

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.72 of 2013

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1. Babulal @ Chamari Mahto S/O Late Sankar Mahto.
 2. Brahmddeo Prasad.
 3. Chandra Bhushan Prasad Verma both S/O Babulal @ Chamari Mahto.
 4. Kumari Devi W/O Late Yogendra Mahto.
 5. Manoj Kumar.
 6. Avinash Kumar both S/O Late Yogendra Mahto all Resident Of Mohalla Morarpur, Town Bihar, P.O. Biharsharif, P.S. Laheri, District Nalanda.

.... Petitioner/s

Versus

Biku Mahto S/O Late Mahadeo Mahto Resident Of Mohalla Morarpur, Town Bihar, P.O. Biharsharif, P.S. Laheri, District Nalanda. Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

CAV JUDGMENT

Date: 08-05-2015

Heard Mr. R.K.P. Singh, the learned counsel for the petitioners and Mr. Hare Krishana Kumar, the learned counsel for the opposite party.

Assailing the order dated 18.04.2013 passed in Execution Case No. 01 of 2012 rejecting the objection by the petitioners to dismiss the execution case as barred by limitation, the petitioners have preferred this revision application.

In order to appreciate the contentions raised by the learned counsel for the parties, it would be fruitful to briefly notice the history of the present litigation. The title suit for partition was filed in the year 1973 and a preliminary decree for partition was passed on 13.09.1977. Thereafter, the proceeding for preparation of final decree



was initiated and ultimately the final decree was passed on 18.12.1987. The judgment debtor-petitioners filed F.A. No. 69 of 1988 before this Court against the final decree. The First Appeal No. 69 of 1988 came to be dismissed on merits on 21.09.2010. Thereafter, the decree-holder filed Execution Case No. 01 of 2012 praying for execution of the final decree.

The judgment debtor-petitioners appeared in the execution case after notice and filed objection petition on 20.06.2012 praying to reject the execution petition as barred by limitation. The decree holder-petitioner filed their rejoinder and after hearing the parties, the learned court below by the impugned order has held that the execution case was not barred by limitation and consequently rejected the objection raised by the judgment debtor-petitioners.

Mr. Singh, the learned counsel for the petitioners has submitted that admittedly the final decree was passed on 18.12.1987 and therefore the limitation of 12 years as prescribed under Article 136 of the Limitation Act would run from that date as the decree became immediately enforceable. It has been propounded that the period of limitation would start from the date when the decree became enforceable and filing or pendency of appeal against the said decree would not arrest running of the period of limitation unless the stay has been granted by the appellate court in appeal. It has also been



submitted that the decree holder-opposite parties deliberately filed the stamp paper and the final decree engrossed on stamp paper on 31.07.1989 because of the delay committed by the decree-holder. It has also been argued that in the execution petition it is the original decree which has been sought to be executed and not the appellate decree but the learned court below has committed error of jurisdiction and acted with material irregularity in coming to the conclusion that the execution case has been filed within the prescribed period of limitation. The learned counsel for the petitioners has placed the reliance on the judgment of the Apex Court in the case of **Hameed Joharan Vs. Abdul Salam 2001 (7) SCC 573, Ratan Singh Vs. Vijay Singh 2001 (1) SCC 469 and Dr. Chiranji Lal Vs. Hari Das 2005 (10) SCC 746** in support of his submissions.

Per contra, Mr. Kumar, the learned counsel for the decree-holder-opposite party has submitted that there is no error of jurisdiction or illegality in the impugned order rejecting the objection of limitation as raised by the judgment debtor-petitioners. It has been canvassed that the axiomatic principle that the appeal is continuation of the suit must not be ignored and the starting point of limitation for filing the execution case would be the date when the appeal against the said decree stood disposed of. It has been highlighted that in the present case the petitioners themselves assailed the final decree by

filing the first appeal before this Court and put the said decree in jeopardy and therefore the execution case filed within 12 years of the disposal of the first appeal can by no stretch be said to be barred by limitation.

After condensing the rival submissions on behalf of the parties, the perceptible note of discord between them is the starting point of limitation as prescribed under Article 136 of the Limitation Act in the present facts and circumstances. It is not in dispute that the petitioners filed First Appeal No. 69 of 1988 against the final decree dated 18.12.1987. The first appeal came to be dismissed on 21.09.2010. The execution case has been filed on 12.01.2012. It is thus apparent that the execution case has been filed within 12 years as prescribed under Article 136 of the Limitation Act from the date of dismissal of the first appeal. The question as to whether the date of disposal of the appeal against the decree, sought to be executed, would be the starting point of limitation for filing the execution case squarely came up for consideration before a Full Bench of this Court in the case of **Jokhan Rai Vs. Baikunth Singh 1987 PLJR 172**. In the said case, the appellate court granted the decree on 23.12.1969 after setting aside the dismissal of the suit. The second appeal against the judgment and decree of the appellate court came to be dismissed on 21.03.1980. The decree holder thereafter filed execution case in the

year 1983 for execution of the decree dated 23.12.1969. The objection by the judgment debtor in the said case for dismissal of the execution case as barred by limitation was rejected by the executing court. In this backdrop, the question whether the *terminus a quo* for computing the period of limitation of 12 years under Article 136 of the Indian Limitation Act is the date of the original decree alone or in the event of an appeal that of the appellate decree as well, on reference, came to be considered by the aforesaid full Bench. Their Lordships held as follows:-

“14.....To sum up, the answer to the question posted at the outset is rendered in the terms that the terminus a quo for computing the limitation of twelve years under Article 136 of the Act is the date of appellate decree in the event of an appeal and not that of the original decree.

15. Once it is held as above, it is plain that there is no merit in this revision petition. The learned Execution Munsif rightly held that time was to run from the date of the dismissal of the appeal by the High Court on the 21st of March, 1980. The execution application was thus plainly within time.....”

In a later decision in **Uma Shankar Sharma Vs. The State of Bihar 2005 (1) PLJR 541** on the similar facts the same view was reiterated holding as follows:

“8. Article 136 of the Limitation Act, 1963, specifically provides that the time from which period of limitation begins to run is when the decree or order becomes enforceable. In a case where the decree of the lower courts is challenged in section Appeal which results into a decree passed by this Court, then the decree of the courts below merge with the Judgment and decree of the Second Appeal and the decree becomes enforceable and the period of limitation under Article 136 of the Limitation Act is to be counted from the date of Judgment in the Second Appeal. Even when the appeal is dismissed on any preliminary matter or is dismissed for default, it would naturally amount to confirmation of the Judgment and decree of the lower courts, which would attain finality only thereafter and hence the final decision would be that of the second appellate court and

the decree of the courts below could be legally treated as enforceable only thereafter. It would thus be absolutely immaterial that there was no order in the second appeal staying execution of the decree and that the decree of the courts below could have been executed by the decree-holder immediately after the said decree.....”

At this juncture, it would be pertinent to mention that in none of the decisions of the Apex Court in the cases of Hameed Joharan (supra), Ratan Singh (supra) and Dr. Chiranji Lal (supra), as relied by the learned counsel for the petitioners, the issue pertaining to the date of starting point of limitation under Article 136 of the Indian Limitation Act in the event of appeal against the decree under execution came up directly for consideration or had been decided. No authoritative decision taking the contrary view to the law laid down by the Full Bench in Jokhan Rai (supra) has been brought to the notice of the court on behalf of the petitioners.

For the aforesaid reasons and discussions, it is held that the starting point of limitation as prescribed under Article 136 of the Indian Limitation Act in the present case would be 21.09.2010 when the First Appeal No 69 of 1988 against the final decree came to be dismissed and not 18.12.1987 on which date the final decree was

passed. The learned court below has rightly decided the issue and there is no error of jurisdiction or illegality in the impugned order.

The revision application is, accordingly, dismissed.

(V. Nath, J)

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