

CASE NO.:
Special Leave Petition (civil) 15697 of 1999

PETITIONER:
DEEP CHAND & ORS.

Vs.

RESPONDENT:
MOHAN LAL

DATE OF JUDGMENT: 03/04/2000

BENCH:
S.Saghir Ahmad, & R.P. Sethi.

JUDGMENT:

SETHI, J.
L...I...T.....T.....T.....T.....T.....T.....T...J
Leave granted.

Suit for specific performance of contract filed by the respondent was decreed on 22nd February, 1973. The decree-sheet was amended vide order dated 5.5.1973. The appeal filed by the appellants-Judgment Debtors was dismissed in default on 15.9.1979 which was restored and finally dismissed on merits by the District Judge, Gurgaon on 11.3.1981 subject to the condition that in case the judgment-debtors make the payment of Rs.15,500/- to the decree-holder, plaintiffs' suit shall stand dismissed and appeal accepted. The first instalment was to be deposited on or before 15.4.1981 and second on or before 15.5.1981. The judgment-debtors failed to abide by the terms of the said decree. The decree-holder was, therefore, entitled to get the decree executed in lieu of Rs.25,000/- out of which he was stated to have already deposited a sum of Rs.10,218/- as earnest money at the time of the agreement and had deposited the balance amount on 12.1.1982. The amount was deposited in favour of the mortgagee with the result that the land was redeemed. Thereafter the decree-holder filed execution applications on 17.12.1982, 12.6.1984 and 21.9.1992 which were dismissed. However, the decree-holder got the sale deed executed and registered in his favour through the process of execution of the decree from the executing court. As despite the mutation of ownership sanctioned in favour of decree-holder, the judgment-debtors did not deliver the possession of the land in question, he filed an application for execution in April, 1994 which was dismissed by the executing court on 24th September, 1998 holding that the same was barred by limitation.

Not satisfied with the order of the executing court, the decree-holder filed a revision petition in the High Court which was allowed vide the order impugned in this appeal. The High Court has held that the execution application has been filed within time. Directions have been issued to the executing court for taking further steps in the execution of the decree passed in favour of the decree-holder. The

judgment of the High Court has been assailed in this appeal on the ground that as the execution application was filed after 12 years from the date of the decree, the same was barred by time, and revisional Court was not justified in allowing the revision petition by setting aside the order of the executing court.

Article 136 of the Limitation Act is a specific Article prescribing and dealing with the applications for the execution of decrees and orders. In Govind Prasad & Anr vs. Pawankumar the Privy Council held that successive applications for execution are permitted to be filed but only within the period of limitation provided by law.

Article 136 provides:

For the execution of any decree (other than a mandatory injunction) or order of any Civil Court Twelve Years When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought takes place:

Provided that an application for the enforcement of a decree granting a perpetual injunction shall not be subject to any period of limitation.

A perusal of the Article shows that the period of limitation prescribed by it starts to run from the date when the decree becomes enforceable provided the case does not fall within the scope of the latter part of the provision in the third column. Generally a decree or order becomes enforceable from its date, but in appropriate cases the court passing the decree may prescribe time wherefrom the decree becomes enforceable on a future date. It must, however, be remembered that the purposes of execution proceeding is to enable the decree-holder to obtain the fruits of his decree. In case where the language of the decree is capable of two interpretations, one of which assist the decree-holder to obtain the fruits of the decree and the other preventing him from taking the benefits of the decree, the interpretation which assists the decree-holder should be accepted. The execution of the decree should not be made futile on mere technicalities which does not, however, mean that where a decree is incapable of being executed under any provision of law it should, in all cases, be executed notwithstanding such bar or prohibition. A rational approach is necessitated keeping in view the prolonged factum of litigation resulting in the passing of a decree in favour of a litigant. The policy of law is to give a fair and liberal and not a technical construction enabling the decree-holder to reap the fruits of his decree.

It has been held in Akshoy Kumar Debi v. alini Ranjan Mukherjee [AIR 1950 Cal 473]; Annapurnamma v. Venkamma@@

[AIR 1939 Mad.323] and Mst.Parmeshri & Ors. vs. Mst.Atti@@

[AIR 1958 Punjab 79] that "It is the policy of law that Article 182 (now Article 136) should receive a fair and liberal and not a technical construction so as to enable the decree-holder to reap the fruits of his decree. It will not be in consonance with the principles of just

interpretation, to strain the language of Article 182 in favour of a judgment-debtor who has not paid his just debt".

In the instant case the suit of the respondent was decreed in the following terms:

"It is ordered that the defendant is directed to get executed the sale deed as per agreement Exhibit PW1/2 dated 13.8.69 to sell the suit land for Rs.25,000/- in favour of the plaintiffs. The defendant will get only Rs.14,782/- before the Sub Registrar at the time of registration. He had received Rs.10,218/-. The plaintiff will pay the expenses on account of stamp and registration of the sale deed in question and plaintiff is also entitled to possession of this land as soon as the sale deed is executed and registered. The defendant is now directed that he should execute and get registered the sale deed by 22.3.73 on the above terms failing which the plaintiff can get the sale deed executed through court. Suit of the plaintiff is accordingly decreed with costs."

As noted earlier, the appellants-judgment debtors are found to have committed defaults in the payment of the instalments as agreed upon. The decree-holder was, therefore, entitled to get the sale deed executed in terms of the decree passed in his favour. He was held "entitled to possession" of the land as soon as the sale deed was executed and registered. It is not disputed that sale deed was executed in favour of the decree-holder vide court orders dated 23rd March, 1984. The execution application seeking possession of the land, the subject matter of the decree, was filed in April, 1994, admittedly, within a period of twelve years as prescribed under Article 136 of the Limitation Act. The High Court has rightly held that the decree for possession of land became enforceable only after the execution of the sale deed as was the direction of the court decreeing the suit. Before the execution of the sale deed in his favour on 23.3.1984, the decree-holder was not entitled to possession in terms of the decree. The decree, therefore, itself directed its execution after the execution of the sale deed in favour of the decree-holder. The decree-holder has been proved to have filed successive applications for the execution of the decree within the period of limitation. The language of Article 136 cannot be strained in favour of the judgment-debtors who have been found to have not availed of the benefits of decree conferred upon them as they are proved to have failed to pay the amount even in instalments. The decree in the instant case is not capable of any other interpretation. As a general rule the executing court should not find ways to dismiss the execution application as barred by time unless it is established, beyond doubt, that such an application was beyond limitation.

We find no infirmity in the order of the High Court requiring interference in this appeal. The appeal is accordingly dismissed but without any order as to costs.