1930

TULSIDAS JASRAJ v. THE INDUSTRIAL BANK OF WESTERN INDIA

Patkar J.

Further, the disposition of the debentures in favour of the Imperial Bank was not necessary in order to gain time to formulate a scheme of reconstruction. Even if the Bank had refused to grant time, the Court could have acted under section 170, and section 179, clauses (*b*) and (*g*), notwithstanding the opposition of the Imperial Bank.

I think, therefore, on consideration of all the circumstances that the disposition of the debentures in favour of the Imperial Bank of India, Limited, ought not to be validated under section 227, clause (2), of the Indian Companies Act.

I would, therefore, allow First Appeal No. 29 of 1928, allow the application of the liquidator, and reverse the order of the lower Court with costs on the respondent.

Appeals allowed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Mirza and Mr. Justice Broomfield.

1930
April 10.

RAMKRISHNA VITHAL KULKARNI (ORIGINAL JUDGMENT DEBTOR'S HEIR), APPELLANT *v.* RAMCHANDRA DATTATRAYA GARWARE, MINOR BY HIS GUARDIAN AND NEXT HEIR ADOPTIVE MOTHER INDIRABAI, WIDOW OF DATTATRAYA KRISHNA GARWARE (ORIGINAL JUDGMENT CREDITOR), RESPONDENT.*

Indian Limitation Act (IX of 1908), section 6—Decree—Execution—Minority of decree-holder—Application for execution after twelve years—Limitation—Civil Procedure Code (Act V of 1908), section 48—Dekkhan Agriculturists' Relief Act (XVII of 1879)—Mortgage decree—Decree absolute not necessary.

On February 4, 1911, a decree was passed on an award made by a conciliator under section 44 of the Dekkhan Agriculturists' Relief Act in a mortgage suit. Plaintiff-mortgagee was a minor at the time of the award decree. He died on September 26, 1917, being then still a minor without having executed the decree. He left a widow who was a minor. She attained majority on February 3, 1923. On February 1, 1926, the widow presented an application for the execution of the decree. It was contended that the application for execution was barred by limitation under section 48 of the Civil Procedure Code, 1908, and also that the decree being not made absolute execution was barred.

*Second Appeal No. 777 of 1928.

Held, (1) that the application for execution being filed within three years of the minor widow attaining majority was saved from being time-barred under section 6 of the Indian Limitation Act, 1908, though it was governed by section 48 of the Civil Procedure Code, 1908.

Moro Sadashiv v. *Visaji Raghunath*,[1] followed;

(2) that the decree being passed under the Dekkhan Agriculturists' Relief Act, 1879, it was not required to be made absolute before it could be treated as final and effective.

Kashinath Vinayak v. *Rama Daji*[2]; *Hirachand Khemchand* v. *Aba Lala*[3]; *Suklya* v. *Suklal*,[4] followed.

Ramji v. *Pandharinath*,[5] distinguished.

Second Appeal against the decision of D. V. Yennemadi, Assistant Judge at Satara, confirming the decree passed by K. S. Sapre, Subordinate Judge at Koregaon.

Proceedings in execution.

The property in suit belonged to one Vithal Kulkarni. By a deed dated June 15, 1893, Vithal mortgaged it to Krishnarao Garware. On behalf of Krishnarao's minor son Dattatraya (plaintiff) a decree was obtained on February 4, 1911, in terms of an award made by conciliator under section 44 of the Dekkhan Agriculturists' Relief Act. Dattatraya died on September 26, 1917, while still a minor. He left him surviving his widow Indirabai who was born on February 3, 1905. She attained majority on February 3, 1923. Later she adopted Ramchandra a minor. On February 1, 1926, she filed an application for execution of the decree.

The judgment-debtor contended that the Darkhast was time-barred under section 48 of the Civil Procedure Code, 1908.

The lower Courts held, on the authority of *Moro Sadashiv* v. *Visaji Raghunath*,[1] that the Darkhast was in time and allowed the execution to proceed.

The judgment-debtor appealed to the High Court.

[1] (1891) 16 Bom. 536.
[2] (1916) 40 Bom. 492.
[3] (1921) 46 Bom. 761.
[4] (1923) 48 Bom. 172.
[5] (1918) 43 Bom. 477.

1930

RAMKRISHNA VITHAL v. RAMCHANDRA DATTATRAYA

P. B. Gajendragadkar, for the appellant.

Diwan Bahadur *G. S. Rao*, for the respondent.

MIRZA, J.—The facts which have given rise to this second appeal are as follows:—On February 4, 1911, a conciliator who was appointed under the provisions of the Dekkhan Agriculturists' Relief Act filed his agreement or award in Court in respect of disputes then existing between the mortgagee and the mortgagor of a certain property. The mortgagee at the time of the award was a minor who died in the year 1917 being then still a minor without having executed the award which was in his favour. He left a widow, who also was a minor, as his heir according to Hindu law. The widow attained majority in the year 1923 and within three years thereafter in 1926 filed the present Darkhast for executing the conciliator's award. It is conceded by Mr. Gajendragadkar on behalf of the appellant, the original judgment debtor's heir, that if we were to follow the ruling in *Moro Sadashiv* v. *Visaji Raghunath*[1] the execution proceedings would be in time. He urges, however, that we should refer the point to a Full Bench on the ground that the ruling is an old one and that, although it has not been overruled in this Court, two other High Courts have dissented from it—the High Court of Madras in *Ramana* v. *Babu*,[2] and the High Court of Allahabad in *Prem Nath Tiwari* v. *Chatarpal Man Tiwari*.[3] He has also pointed out that the decision in *Moro Sadashiv* v. *Visaji Raghunath*[1] was given on a reference at which no party had appeared to assist the Court with arguments. Mr. Gajendragadkar has addressed an able argument before us contending that section 6 of the Indian Limitation Act does not govern section 48 of the Civil Procedure Code, and that it should

[1] (1891) 16 Bom. 536.

[2] (1912) 37 Mad. 186.

[3] (1915) 37 All. 638.

be held that an application for execution, falling as it does under section 48 of the Civil Procedure Code, would not be saved by section 6 of the Indian Limitation Act from being time barred.

In our opinion *Moro Sadashiv* v. *Visaji Raghunath*[1] has been considered to be an authority in this Court for so long that it may now be regarded as having become an established principle so far as this High Court is concerned. Whatever views the other High Courts may hold on this subject it has not been shown that the view taken in *Moro Sadashiv* v. *Visaji Raghunath*[1] is contrary to the principles of natural justice or has caused any undue hardship or inconvenience to parties.

The second point urged by Mr. Gajendragadkar on behalf of the appellant is that before applying for execution it was necessary for the judgment creditor to have applied for and obtained an order making the decree in his favour a decree absolute or final decree. He relies on the ruling in *Ramji* v. *Pandharinath*.[2] The rulings of this Court in *Kashinath Vinayak* v. *Rama Daji*[3]; *Hirachand Khemchand* v. *Aba Lala*[4] and *Suklya* v. *Suklal*[5] are authorities for the contrary proposition. If *Ramji* v. *Pandharinath*[2] is to be taken as being in conflict with the rulings in these three cases we would consider that the preponderating weight of authority is on the side of holding, as the lower Court has held, that a mortgage decree under the Dekkhan Agriculturists' Relief Act does not require to be made absolute before it can be treated as final and effective.

This appeal in our opinion should be dismissed with costs.

[1] (1891) 16 Bom. 536.
[2] (1918) 43 Bom. 477.
[3] (1916) 40 Bom. 492.
[4] (1921) 46 Bom. 761.
[5] (1923) 48 Bom. 172.

1930

RAMKRISHNA VITHAL v. RAMCHANDRA DATTATRAYA

BROOMFIELD, J.:—I agree. I consider that the decision in *Moro Sadashiv* v. *Visaji Raghunath*[1] is in accordance with the principles of natural justice, and should be followed by this Court on the principle of *stare decisis*.

As regards the second point, the decision in *Ramji* v. *Pandharinath*[2] appears to have been based upon the peculiar terms of the decree which had to be construed in that case. It was not a decree which came strictly under the provisions of the Dekkhan Agriculturists' Relief Act. It has not been shown to us that the decree with which we are concerned is similar to the one which the Court had to deal with in *Ramji* v. *Pandharinath*.[2] But, whether that be so or not, I agree with my learned brother that as the balance of authority as well as the most recent decision in *Hirachand Khemchand* v. *Aba Lala*[3] is in favour of the view which the lower Courts have taken there is no reason why we should differ.

Decree confirmed.

J. G. R.

[1] (1891) 16 Bom. 536. [2] (1918) 43 Bom. 477.
[3] (1921) 46 Bom. 761.

APPELLATE CIVIL.

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Patkar.

1930
April 14.

BHIKABAI WIFE OF CHUNILAL AMBAIDAS, (ORIGINAL DEFENDANT), APPELLANT v. MANILAL AND OTHERS, SONS AND HEIRS OF THE DECEASED BHAGCHAND RAYCHAND; AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Hindu law—Jains—Dasha Shrimali Shwetambar Jain Sect in Khandesh—Custom—Custom of widow taking absolute interest in property held by husband as sole surviving coparcener—Mother's interest in the property—Alienation—Reversioner—Custom, proof of.

Held, that in Dasha Shrimali Shwetambar Jain Community in Khandesh the custom set up by the defendant that a widow gets absolute power to deal with the immoveable self-acquired property of the husband or the ancestral property which was in the hands of the husband as a sole surviving coparcener is not proved.

*Appeal No. 165 of 1924 against the decision of V. P. Raverkar, First Class Subordinate Judge at Dhulia, in Special Suit No. 587 of 1921.