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RAM BACHAN RAI AND ORS.

v.

RAM UDAI RAI AND ORS.

MAY 5, 2006.

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[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

Code of Civil Procedure, 1908: O.IX Rule 13, O.XX R. 7. O.XXI R. .22 and Rule 58; Ss. 47, 115/Limitation Act, Article 136:

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Suit for declaration of title and recovery of possession—Decreed ex-parte by trial Court—Filing of an application under O. IX R.13 CPC by judgment debtors for setting aside ex-parte decree—Dismissed for default by trial Court—Revision petition dismissed by High Court—Filing of an application for execution of decree—Dismissed by the Executing Court holding

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that the period of limitation had to be counted from the date of dismissal of the Revision by the High Court—On appeal Held: the application for execution was clearly time-barred as having been filed beyond the period of limitation of 12 years in terms of Article 136 of the Limitation Act — Both the Executing Court and the High Court erred in not concluding the application for execution of the decree as time barred.

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The question which arose for consideration in this appeal was as to when would the period of limitation for execution of a decree commence in terms of Article 136 of the Limitation Act.

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Appellant, the judgment debtor, contended that the High Court was not justified in summarily rejecting the Civil Revision; that the Executing Court had erroneously held that the period of limitation had to be reckoned with effect from the date of dismissal of the Civil Revision; and that Article 136 of the Limitation Act, 1963 provides for a period of 12 years for filing of an application for execution of a decree for recovery of immovable property; and that since the application was filed on 5.4.1991, it was barred by limitation.

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Respondents submitted that the judgment and decree dated 3.5.1976 was passed in the suit admittedly under Order XX Rule 7 of the CPC; and that as the cost for enforcement of the decree was not quantified, the period of limitation could not have commenced from the date of judgment and the decree.

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Allowing the appeal, the Court

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HELD: The entire focus was on the date from which the period of limitation is to be reckoned. The application for execution filed on 5.4.1991 was clearly time-barred as having been filled beyond the period of twelve years prescribed under Article 136 of the Limitation Act. Thus, the High Court as well as the Executing Court committed illegality in coming to a conclusion that it was not barred by limitation. Therefore, the inevitable result is that the order passed by the High Court and the Executing Court cannot be maintained and is set aside. [900-G-H; 901-A]

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Chiranjilal (dead) by LRs. v. Hari Das (d) by LRs., [2005] 2 SCC 261, relied on.

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Ram Nath Das and Ors. v. Saha Chowdhury and Co, Ltd. & Ors., AIR (1974) Cal. 246, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1100 of 2000.

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From the Judgment and Order dated 22.8.1995 of the High Court of Patna in Cr.No. 729/1994.

S. Chandra Shekhar for the Appellants.

S.B. Sanyal and Akhilesh Kumar Pandey for the Respondents.

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The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in this appeal is to the order of a learned Single Judge of the Patna High Court summarily rejecting the Civil Revision filed by the appellants under Section 115 of the Code of Civil Procedure, 1908 (in short the 'Code').

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The Civil Revision was filed against the order of the Executing Court allowing the application for execution of a decree which was passed more than 14 years ago.

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A brief reference to the factual aspect would suffice.

The respondents-plaintiffs filed a suit for declaration of title and recovery of possession in which the appellants had appeared and filed a written statement. The suit was decreed *ex parte* as the defendants did not appear

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A on the date fixed. The *ex parte* decree in the concerned suit was passed on 3.5.1976. No appeal was, however, filed against the aforesaid judgment and decree. The present appellants who are the judgment debtors filed an application under Order IX Rule 13 CPC for setting aside the *ex parte* decree which was dismissed for default on 14.7.1978. The said application was not restored by the trial Court and a Miscellaneous Appeal filed also stood dismissed on 10.1.1987. The Civil revision filed against the order of dismissal was also dismissed on 6.4.1987. At no stage any stay was granted by any Court and the respondents as decree holders filed an application for execution on 5.4.1991. According to the appellants, only a symbolic possession was taken as no notice as mandatorily required to be served in terms of Order XXI Rule 22 or Order XXI Rule 58 of the Code of Civil Procedure was ever served on the judgment debtors. When the judgment debtors came to know of the symbolic possession taken by the decree holders, they filed objection under Section 47 CPC saying that the decree was not legally enforceable as it was barred by time.

D The learned Subordinate Judge dismissed the objection holding that the period of twelve years had to be counted from the date of dismissal of the Civil Revision by the High Court i.e. from 6.4.1987 as the *ex-parte* decree had merged in it. As already noted, the Civil Revision was summarily dismissed.

E In support of the appeal, learned counsel for the appellants submitted that the High Court was not justified in summarily rejecting the Civil Revision. According to him, the Executing Court had erroneously held that the period of limitation had to be reckoned with effect from the date of dismissal of the Civil Revision. On the contrary, in view of what has been stated in *W.B. Essential Commodities Supply Corporation v. Swadesh Agro Farming & Storage Pvt. Ltd. and Anr.*, [1999] 8 SCC 315 the application was clearly filed beyond the period of limitation. Article 136 of the Limitation Act, 1963 (in short the 'Limitation Act') provides for a period of 12 years for filing an application for execution of a decree for recovery of immovable property. Since the application was filed on 5.4.1991 it was beyond the period of limitation.

G In response, learned counsel for the respondents submitted that the judgment and decree dated 3.5.1976 was passed in the suit admittedly under Order XX Rule 7 of the CPC. As the cost for enforcement of the decree was not quantified, the period of limitation could not have commenced from the date of judgment and the decree.

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The basic issue, therefore, is when would the period of limitation for execution of a decree passed in a suit commence. Article 136 of the Limitation Act reads as follows:

Description of application	Period of limitation	Time from which period begins to run
For the execution of any decree (other than a decree granting 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 that 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 or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

Noticing some conflicts in views expressed by two Judge Benches judgment of this Court, reference was made to a three Judge Bench in *Chiranjilal (dead) by Lrs. v. Hari Das (dead) by Lrs.*, [2005] 2 SCC 261. A three Judge Bench by its judgment dated May 13, 2005 in *Dr. Chiranjilal (D) by Lrs. v. Hari Das (d) by Lrs.*, [2005] 10 SCC 746) has decided the matter observing *inter-alia* as follows:

“24. A decree in a suit for partition declares the right of the parties in the immovable properties and divides the shares by metes and bounds. Since a decree in suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act. The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of

A partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon.”

In paragraph 25 of the same decision, this Court also observed as follows:

B 25. *The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. No rule has been shown to us requiring the Court to call upon or give any time for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong. The proposition that period of thereupon an only thereafter the period limitation would remain suspended till stamp paper is furnished and decree engrossed of twelve years will begin to run would lead to absurdity. In Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari, it was said that the payment of court fee on the amount found due was entirely in the power of the decreeholder and there was nothing to prevent him from paying it then and there; it was a decree capable of execution from the very date it was passed. (Emphasis supplied)*

In view of the said decision, the inevitable conclusion is that the Executing Court was not correct in its view. It is to be noted that learned counsel for the respondents conceded to the position that the period of limitation is not to be reckoned from the date of dismissal of the Civil Revision which was filed relating to rejection of the application under Order IX Rule 13, CPC. The entire focus was on the date from which the period of limitation is to be reckoned. Reliance was placed on a decision of the Calcutta High Court in *Ram Nath Das and Ors. v. Saha Chowdhury and Co. Ltd. and Ors.*, AIR (1974) Cal 246 where it was held that the decree was enforceable and when cost is assessed. The ratio in the said judgment clearly runs counter to what has been stated in *Dr. Chiranjil Lal's* case (supra).

For the reasons aforesaid, the application for execution filed on 5.4.1991 was clearly time barred having been filed beyond the period of twelve years

prescribed under Article 136 of the Limitation Act. Accordingly the High Court as well as the Executing Court committed illegality in coming to a conclusion that it was not barred by limitation. Therefore, the inevitable result is that the order passed by the High Court and the Executing Court cannot be maintained and are set aside. The appeal is allowed. The application for execution stands rejected. No costs.

S.K.S.

Appeal allowed.

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