

Supreme Court of India

Bhaskaran vs Sreedharan on 7 March, 2002

Equivalent citations: JT 2002 (3) SC 568, RLW 2003 (1) SC 108, 2002 (2) UJ 1263 SC

Bench: D Mohapatra, R Sethi, B Kumar

ORDER

1. Leave granted.

2. This appeal filed by the plaintiff is directed against the order passed by the Kerala High Court in C.R.P. No. 1390/2000-E, holding, inter alia, that the execution "petition filed by the defendant No. 1 - respondent herein, is not barred by limitation. The execution petition arose out of a suit for partition in which a compromise decree was passed on 18th October, 1979. In the compromise decree, certain arrangement for distribution of the properties between the plaintiff and defendant No. 1 who are brothers was made. It was provided in the compromise decree that the defendant, respondent herein, shall pay a sum of Rs. 6250/- to the plaintiff, appellant herein, on or before 6th February, 1980 and the plaintiff to execute the release deed in favour of the defendant. It was also provided that the plaintiff and his family can reside in the property for two months from the date of decree to enable them to obtain alternate accommodation. It was further provided that in case the first defendant did not pay Rs. 6250/- to the plaintiff, the plaintiff can pay Rs. 5250/- to the first defendant and obtain the release of the rights of the first defendant. It appears that there was default on the part of both the parties inasmuch as the first defendant did not pay the amount of Rs. 6250/- to the plaintiff by 6th February, 1980 and the plaintiff did not vacate the premises. This resulted in filing of two execution petitions by the parties, E.P. No. 63/80 by the plaintiff and E.P. No. 28/81 by defendant No. 1. The E.P. filed by the defendant No. 1 was dismissed by the executing court by its order dated 13th November, 1981 and the said order remained unchallenged. The E.P. filed by the plaintiff was allowed by the executing court by its order dated 26th February, 1983. The said order was challenged before the High Court in revision wherein, the High Court took the view that the E.P. was premature and dismissed it as such-vide the judgment dated 1st November, 1985. The special leave petition filed by the appellant against the said judgment was dismissed by this Court on 4th April, 1981.

3. Thereafter, the defendant No. 1 filed E.P. No. 6/99 on 18th January, 1999. The plaintiff in his objection took the plea that the E.P. was barred by limitation. The plea was negatived by the executing court and the order for eviction of the plaintiff from the premises and for execution of the release deed in favour of the defendant No. 1 was passed on 17th June, 2000. In the revision petition filed by the plaintiff, the High Court confirmed the order of the executing court. The order of the High Court is under challenge in the present appeal.

4. The question for determination is whether in the facts and circumstances of the case, E.P. No. 6/99 was barred by limitation. The High Court took the view that the E.P. was filed within the period of limitation i.e. within 12 years from the date, the compromise decree became executable.

5. On perusal of the compromise decree, it is clear that each party was required to fulfill certain conditions for acquiring the share of the other party in the property. In such a case, if there was

default on the part of any party in complying with the conditions then the other party could seek the assistance of the executing court for compliance of the decree. Therefore, the compromise decree became executable at the instance of a party on the default committed by the other party. Assuming that there was some doubt on account of the involved nature of the compromise decree, the matter was clarified by the High Court in its judgment dated 1st November, 1985. Even taking this date to be the starting point of limitation then also the E.P. filed in 1999 is barred by limitation. It cannot be said that by merely filing the SLP in this Court the period of limitation, which stood extended till disposal of the SLP which was dismissed in limine.

This Court has from time to time clarified that dismissal of a SLP does not amount to confirmation of the judgment/order of the High Court on merits. It only means that this Court did not consider the case to be fit for grant of leave under Article 136 of the Constitution. Therefore, the High Court was clearly in error in holding that the period of limitation for filing the execution petition in the case stood extended till disposal of the SLP by this Court and on that basis holding that the execution petition filed by the respondent was not barred by limitation. The order is clearly unsustainable.

6. Accordingly, the appeal is allowed. The order under challenge is set aside. However, considering the relationship of the parties and the fact that the execution petition was for implementation of the terms of the compromise decree passed in the partition suit, we make it clear that this judgment will not prevent the parties from coming to an amicable settlement regarding the suit property and from approaching the competent court in accordance with law. Parties to bear their respective costs.