954, was not really in the nature of a substantial amendment but merely an arithmetical calculation was inserted in the decree. We are unable to accept the submission of learned Counsel as right.

We do not consider that it is open to the executing court to go behind the order of amendment and to enquire whether the amendment was a substantial amendment or merely an amendment of a clerical or arithemetical nature. It is also not open to the executing court to go into the question whether the amendment was necessary or not necessary or whether the Court of the Munsif was competent to make the amendment or not. In our opinion, the language of Article 182 must be given a strict grammatical meaning and equitable considerations are out of place. That is the view expressed by the Privy Council in *Nagendra Nath Dey v. Suresh Chandra Dey*[1], which involved an analogous question as to the construction of Article 182(2) of the Limitation Act. It was pointed out by Sir Dinshah Mullah, who pronounced the opinion of the Judicial Committee that there was no warrant for reading into the words "where there has been an appeal" any qualification either as to the parties to it and that the words meant just what they said. At page 167 of the report the following passage occurs in the judgment of the Judicial Committee :

> "Their Lordships think that nothing would be gained by discussing these varying authorities in detail. They think that the question must be decided upon the plain words of the article, 'where there has been an appeal,' time is to run from the date of the decree of the appellate court. There is in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide. It is at least an intelligible rule that so long as there is any question sub judice between any of the parties those affected shall not be compelled to pursue the so often thorny path of execution which if the final result is against them, may lead to no advantage. Nor in such a case as this is the judgment-
> debtor prejudiced. He may indeed obtain the boon of delay, which is so dear to debtors,

and if he is virtuously inclined there is nothing to prevent his paying what he owes into Court."

The view we have expressed is also supported by a decision of this High Court in *Gouri Kant Prasad v. Rambilas Narain*[2], In that case one D obtained a preliminary mortgage decree against R and before it was made final he assigned it to G who applied for making it final. He subsequently applied for a personal decree under Order 34, rule 6, Civil Procedure Code, and such a decree was passed on the 12th June, 1940, but in that decree the name of D was shown as the decree-holder instead of that of G. Two execution petitions by G in his own name were dismissed. In the meantime on 28-7-1943, G had applied for amendment of the decree, and on 28-9-1943 G filed a third execution petition in his own name and while this was pending he got the decree amended on the 20th May, 1944. The attention of the Court was pointedly drawn to the fact of the amendment and the judgment-debtor raised an objection that the amendment should not have been allowed. The question that arose before the High Court was whether the application was barred by limitation. It was held by Manohar Lall, J., that in the circumstances of the case the application for execution was not barred by limitation; and although there was no application for the amendment of the execution petition after the amendment of the decree, the attention of the Court having been drawn to the fact that the decree which was being executed was the decree as amended on the 20th May, 1944, it must be held that the decree which was being executed was the amended decree, and the application for execution must be treated to be an application for execution of the amended decree as and after the 20th May, 1944. A similar view has been taken of the construction of Article 182(4) of the Limitation Act by a Division Bench of the Calcutta High Court consisting of Derbyshire, C. J. and Mukherjee, J. in *Manohar Chandra v. Kali Priya Roy*[3], It was held by the learned Judges in that case that under Article 182(4) of the Limitation Act, time for the execution of a decree which was amended runs from the date of the amendment, and it was beyond the competence of the executing Court to decide as to whether the order for the amendment of the decree was proper or not. Once the decree was amended, the executing Court has got to take the amended decree as it stands and allow execution of it, provided the application for execution was made within three years of the amendment. A similar view has been taken by the Lahore High Court in *Imam Din v. Peoples Instalment and Saving Bank Ltd., Lahore*[4], where it was pointed out that it was not within the competence of the executing court to question the correctness of the amended decree and that an application for execution brought within three years from the date of amendment was within time. A similar view has been expressed by the Madras High Court in *A, Lakshmikanta Rao v. M. Ramayya*[5], by Beasley, C. J. and King, J. It was held in that case that the words of Article 182(4) must be given their plain meaning, and for an application for execution of a final decree which has been amended the period of limitation is three years from the date of the amendment. On behalf of the respondents learned Counsel referred to *Hakim Muhammad Idris v. Muhammad Kabir*[6], and *Aklu Singh v. Ram Prit*[7], But these cases do not relate to the interpretation of Article 182(4) of the Limitation Act, nor do they deal with the situation where there is an amendment of the final decree. Learned Counsel also referred to *Rameshwar Narain v. Raghunandan*[8], but that was also a case where the amendment was made after the expiry of three years from the date of the original decree. The material facts of the present case are, however, different, for in the present case the application for the amendment of the decree and also the actual order of the amendment of the decree was made within three years from the date of the final decree for mesne profits. We are also of opinion that the observation of Fazl Ali J. in ILR 16 Pat 453 , that the

amendment contemplated by Article 182(4) must be a real amendment of the decree and not a mere correction of some clerical error or some arithmetical error is an obiter dictum and was not necessary for the decision of the particular case.

4. For the reasons we have already expressed we hold that the execution of the decree taken out by the appellants decree-holders on 21-6-1954, is not barred by limitation. We accordingly allow this appeal and set aside the order of the lower appellate court.

5. The appeal is accordingly allowed with costs.

Appeal allowed.

Cases Referred.

[1] AIR 1932 PC 165
[2] AIR 1948 Pat 158
[3]41 Cal WN 1330
[4] AIR 1941 Lah 131
[5] AIR 1935 Mad 97
[6] AIR 1950 Pat 524
[7]1958 BLJR 327
[8] ILR 16 Pat 453