

Lahimiya Vs. Mazur Hannisa

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Court : Chennai

Decided On : Jan-28-1926

Reported in : 95Ind.Cas.718

Judge : Ramesam, J.

Appellant : Lahimiya

Respondent : Mazur Hannisa

Judgement :

1. This Civil Miscellaneous Second Appeal arises in the execution of a decree in Order Section No. 316 of 1912 dated 6th January 1915. The decree was obtained by the respondent against her husband, the appellant. The first execution petition was filed on 20th September 1915. The appellant's immoveable property was attached. There was a claim petition. It was dismissed on 26th February 1916. The attached property was sold in September 1916 and the sale was confirmed on 10th October 1916, Meanwhile the defeated claimant filed an original suit to establish his right, O. S. No. 420 of 1916. This was dismissed on 9th November 1917. An appeal to the Sub-Court, A. S. No. 55 of 1918, was dismissed on 13th November 1919. The decree-holder then filed a petition for further execution, E. P. No. 44 of. 1920 dated 13th November 1919. She was asked to state how her petition which was more than three years from the earlier petition was not barred. She gave no explanation. She asked for further time. After time was extended twice the following order was passed; 'Time can no longer be granted. Rejected'. It does not appear on what ground it was rejected. If it was rejected on the ground that it was out of time, possibly the order may be res judicata. See Vyapuri Koundan v. Chidambara Mudaliar 18 Ind. Cas. 607 : 21 M. L. J. 26 : 37 M. 314, But it is not clear to me that it was dismissed as barred. Anyhow the point will have to be considered now. The decree-holder then filed the present petition on 21st February 1922. In this petition she prays for arrest of the appellant. She also applied in C. M. P. No. 2096 of 1922 for delivery of the property which was sold in 1916. The District Munsif held both the petitions to be barred and dismissed them. There was an appeal to the Subordinate Judge of Masulipatam. He held that E. P. No. 44 of 1920 dated 13th November 1919 must be regarded as a continuation of her execution petition in 1915 on account of the intervening suit by the claimant which terminated in 1919 and, therefore, that that application was not barred and the present application which is within three years from that is also not barred. But this ground of the Subordinate Judge cannot be upheld. The execution petition of 1915 was for attachment of property and sale. The petitions of 1919 and 1922 were for arrest. As the reliefs are entirely different, the later petitions cannot be considered to be a revival of the earlier execution petition. Moreover the intermediate suit was by the claimant and not by the decree-holder. There was no order of injunction in the suit stopping further execution. Not unless there was a suspension without any default on

her part can the principle of revival of a former execution petition be utilised in favour of the appellant. The result is, it must be held that E. P. No. 110 of 1922 is barred and should be dismissed with costs throughout.

2. The other petition C. M. P. No. 2096 of 1922 for delivery of property was not dealt with by the Subordinate Judge in his order apparently by an oversight. To prevent any misconception as to its termination I must deal with it. Under Article 181 of the Limitation Act the application for delivery must be made within three years from the time the right to apply accrues. Such right accrued on 10th October 1916 when the sale was confirmed. The respondent has not appeared before me and has not assisted me. I tried my best to find out in the record something to help her to save her application for delivery of property and the learned Vakil for the appellant has placed the facts fairly before me. I am not able to find anything to help her. Though the intermediate suit by .the claimant relates to the matter of the house and though in this respect the application for delivery is different from the application for arrest, still it is difficult to see how it suspends her right, and how the application for delivery can be distinguished from the application for arrest. In the case of application for delivery we have nothing to do with the revival theory. The only question is when the right to apply accrued. It is a different Article that governs an application for delivery and as this application is more than three years from the confirmation of sale, this also must 'be held to be barred. The result is, in this matter also the District Munsif s order is restored.

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