

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.11040 OF 2013

SHAIFUDDIN (DEAD) THR. LRS.

...APPELLANT

VERSUS

KANHAIYA LAL (DEAD) THR. LRS. & ORS.

...RESPONDENTS

J U D G M E N T

SANJAY KAROL, J.

1. By way of this appeal, the judgment dated 04.01.2006 in Civil Revision No. 715/2002 passed by the High Court of Madhya Pradesh, is called into question by the appellants. This order is assailed on the ground that the execution application was filed after 12 years from the date of the decree, and the same was therefore, barred by time. Consequently, it is prayed that the

Revisional Court was not justified in dismissing the revision petition.

2. The question which arises in this Appeal before us is whether the date on which the compromise decree dated 26.04.1960 was entered into in Civil First Appeal No.11/1959 or the date when the final decree was passed by the Civil Court in Suit No. 30 A/87 i.e. 31.03.1994, will be considered for establishing the period of limitation under the Limitation Act, 1963 (hereinafter “the Act”) for instituting execution proceedings?
3. It is imperative to discuss the legislative provision governing the limitation period in the execution of a decree i.e., Article 136 of the Act. The said Article is specific as it prescribes and deals with the applications for the execution of decrees and orders. It provides that the execution proceedings have to be initiated within 12 years from the date 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.

4. This Court, in **Deep Chand v. Mohan Lal** ¹(2 judges), while dealing with the interpretation of Article 136 of the Act made pertinent observations to the effect that:

- i. A decree or order becomes enforceable from its date;
- ii. In appropriate cases the court passing the decree may prescribe the time wherefrom the decree becomes enforceable on a future date.
- iii. The purpose of an execution proceeding is to enable the decree-holder to obtain the fruits of his decree.
- iv. In case where the language of the decree is capable of two interpretations, one of which assists the decree-holder to obtain the fruits of the decree and the other prevents him from taking the benefits of the decree, the interpretation which assists the decree-holder should be accepted.
- v. A decree is not to be rendered futile on technicalities. A rational approach is necessitated in cases where a decree has been the subject of prolonged litigation and a fair construction is to be given thereto.

5. In **Akkayanaicker v. A.A.A. Kotchadainaidu & Anr.** ², this Court (2-Judge Bench) held that in view of the words "when the decree

¹ (2000) 6 SCC 259, Paragraph 5.

² (2004) 12 SCC 469

or order becomes enforceable" occurring in Article 136 of the Act, the starting point of limitation would be the date on which the decree becomes capable of execution.

6. Furthermore, in **Bimal Kumar v. Shakuntala Debi**³, this Court (2 Judges) observed:

“41. In this context, we may usefully refer to the dictum in *Ratansingh v. Vijaysingh* [(2001) 1 SCC 469] wherein, while dwelling upon the concept of enforceability of a decree and the effect of an order of stay passed by the appellate court, the Bench stated thus:

“8. When is a decree becoming enforceable? Normally a decree or order becomes enforceable from its date. But cases are not unknown when the decree becomes enforceable on some future date or on the happening of certain specified events. The expression ‘enforceable’ has been used to cover such decrees or orders also which become enforceable subsequently.””

(Emphasis Supplied)

7. Before advertng to the facts of the case, it is significant to reproduce clause 6 of compromise decree dt 26.04.1960 in Civil First Appeal No. 11/1959 :

“That after institution of this suit and during the pendency of the case in the District Judge Court, the appellant started proceedings to surrender certain part of the land to the government. But actual possession over this piece of land is of the Respondents No. 1 to 4. Respondents No. 1 to 4 shall be entitled to maintain their right and possession over the

³ (2012) 3 SCC 548

same as before and would be entitled for getting the proceedings of the surrender as terminated, and for this they may initiate legal action. The appellants by adducing their statement etc., as per their necessity/requirement, shall assist to the respondent alas after terminating all kinds of legal actions, if the aforesaid premise is taken away from the possession of the respondent no 1 to 4, then the appellant shall give from their land from the adjacent land from the east of the V points indicated in the map to the respondent No.1 to 4, admeasuring to 1 bigha 5 biswas = one & a quarter bigha from where so ever the appellants may desire to do so, and in that condition the respondent no. 1 to 4 shall have the right to take the same.”

8. A perusal of the above clause of the compromise decree clearly shows that during the pendency of the suit, the Appellant surrendered the land to the State Government. Notably, this compromise decree was entered into wherein it was specified that if due to such surrender the Respondents (Decree holders) were to lose possession of the land, then the Appellant (Judgement Debtor) would give 1 bigha and 5 biswas to the former.
9. The facts of the instant appeal reveal that the cause of action to execute the compromise decree arose when the premises were taken away from the possession of the Decree holders (Respondents Nos.1 to 4). The dispossession of the Respondents was confirmed vide final decree passed by the Civil Court in Suit No.30 A/87 when rights in favor of third person, namely, Mr. Malik

Ram, were finally determined. Hence in our considered view, the cause of action would arise only on 31.03.1994. The prerequisite for enforceability of clause 6 is the dispossession of the defendants, *de facto* or *de jure*.

10. Looking at it through a different lens, it appears that clause 6 of the compromise decree could not have been executed unless the Decree Holders were to lose their right of possession, which fact was not a possibility unless such rights stood conclusively determined by the Civil Court.
11. As discussed above, the limitation period would commence only with the decree becoming enforceable and thus is capable of being executed. In the instant case, the relevant date from which the period of limitation will begin only with effect from 31.03.1994. The period of twelve years is computable from the said date, hence the Execution Application made on 17.07.1995 is within Limitation.
12. It is also noted that during the pendency of this appeal, the opportunity for compromise was given to the parties. But, no compromise could be arrived at.

13. In view of the discussion above, we are of the considered view that the Courts below rightly held that the Execution Application is within Limitation.
14. Before disposing of this Appeal, we take note of the submission of the Decree holders that the cheques, even though received were not presented as the settlement failed. Such a statement is taken on record.
15. Thus, this Appeal is dismissed. Interlocutory Application(s) if any, stand disposed of. No order as to costs.

.....J.
(KRISHNA MURARI)

.....J.
(SANJAY KAROL)

Dated: 17th April, 2023
Place: New Delhi.