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CRP (MD) No.2034 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No.2034 of 2022

and

CMP (MD) No.9285 of 2022

Ramzan Beevi

... Petitioner

Vs

Nalla Mohammed

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.09.2022 made in EA.No.1 of 2021 in EP.No.21 of 2018 in OS.No.277 of 1995 on the file of the Principal District Munsif, Sivagangai and allow the EA.1 of 2022 in EP.No.21 of 2018.

For Petitioner : Mr.D.Venkatachalam

For Respondents : Mr.T.R.Jeyapalam

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order dated 09.09.2022 made in



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EA.No.1 of 2021 in EP.No.21 of 2018 in OS.No.277 of 1995 on the file of the Principal District Munsif, Sivagangai.

2.The judgment debtor in OS.No.940 of 2017 has filed an application in EA.No.1 of 2021 in EP.No.21 of 2018 to reject the execution petition that it is a time barred one. The said application was dismissed by the trial Court. Aggrieved over the same, the present petition is filed.

3.The learned Counsel for the petitioner submits that as per Article 135 of the Limitation Act, the time limit for executing the permanent injunction is only three years. Though first appeal and second appeal were filed, no stay was granted and subsequently the appeals were dismissed and the execution petition is hit by limitation.

4.The learned Counsel for the respondent submits that the judgment and decree in OS.No.277 of 1995 was passed in the year 2013 and as per the law of merger, the execution petition is very much maintainable. The suit was filed for declaration, recovery of possession and permanent injunction. If it is a suit for injunction alone, Article



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135 of the Limitation would come into play and since the suit was filed for declaration, recovery of possession and injunction, as per Article 136 of the Limitation Act, the time limit for executing the decree is 12 years and therefore, the execution petition is filed well within time.

5. The learned Counsel for the respondent also relied on the judgment of the Hon'ble Apex Court in Gojer Bros Private Limited Vs. Ratan Lal Singh, reported in 1974 AIR (SC) 1380.

"The juristic justification of the doctrine of merger may be sought in the principle that there cannot be, at one and the same time. more than one operative order governing the same subject-matter. Therefore the judgment of an inferior court, if subjected to an examination by the superior court, ceases to have existence in the eye of law and is treated as being superseded by the judgment of the superior court. In other words, the judgment of the inferior court loses its identity by its merger with the judgment of the superior court."



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In cases where the decree of the trial court is carried in appeal and the appellate court disposes of the appeal after a contested hearing, the decree to be executed is the decree of the appellate court and not of the trial court. In Jowad Hussain vs. Gendan Singh & Ors., (1) the, Privy Council while holding that the limitation of three years within 'which an application for a, final decree must be made runs from the date of the decree of the appellate court, quoted with approval the statement of law contained in the judgment of a learned judge of the Allahabad High Court to the following effect : "When an appeal has been preferred, it is the decree of the Appellate Court which is the final decree in the cause". (2) The Privy Council also adopted the statement contained in a judgment of Tudball J. to this effect : "When the Munsif passed the decree it was open to the plaintiff or the: defendant to accept that decree or to appeal. If an appeal is preferred,, the final decree is the decree of the Appellate Court of final jurisdiction. When that decree is passed, it is that decree and only that which can be made final in the cause between the parties." Thus, when the decree of the court of first instance is confirmed by the High Court and the latter



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decree is confirmed by the Privy Council the decree capable of execution is the decree of the Privy Council. (3) In that case the decree passed by a District Judge in 1887 awarded "future mesne profit" to the plaintiff. That decree was reversed by the High Court but was confirmed by the Privy Council on May 11, 1895. When the matter came back in execution proceedings the Privy Council held that the decree which the courts had to execute was the one Passed by it in 1895 and since by that decree the District Judge's decree- was confirmed, the decree of 1895 clearly carried the mesne profits up to its own date.

6. Heard the learned Counsel on either side and perused the materials placed on record.

7. The respondent / plaintiff has filed the suit in OS.No.277 of 1995 for declaration, recovery of possession and permanent injunction. The suit was decreed on 20.04.2013. The judgment debtor has filed an appeal suit in AS.No.91 of 2013, which was dismissed in the year 2016. The petitioner could not get any order of stay of the operation of the judgment and decree passed in the suit.



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Thereafter, the petitioner filed second appeal in SA(MD)183 of 2017 and the same was dismissed on 15.02.2018. Only after the judgment and decree passed in the second appeal, the respondent / decree holder has filed the above execution petition on 28.09.2018. As pointed out by the learned Counsel for the respondent the limitation has to be calculated as per Article 136 of the Limitation Act. Accordingly the period of limitation is 12 years and by applying the law of merger, the execution petition is maintainable. Therefore, there is no reason to interfere with the orders of the execution Court.

8. In view of the above discussion, the civil revision petition is dismissed. No costs. Consequently connected miscellaneous petition also stands dismissed.

14.11.2022

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To

The Principal District Munsif,
Sivagangai.



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B. PUGALENDHI, J.

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