

Rev.Aplc(MD)No.123 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Rev.Aplc(MD)No.123 of 2010

- 1.Bhavani Ammal
- 2.Ramanathan
- 3.Ramaviswanathan
- 4.Ananthapadmanabhan
- 5.Jayanthi
- 6.Gayathri
- 7.Ganapathi
- Venataraman (Died)
- 9.Alamelu Venkataraman
- 10.Geetha
- 11.Sudha
- 12.Sivaraman

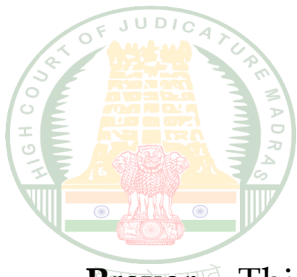
... Review Applicants

*(Petitioners 9 to 12 are brought on record
as Lrs of the deceased 8th petitioner vide
Court order dated 22.03.2024 made
in M.P.(MD).No.1 to 3 of 2014)*

Vs.

- 1.Ganga Natarajan (Died)
- 2.Vanisree
- 3.Bhaskar
- 4.Prabhu
- 5.Savithri
- 6.Seethalakshmi
- 7.Ravichandran

... Respondents



Rev.Aplc(MD)No.123 of 2010

Prayer : This Review Application is filed under Section 114 r/w Order 47 Rule 1 of Civil Procedure Code, to review the order dated 26.07.2002 passed in C.R.P.No.954 of 2002.

For Petitioners	: Mrs.Rajeswari for M/s.S.M.S.Johnny Bash
For Respondents	: Mr.R.Murali (For R3 and R4) R1 – Died No appearance (For R5 to R7)

ORDER

The decree holder in O.S.No.2158 of 1981 on the file District Munsif Court, Uthamapalayam filed this review petition to review the order passed by this Court in C.R.P.(MD).No.954 of 2002, dated 26.07.2002.

2.In this case, the revision petitioners/decreed holders filed the execution petition to enforce the composite decree in O.S.No.2158 of 1981 on the file of the learned District Munsif, Uthamapalayam, dated 30.04.1983, consisting of the declaration, recovery of possession, mandatory injunction and the permanent injunction. The contesting defendants in the suit filed the appeal suit in A.S.No.97 of 1983 and the same was dismissed on 22.03.1984. Challenging the concurrent judgments and decrees, the contesting defendants filed the second appeal before this Court in S.A.No.1433 of 1984 along with C.M.P.No.1234 of 1984. This Court granted stay of an execution on 24.09.1984 and made absolute on 14.02.1986. Finally, after



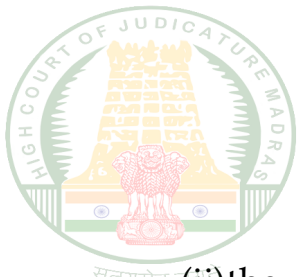
Rev.Aplc(MD)No.123 of 2010

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elaborate hearing, the appeal was dismissed on 11.12.1997. Thereafter, the execution petition was filed on 07.02.2000. The execution petition was dismissed by the Execution Court on 20.11.2001 stating that the execution petition is barred by limitation under Article 136 of the Limitation Act, 1963. The Execution Court also has held that there was no stay of the execution of decree pending second appeal. The Execution Court, relied the judgment of the Hon'ble Supreme Court in the case of *Ratansingh Vs. Vijaysingh and others* reported in **2001 (1) SCC 469**. Challenging the same, the petitioners filed the C.R.P.No.954 of 2002 and the same was dismissed by passing the impugned order dated 26.07.2002, holding that execution proceedings in E.P.No.20 of 2000 in O.S.No.2158 of 1981 is barred by limitation. This Court also observed that there was no stay pending the second appeal. Challenging the same, the petitioners filed this review application.

3.The learned counsel for the review petitioners made the following submissions:

(i)this Court inadvertently dismissed the revision petition in the admission stage without considering the specific ground raised by the revision petitioner that the Court below failed to notice the pendency of the second appeal and failed to take notice that the period of limitation is controlled by the stay order granted in the second appeal.



Rev.Aplc(MD)No.123 of 2010

सत्यमेव जयते
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(ii)the grant of stay of the execution of the decree in O.S.No.2158 of 1981 by order dated 24.09.1984 was made absolute on 14.02.1986 and the same existed till the disposal of the second appeal on 11.12.1997. The same was not considered by this Court and hence there is an apparent error on record.

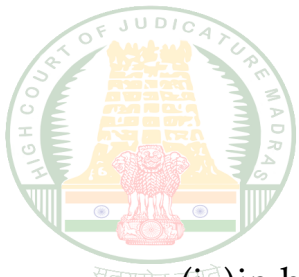
(iii)therefore, they seek to set aside the impugned order passed by this Court in C.R.P.No.954 of 2002.

4.The learned counsel for the contesting respondents made the following submissions:

(i)the petitioner neither produced any stay order copy before the Court below nor before the hearing of the C.R.P., before this Court. Therefore, there is no apparent error on record to interfere with the order of this Court.

(ii)the decree holder must be vigilant to execute the decree. Therefore, the learned Judge, Execution Court correctly dismissed the E.P.No.20 of 2000 as barred by limitation by relying on the judgment of the Honourable Supreme Court reported in **2001 (1) SCC 469**.

(iii)even as on today, the execution application is not maintainable on the ground that decree is for the mandatory injunction and other reliefs and therefore as per Article 135 of the Limitation Act, 1963, the execution petition is not maintainable ie., after excluding the stay period, the execution petition is out of time.



Rev.Aplc(MD)No.123 of 2010

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(iv) in between the belated execution, alienation has taken place and hence, on the ground of equity, the execution petition is to be dismissed.

5. This Court considered the rival submission and also perused the records and the impugned orders and the relevant provisions and the precedents on the subject in issue.

6. Pending the review application, the first respondent died and the legal heirs of the first respondent namely, the respondent Nos. 2 to 4 already on record and the memo dated 10.11.2014, was filed. The same is recorded.

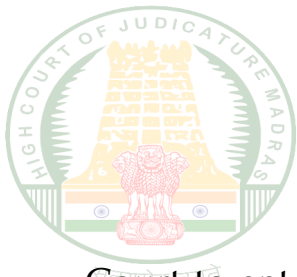
7. To determine the review, this Court framed the following questions:

(i) whether there is any apparent error to interfere with the impugned order passed by this Court in C.R.P.No.954 of 2002, confirming the dismissal of the E.P.No.20 of 2000 in O.S.No.2158 of 1981 on the file of the learned District Munsif, Uthamapalayam?

(ii) whether this Court is correct in holding that the execution proceeding is barred by limitation?

8. Grounds for entertaining the review:

Before going into the jurisdiction of this Court to entertain this review it is to be seen whether under Section 114 r/w order 47 Rule 1 of CPC, this Court is duty bound to recapitulate the following principle as laid down by the Hon'ble Supreme



Rev.Aplc(MD)No.123 of 2010

Court to entertain the review in the case of *Kamlesh Verma v. Mayawati*, reported
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in (2013) 8 SCC 320 at page 333

20.1. When the review will be maintainable:

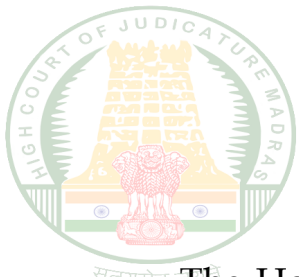
- (i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) *Mistake or error apparent on the face of the record;*
- (iii) *Any other sufficient reason.*

9. Meaning of any sufficient reason

“Any other sufficient reason” as per the judgment of the Privy council in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] approved by the Hon'ble Supreme Court in in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius [AIR 1954 SC 526 is that “a reason sufficient on grounds at least analogous to those specified in the rule”

Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

10. Meaning of “apparent error on record”:



Rev.Aplc(MD)No.123 of 2010

The Hon'ble Supreme Court in the case of *State of W.B. v. Kamal Sengupta*,
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reported in (2008) 8 SCC 612 has defined the meaning of *apparent error on record*:

22. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

10.1. Now applying the above principle, this Court finds that the non-consideration of the legal principle relating to the interpretation of the article 136 of the Limitation Act 1963 and the pendency of the second appeal with stay of the execution in S.A.No.1433 of 1984 is apparent error on record and also this Court has



Rev.Aplc(MD)No.123 of 2010

jurisdiction to exercise the review jurisdiction on the existence of the sufficient grounds to interfere with the impugned order of this Court in C.R.P.No.954 of 2002.

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11.This Court granted stay as observed earlier in C.M.P.No.12340 of 1984 by order dated 24.09.1984 and the same was made absolute on 14.02.1986 with the following term:

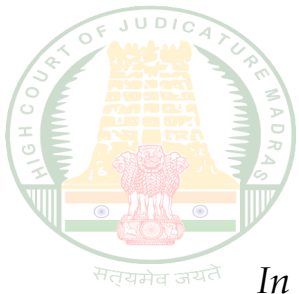
(I) That all further proceedings in execution of the decree on O.S.2158/81 on the file of the Court of the District Munsif, Uthamapalayam as confirmed in AS.No.97/1983 on the file of the Court of Subordinate Judge, Periyakulam be and are here by stayed pending further orders on this petition.

11.1.The same was also continued till the disposal of the second appeal on 11.12.1997 and this Court after elaborate hearing dismissed the second appeal and dismissed the above said civil miscellaneous petition.

11.2.The relevant portion of the Second Appeal judgment is as follows:

At the time of admitting the second appeal the following substantial question of law was formulated, for consideration in the appeal;

Whether the Court below are right in admitting Ex.A2 in evidence and relying upon the same when it is unstamped and unregistered.



Rev.Aplc(MD)No.123 of 2010

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In my view, there is nothing either specifically nor even remotely any justification exist to warrant interference by this Court with the concurrent judgments of the courts below in this second appeal. The second appeal, therefore, fails and shall stand dismissed. No costs. Consequently C.M.P.No. 12340 of 1984 is dismissed.

In the said circumstances, the dismissal of the execution petition in E.P.No.20 of 2000 confirmed by this Court in the impugned order on the ground that there was no stay of the decree in O.S.No.2158 of 1981 is *exfacie* illegal and hence, there is apparent error in the impugned order which requires this Court to interfere with the impugned order.

12.Now the question is whether the dismissal order of the learned Judge Execution Court in E.P.No.20 of 2000 on the ground of limitation is correct?

13.The learned Judge, Execution Court, has held that the petitioner obtained decree for declaration, recovery of possession and mandatory injunction on 30.04.1983 in O.S.No.2158 of 1981 and hence, to execute the decree for mandatory injunction, under Article 135 of limitation Act, 1963, he should have filed the execution proceedings within a period of three years from the date of the decree. To consider the said issue of period of limitation, this Court dwells upon the principle relating to the applicability of Article in the case of the composite decree.



Rev.Aplc(MD)No.123 of 2010

सत्यमेव जयते
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14. It is well settled principle, if two Articles limiting the period for bringing a suit are wide enough to include the same cause of action and neither of them can be said to apply more specifically than the other, that which keeps alive and not that which bars the suit should generally and apart from other equitable considerations be preferred. Where two articles are wide enough to cover a given right of suit and if the one applies more specifically than the other, the Court should lean in favour of the application of the provision which would keep the right of suit alive in preference to that which would destroy it.

14.1.In the case of *Gannon Dunkerley & Co. Ltd. Vs Western India Theatres Ltd. & Anr.* reported in 1960 SCC OnLine Cal 198

if two articles limiting the period for bringing a suit are wide enough to include the same cause of action and neither of them can be said to apply more specifically than the other, that which keeps alive and not that which bars the suit should generally.

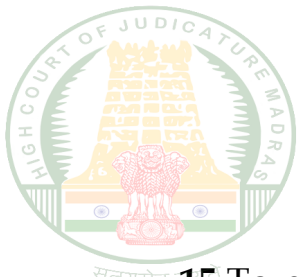
14.2.Execution is carrying into effect the order of a Court of law. It is the enforcement of decrees and orders by process of Court to enable the decree-holder to realize the fruits of the judgment in his favour¹ on a procedural matter pertaining



Rev.Aplc(MD)No.123 of 2010

WEB COPY

to execution when a section yields to two conflicting constructions, the Court shall adopt a construction which maintains rather than disturbs the equilibrium in the field of execution^[2]. I have been always of the opinion that the law of limitation should receive a liberal interpretation so as to enable the decree-holder to obtain the fruits of his decree and the language should neither be strained nor stretched^[3]. It is also the principle that the Court seeks to avoid a construction that cures the mischief the enactment was designed to remedy only at the cost of setting up of a disproportionate counter-mischief since this is unlikely to have been intended by the Parliament^[4]. We do not wish to encumber this judgment with a detailed discussion of all the citations and the reasoning advanced therein in support of one or the other view. It will be sufficient to say that upon the language of Section 12(2) both the constructions are possible, but the one adopted by the majority of the courts, appears to be more consistent with justice and good sense. The Limitation Act deprives or restricts the right of an aggrieved person to have recourse to legal remedy, and where its language is ambiguous, that construction should be preferred which preserves such remedy to the one which bars or defeats it. A court ought to avoid an interpretation upon a statute of limitation by implication or inference as may have a penalising effect unless it is driven to do so by the irresistible force of the language employed by the Legislature^[5].¹



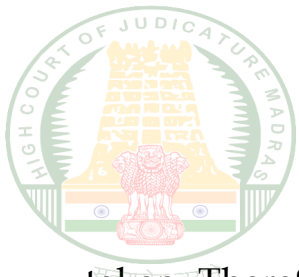
Rev.Aplc(MD)No.123 of 2010

सत्यमेव जयते
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15.To apply the above principle and to decide the decision of the Execution Court whether the execution petition filed by the appellant is barred by limitation by applying Article 135 of Limitation Act the following dates and events are relevant:

Sl.No	Date	Events
1	30.04.1983	Original Suit was filed by the Review Petitioner/Plaintiff in O.S.No.2158 of 1981 inter alia praying for declaration and recovery of possession and mandatory injunction to demolish the super structure therein. The suit was decreed in favour of plaintiff/Review Petitioner.
2	22.03.1984	Appeal filed by the 1 and 4 defendants/respondents herein A.S.No.97 of 1983 and the same was dismissed.
3	1984	The second appeal was filed and an interim stay was granted on 24.09.1984.
4	14.02.1986	Interim Order passed on 24.09.1984 by this Court in C.M.P.No.12340 of 1984 in S.A.No.1433 of 1984 was made absolute and the execution of the decree in O.S.No.2158 of 1981 is being stayed.
5	11.12.1997	Second Appeal filed by 1 st and 4 th defendants/ respondents herein in S.A.No.1433/1984 was dismissed.
6	07.02.2000	Execution petition filed by the Plaintiff's herein E.P.No.20 of 2000.
7	20.11.2001	The Execution petition was dismissed.

15.1.In this case, there is a decree for possession and mandatory injunction. As already discussed above, in the case of two Articles limiting the period for particular action, the period mentioned in the article which keeps the relief alive has to be



Rev.Aplc(MD)No.123 of 2010

taken. Therefore, Article 135 of Limitation Act, which is meant for Execution of the
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mandatory injunction is not applicable. Article 136 of the Limitation Act alone is
applicable.

15.2.Even otherwise, the Execution Petition filed on 07.02.2000, after the
dismissal of the Second Appeal in S.A.No.1433 of 1984 on 11.12.1987, is within time
either under Article 135 or under Article 136 of the Limitation Act 1963. On the
peculiar circumstances that the stay order was in force from 14.02.1986 to 11.12.1997.
Therefore, the dismissal of the Execution Petition filed by the petitioner after the
long period of contest in the second appeal simply on the ground of limitation
without considering the stay order amounts to judicial massacre of the decree in
O.S.No.2158 of 1981. Hence, this Court is inclined to set aside the order in E.P.No.20
of 2000 dated 07.02.2000 in O.S.No.2518 of 1981 on the file of the (*)District Munsif
Court, uthamapalayam.

16.Accordingly, this Review Application is allowed in the following terms:

(i)the order passed in C.R.P.(MD).No.954 of 2002 is hereby set aside.

(ii)the fair and decretal order passed in E.P.No.20 of 2000 dated 07.02.2000 in
O.S.No.2518 of 1981 on the file of the (*)District Munsif Court, uthamapalayam. is
hereby set aside.



Rev.Aplc(MD)No.123 of 2010

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(iii)the Execution Petition in E.P.No.20 of 2000 dated 07.02.2000 in O.S.No.2518 of 1981 on the file of the learned (*)District Munsif Court, uthamapalayam. is hereby directed to be disposed of within a period of six months from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

(*)Corrected as per the order of this court dated 06/12/2024

Sd/-

Assistant Registrar()

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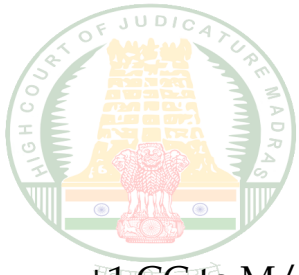
04/11/2024

Sub Assistant Registrar

vsg/sbn

(*) To be substituted the order already despatched on 04/11/2024

+1 CC to M/s.S.M.S.JOHNNY BASHA, Advocate (SR-16113[F] dated 27/03/2024)



Rev.Aplc(MD)No.123 of 2010

+1 CC to M/s.M.SURESH KUMAR, Advocate (SR-16440[F] dated 28/03/2024)

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Rev.Aplc(MD)No.123 of 2010

27.03.2024

MGJ(04.11.2024) 15P 3C

KB(09.12.2024) 15P 3C

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