

APPELLATE CIVIL.

Before Mr. Justice Davatia.

1938
January 17

RAMCHANDRA GOVIND UNAVNE (ORIGINAL DEFENDANT NO. 2), APPELLANT v.
LAXMAN SAYLERAM RONGHE (ORIGINAL PLAINTIFF), RESPONDENT.*

General Clauses Act (X of 1897), s. 9—Decree directing deposit to be made within fifteen days from date of decree—Fifteen days would mean fifteen clear days—Date of order to be excluded in computing period—Indian Limitation Act (IX of 1908), s. 12.

The plaint house belonged to two brothers (defendants Nos. 1 and 2). In 1934, defendant No. 1 sold his undivided half share in the house to plaintiff. The plaintiff sued for partition. A consent decree was passed on January 23, 1936, under which defendant No. 2 was directed to deposit Rs. 200 in Court "within fifteen days" from the date of the decree and thereupon the plaintiff was to pass a sale deed of the property to defendant No. 2 and then recover the amount deposited in Court; that if defendant No. 2 failed to pay Rs. 200 within fifteen days as ordered, the plaintiff was at liberty to recover possession of half of the property by equitable partition. The defendant No. 2 deposited Rs. 200 on February 7, 1936. Both the lower Courts held that the deposit was not made within fifteen days as directed by the decree and allowed the plaintiff to proceed to execute the decree.

On appeal to the High Court :

Held, that the expression "fifteen days" would mean fifteen clear days, that is, the date on which the order was made was to be excluded, and therefore the deposit made on February 7, 1936, was within time.

SECOND APPEAL against the decision of T. E. Waterfield, Assistant Judge at Poona, confirming the decree passed by N. V. Ransubhe, Subordinate Judge at Baramati.

Execution proceedings.

In 1935, the plaintiff filed a suit against both the brothers to recover by partition the half share sold to him by Laxman (defendant No. 1). On January 23, 1936, a consent decree was passed between the parties the terms of which were as follows :—

"Defendant No. 2 do pay in Court Rs. 200 within fifteen days from this day.

Plaintiff do execute a sale deed in favour of defendant No. 2 in respect of the property in suit and then should take Rs. 200 from the Court. At the costs of defendant No. 2 the sale deed should be executed.

*Second Appeal No. 493 of 1935.

In case plaintiff do not execute the sale deed defendant No. 2 should get it executed at his cost.

In case defendant No. 2 does not pay the amount within the period fixed, plaintiff do get equitable partition of the property in suit effected and do take possession of half the share from defendant No. 2 as per claim made in the plaint."

On February 7, 1936, defendant No. 2 deposited Rs. 200 into Court. The plaintiff refused to recover this amount from the Court and instead proceeded to apply for possession of half the suit property on the ground that the defendant had failed to pay Rs. 200 in time.

Defendant No. 2 contended that if in the opinion of the Court the time expired on February 6, 1936, one day's delay should be condoned.

The Subordinate Judge overruling defendant No. 2's contention allowed execution to proceed. His reasons were as follows :—

"Section 5 of the Limitation Act does not apply to the execution proceedings. In view of the words 'from to-day' in my order the fifteen days would complete on 6th of February and not on the 7th instant. In the absence of those words the first day of decision would have been excluded from computation as suggested by the learned pleader of the applicant. To exclude that day of decision would be not carrying out the spirit and intention of the order."

On appeal, the District Judge dismissed the appeal summarily, stating his reasons as follows :—

"With regard to the first ground, the argument of the learned pleader for appellant is that in computing the fifteen days, the first day, namely, the day on which the order was passed, must be excluded. This is the vital point. For, if this date be excluded, then the 7th of February clearly falls within fifteen days from the 23rd of January. If it is not to be excluded, then the 7th of February is the 16th day and so beyond time. In support of his arguments the learned pleader for the appellant quotes s. 12 of the Indian Limitation Act, under which in computing the period of limitation for any suit or appeal or application, the day from which such period is to be reckoned is to be excluded. However, the payment of Rs. 200 according to the Court's order is an act not a suit or appeal or application. So, it is clear that s. 12 of the Indian Limitation Act does not directly apply. The same remark applies to s. 9 of the General Clauses Act of 1897, which has application to Acts of the Governor General in Council or Regulations.

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It is contended by the learned pleader for appellant that at any rate the principle of these two sections ought to apply to the case, but I would hesitate to apply the principle to such a case as the present. The fixing of a certain period was again a matter for the discretion of the lower Court. Fifteen days is not a period that is laid down by law in such cases universally and the lower Court, if it has so chosen, could just as well have fixed a period of 16 days as of 15. The words 'within 15 days' mean nothing but 'less than 15 days' or, at any rate, 'not more than 15 days' and reckoning from the day on which the order was passed, the 7th of February is the 16th day.

I am therefore inclined to think that it would not be justifiable to exclude the 23rd of January from the period of 15 days prescribed by the lower Court, without a very definite ruling upon the point. I therefore decline to interfere with the order of the lower Court and summarily dismiss the appeal."

Defendant No. 2 appealed to the High Court.

J. G. Rele, for the appellant.

V. D. Limaye, for the respondent.

DIVANIA J. This is an appeal by defendant No. 2 against a decree directing that the amount deposited by him should not be accepted and that the decree should be executed as if default had taken place in the deposit of the amount. The decree passed against the appellant directed that the defendant should deposit Rs. 200 in Court within fifteen days from that day, i.e. January 23, 1936, that the plaintiff should pass a sale-deed of the suit property to the defendant and then recover the amount deposited in Court, and that if the defendant failed to pay Rs. 200 within fifteen days as ordered, the plaintiff was at liberty to recover possession of half of the property from the defendant upon an equitable partition. The defendant deposited Rs. 200 on February 7, 1936, but the trial Court held that the deposit was not made within fifteen days as directed but that it was made on the sixteenth day, and that therefore it was not made in time and the decree was to be executed on the basis that the deposit was not made. There was an application by the defendant to extend the time by one day, but the learned Judge was of opinion that s. 5 of the Indian Limitation Act

did not apply to execution proceedings and therefore he had no power to extend the time.

On appeal the learned Judge has confirmed that decision on the ground that s. 12 of the Indian Limitation Act and s. 9 of the General Clauses Act, which were invoked on behalf of the appellant, did not apply as this was not a case of a provision in a statute or related to the limitation of suits, and he was of opinion that the first day of the order, viz. January 23, should be included within the period of fifteen days, and therefore, the fifteen days would expire on February 6. With regard to the prayer about extension of time the learned appellate Judge thought it was entirely within the discretion of the trial Court and he was not prepared to disturb the order based on such discretion.

It is contended here on behalf of the appellant that the lower Courts were wrong in holding that the deposit was not made within time, and I am of opinion that that contention is correct. The material words in the decree are that the defendant was to pay Rs. 200 "within fifteen days from this day." Now it is clear that if these words occurred in a statute, the first day would be excluded, and the fifteenth day would expire on February 7. It is enacted in s. 9 of the General Clauses Act of 1897 that in any Act of the Governor General in Council or Regulation it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time to use the word "from", and, for the purpose of including the last in a series of days or any other period of time to use the word "to". Thus the word "from" excludes the first day in a series of days. So that the days mentioned would be clear days. It is true that s. 9 would not apply here in terms as the words occur not in a statute but in an order of the Court, but it is desirable for the sake of uniformity that the same interpretation should be given to an expression occurring in a judicial order as would be given to it in a statute, and I think, therefore, the expression

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“fifteen days” would mean fifteen clear days, and that the date of making the order should be excluded.

The learned trial Judge who made the order says that he intended that the fifteenth day should expire on the 6th. Whatever might have been the intention of the learned Judge, it is to be made out from the expression he has used, and it is the meaning of the expression and not his intention that is material.

The order of the lower appellate Court is, therefore, reversed, and the darkhast filed by the plaintiff on the basis that the amount has not been paid in time is dismissed. The appellant is at liberty to file a darkhast for requiring the plaintiff to pass a sale-deed on the basis that the deposit was made in time. The appeal is allowed with costs in this Court and in the lower appellate Court.

Appeal allowed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Dixita.

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KRISHNA HUKUMCHAND GUJAR (ORIGINAL JUDGMENT-DEBTOR), APPELLANT
 v. MADHAV DATTATRAYA KIRPEKAR (ORIGINAL DECREE-HOLDER),
 RESPONDENT.*

Indian Registration Act (XVI of 1908), s. 17 (2) (vi)—Money suit—Property attached before judgment—Undertaking by defendant not to dispose of attached property—Decree—Charge on property for decretal amount—Execution—If decree requires registration.

In a money suit certain immoveable property of a defendant was the subject-matter of an attachment proceeding at one stage, and was subsequently the subject-matter of an undertaking by the defendant not to dispose of the property till the suit was decided. Ultimately a consent decree was passed providing for a charge on that property for the decretal amount. In execution proceedings following the decree

*Second Appeal No. 680 of 1936 (with Second Appeal No. 681 of 1936).