

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 940 OF 2017

Bholaram Girdharilal Agarwal
(Died Through LRs)

1. Deepakkumar Hanumandas Agrawal
(Died Through LRs)

1A. Urmila w/o Deepak Agarwal
age 39 years, occ. Household

1B. Somesh s/o Deepak Agarwal
age 21 years, occ. Student.

1C. Sapna d/o Deepak Agarwal
age 19 years, occ. Student

1D. Anchal d/o Deepak Agarwal
age 17 years, occ. Student

1E. Chanchal d/o Deepak Agarwal
age 17 years, occ. Student

All r/o In front of Balaji Mandir
G.G. Road, Nanded
Tq. & Dist. Nanded.

Petitioners

Versus

1. The Nanded Sikh Gurudwara
Sachkhand Shri Huzur,
Abchalnagar Sahib, Nanded
Through its Superintendent,
Gurudwara Sachkhand Board,
Nanded
Tq. & Dist. Nanded.

2. Shankarlal s/o Mohanlal (Died)
through LRs

2A. Kamalkishor s/o Shankarlal
age major, occ. Nil.

r/o Balaji Mandir, Near Old Mondha
Nanded, Tq. & Dist. Nanded.

Respondents

Mr. P.R. Katneshwarkar, advocate for the petitioners
Mr. P.V. Mandlik, Senior Counsel i/by Mr. P.P. Mandlik, advocate
for Respondent no. 1.

CORAM : S.B.SHUKRE, J.

DATE : 30th January, 2017

ORAL JUDGMENT :

1 Heard Shri Katneshwarkar, learned Counsel for petitioners and Shri Mandlik, Senior Counsel for Respondent No.1. No notice has been issued to Respondent No.2-A, as admittedly, he is a formal party.

2 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

3 The only contentious issue, that this writ petition raises, is about the limitation period for execution of the decree; whether it starts from the date of passing of the decree or from the date on which the decree becomes enforceable? Another incidental question thrown open for consideration by the writ petition is whether or not doctrine of merger, resulting in temporary suspension of limitation period for execution of decree, can be applied in a case like the present one wherein there were two different proceedings initiated by the rival parties and which were pending for consideration before various Courts at different levels.

4 Answer to the first question is provided by Article 136

of the Limitation Act, 1963 and it is that limitation period has to be reckoned from the date on which the decree becomes enforceable. For ascertaining the date making the decree enforceable and also counting the period of 12 years, which is limitation period for execution of decree under Article 136, it is necessary to advert to some of the facts of the case. The admitted facts, in different proceedings, are enumerated below.

Regular Civil Suit No.155/1965, filed by Respondent No.1 for recovery of possession against the petitioner was decreed on 07.09.1966. The first appeal, being Regular Civil Appeal No.95 of 1966, challenging the said decree was dismissed and second appeal, being S.A. No.148 of 1968 was also dismissed on 09.08.1974. Thus, decree passed in Regular Civil Suit No.155 of 1965, against deceased grand father of petitioner no.1, became enforceable on 09.08.1974. After passing of this decree, Bholaram Girdharilal, father of original judgment debtor in R.C.S. No.155/1965, filed another suit claiming declaration of ownership and also injunction prohibiting decree holders from executing the decree which became final on 09.08.1974, on the ground that the decree was not executable against him. This suit was R.C.S. No.297/1974, and it was decreed on 31.12.1979 and thus, from that date onwards, the decree passed in R.C.S. No.155/1965, which was till then enforceable, turned inexecutable.

5 The original decree holders in R.C.S. No.155/1965 challenged this decree in R.C.S. No.297/1974, by filing Regular Civil Appeal No.19 of 1980. The appeal was allowed and the suit came to be dismissed on 29.03.1984. The aggrieved person

Bholaram Girdharilal then filed second appeal, being S.A. No.82 of 1984, which was allowed on 22.04.1991. This order, however, was upset by the Hon'ble Apex Court in the appeal that was allowed to be filed and the matter was remanded back to this Court on 02.03.2011, on the ground that Second Appeal No.82 of 1984 was allowed by this Court without framing any substantial question of law. This Second Appeal was re-heard and decided on 21.08.2013. The decision was in terms of dismissal of the Second Appeal.

6 The above referred admitted facts would show that the dispute between the parties came to be finally settled on 21.08.2013 and it was only from this date onwards that the decree passed in R.C.S. No.155/1965, which was rendered inexecutable with effect from 31.12.1979, once again became operational and enforceable. These admitted facts would further show that the decree, which became enforceable on 09.08.1974 had been rendered inexecutable and unenforceable for a substantial period of seven years from out of the limitation period of twelve years as per Article 136 of the Limitation Act and as such, the execution proceedings filed on 22.04.2014, cannot be said to be filed after expiry of limitation period.

7 Learned Counsel for the petitioners has placed reliance on the judgment in the case of **Chandi Prasad and others Vs. Jagdish Prasad and others**, reported in (2004) 8 SCC 724, in support of his argument that doctrine of merger is not applicable to the facts of the present case and, therefore, the limitation period would have to be considered as having been started from 09.08.1974.

8 To my mind, this writ petition does not involve any question relating to merger of decree passed in one proceeding into the decree passed in another proceeding. As stated earlier, the basic question involved in this petition is about starting point of the limitation period as per Article 136 of the Limitation Act and I have already found that the starting point of limitation period, as per this Article, was linked with different dates or to be precise, the date of the decree on which it first became executable, then the date when it became inexecutable due to decree passed in R.C.S.No.297/1974 and then again the date when it became enforceable due to dismissal of S.A. No.82/1984 on 21.08.2013. I have also found that this decree, viewed in the context of starting point of limitation and running of limitation period of 12 years as per Article 136 of the Limitation Act, is still enforceable with the execution proceedings having been filed before expiry of period of limitation. Therefore, the ratio laid down in the case of **Chandi Prasad** would render no assistance to the learned Counsel for petitioners.

9 In the result, I find no merit in the writ petition and same deserves to be dismissed.

10 Writ Petition stands dismissed. Rule discharged. No costs.

S.B.SHUKRE
JUDGE

adb/wp94017