

Supreme Court of India

Dadi Jagannadham vs Jammulu Ramulu & Ors on 23 August, 2001

Author: S N Variava

Bench: Cji, K.T. Thomas, R.C. Lahoti, N. Santosh Hegde, S.N. Variava

CASE NO. :

Appeal (civil) 5639 of 2001

PETITIONER:

DADI JAGANNADHAM

Vs.

RESPONDENT:

JAMMULU RAMULU & ORS.

DATE OF JUDGMENT: 23/08/2001

BENCH:

CJI, K.T. Thomas, R.C. Lahoti, N. Santosh Hegde & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

1. Leave granted.

2. The question raised in this Appeal is whether the period of limitation for making deposit, in an application to set aside sale of immovable property under Order XXI Rule 89 of the Code of Civil Procedure, is 30 days from the date of sale (being the period prescribed in Order XXI Rule 92(2) C.P.C.) or 60 days from the date of sale (as prescribed in Article 127 of the Limitation Act).

3. Briefly stated the facts are as follows:

On 25th February, 1980 a decree was obtained in a suit based on a promissory note executed on 21st January, 1972. That decree was put into execution and the property of the Judgment-debtor was attached and put up for sale. The sale was held on 22nd November, 1982.

4. On 21st January, 1983 i.e. on the 59th day after the date of sale, an application was filed under Order XXI Rule 89 C.P.C. and the prescribed amount was also deposited.

5. On 11th March, 1983 the executing Court dismissed the application on the ground that the deposit was not made within 30 days as prescribed under Order XXI Rule 92(2) C.P.C. The Judgment-debtor filed an Appeal which was allowed on 3rd September, 1983. The Order of the

executing Court was set aside. The application of the Judgment-debtor was allowed and the sale was set aside.

6. The Civil Revision Petition filed by the Auction Purchaser was dismissed by the High Court of Andhra Pradesh on 1st February, 1990. It was held that Courts had to harmonise the two provisions and interpret the same having regard to the intention of the legislature. It was held that the Judgment Debtor should be given the benefit of the enlarged period of limitation under Art. 127 of the Limitation Act.

7. It must be mentioned that in coming to the above conclusion the Andhra Pradesh High Court relied upon a Judgment of this Court in the case of Basavantappa v Gangadhar Narayan Dharwadkar & Anr. reported in (1986) 4 S.C.C. 273. In that case it was held that the two provisions had to be harmoniously construed. In Basavantappas case this Court had endorsed the view of the Madras High Court, in the case of Thangammal & Ors. v K. Dhanalakshmi and Anr. reported in AIR (1981) Madras 254 that there was an inconsistency in these two provisions and that the legislature should take steps to remove the inconsistency.

8. On 20th February, 1990 this Court in the case of P.K. Unni v. Nirmala Industries and Ors. reported in (1990) 2 SCC 378 held that the limitation period for making deposit in an application for setting aside sale under Order XXI Rule 89 is 30 days from the date of sale as prescribed under Order XXI Rule 92(2). It was noted that under Article 127, Limitation Act, 1963 the period for making an application for setting aside the sale was 30 days. It was noted that, in 1974, the Limitation Act was amended and the period of Limitation to file an application to set aside sale was extended from 30 days to 60 days. This Court noticed that the Statement of Objects and Reasons, in extending the period to 60 days, was as follows:

"An application to set aside a sale in execution of a decree on deposit under Rule 89 of Order XXI is required to be made within 30 days from the date of the sale. Experience shows that this period is too short and often causes hardship because the judgment-debtors usually fail to arrange for moneys within that time. Banks usually take more than 30 days to sanction loans and advances. In the circumstances, Entry 127 of the Schedule to the Limitation Act is being amended to increase the period of limitation to 60 days in respect of an application to set aside a sale in execution of a decree. This increase in the period of limitation will not affect the purchaser because five per cent of the purchase money is required to be paid to him. The advantage of the increased period of limitation will also be available to an application under Rule 90 or Rule 91 of Order XXI to set aside a sale in execution of a decree. In view of the increase in the period of limitation, confirmation of a sale will have to await the expiry of the increased period of limitation."

It was however held that Order XXI Rule 92(2) C.P.C. and Article 127, Limitation Act operated in different fields and that there was no repugnancy between the two. It was held that even though the period under Article 127, Limitation Act was enlarged that period had no bearing on the time allowed for making a deposit. This Court held as follows:

"15. The court must indeed proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said: See *Nalinakhya Bysack v. Shyam Sunder Halder* [1953 SCR 533, 545 : AIR 1953 SC 148]. Assuming there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. No case can be found to authorise any court to alter a word so as to produce a *casus omissus*: Per Lord Halsbury, *Mersey Docks and Harbour Board v. Henderson Brothers*. [(1888) 13 AC 595, 602: 4 TLR 703]. "We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there": *Crawford v. Spooner* [(1846) 6 Moore PC 1, 8, 9: 4 MIA 179].

16. Where the language of the statute leads to manifest contradiction of the apparent purpose of the enactment, the court can, of course, adopt a construction which will carry out the obvious intention of the legislature. In doing so "a judge must not alter the material of which the Act is woven, but he can and should iron out the creases.": Per Denning, L.J., as he then was, *Seaford Court Estates Ltd. v. Asher* [(1949) 2 All ER 155, 164]. See the observation of Sarkar, J. in *M. Pentiah v. Muddala Veeramallappa* [(1961) 2 SCR 295, 314: AIR 1961 SC 1107].

17. In the construction of the relevant provisions, we see no contradiction or ambiguity or defect or omission. We see no merit in the argument that Article 127 must override Rule 92(2) of Order XXI in respect of limitation. We view both the provisions as prescriptive of time for different purposes, and of equal efficacy and particularity. The maxim *generalalia specialibus non derogant* has no relevance to their construction. Nor does the principle in *Heydon case* [(1584) 3 Co Rep 7a: 76 ER 637] offer any help on the point in issue. The mischief which the legislature had set out to remedy by amendment of Article 127 is what is stated in the objects and reasons clause. That object was accomplished by prescribing a longer period for filing an application to set aside a sale in execution of a decree. Furthermore, as already seen, by amendment of Rule 92(2) of Order XXI an opportunity was accorded to the depositor to make good the deficiency in the deposit made by him due to arithmetical or clerical mistake on his part. In no other respect did the legislature evince an intention to extend the period prescribed for making the deposit. It would perhaps have been better, more logical, reasonable and practical, as stated by the Kerala High Court in *Dakshayini v. Madhavan* [AIR 1982 Ker 126: 1981 Ker LT 861], to enlarge the period for making the deposit so as to make it identical with that prescribed for making the application, and such extended period would have better served the object of the amendment, namely, ameliorating the plight of the judgment-debtor, but such are matters exclusively within the domain of legislation by Parliament and the court cannot presume deficiency and supply the omission. The legislature did not do more than what it did. It has, in our view, accomplished what it had set out to achieve. No more no less."

9. When this Special Leave Petition reached hearing on 8th September 1995 another three Judge Bench of this Court did not agree with the view expressed in P.K. Unni's case. That Bench, therefore, referred the matter to a five Judge Bench for considering the correctness of the view taken in P.K. Unni's case. The Order dated 8th September, 1995 reads as follows:

"A three-member bench of this Court in P. K. Unni vs. Nirmala Industries & others 1990(2) SCC 378 has held that time for making a deposit in terms of Rule 89 Order XXI C.P.C. is 30 days and Article 127 of the Limitation Act, 1963 prescribing a period of sixty days for making an application under Rule 89 has no relevance to the prescribed time for making the deposit, and that neither provision has any effect on the other as to time. It appears to us however that these two periods of limitation are two facets of the same coin. The difference, even though artificial, has to be resolved in permitting the larger period of time to achieve the objective. We, on our part, find it difficult to bypass this three-judge bench decision. We, therefore, refer this matter to a five-judge bench for considering the correctness of the view taken in that case and for the purpose direct that the papers of this case be laid before Hon'ble the C.J.I. for constituting a five-judge bench. It may be mentioned that though the matter is short, it is likely to effect a large number of cases in the subordinate courts. It would therefore solicit early fixation."

Under these circumstances this matter has come before this Bench of five Judges for deciding the question mentioned above.

10. Mr. Narasimha relied heavily on P.K. Unni's case. He submitted that even though the legislature intended to extend time to make deposit, they did not do so. He frankly admitted that if the language of the statute leads to a manifest contradiction of the apparent purpose of the enactment, the Court could adopt a construction which would carry out the obvious intention of the legislature. He however submitted that in doing so the Court could not alter the provision. He submitted that in the construction of the two provisions i.e. Order XXI Rule 92(2) C.P.C. and Article 127, Limitation Act, there was no contradiction or ambiguity or defect or omission. He submitted that both the provisions prescribed time for different purposes. He submitted that Art. 127, Limitation Act prescribed a time for filing an application, whereas Order XXI Rule 92(2) C.P.C. prescribed a time for making a deposit. He submitted that the two provisions operated in different fields. He submitted that in effect the legislature did not extend the period prescribed for making the deposit even though they extended time for making an application. He submitted that it would have been more in keeping with their intention, as seen from the Statement of Objects and Reasons, if the legislature had enlarged the period for making the deposit so that it was identical to the one prescribed for making the application. He submitted that this was a matter exclusively within the domain of legislation by Parliament and the Court could not presume deficiency and supply the omission.

11. Mr. Bisaria has fully supported the view taken in the impugned Judgment. He relied on the decision of this Court in Basavantappas case and submitted that there was an apparent conflict. He submitted that the Courts must give an interpretation which would give effect to the intention of the legislature. In support of this submission he cited the cases of Thangammal and others v K. Dhanalakshmi and another reported in AIR (1981) Madras 254, Pathummakutty and etc. v Thekkechalil Kathiyumma and another etc. reported in AIR (1990) Kerala 286 and The Court Liquidator vs. Bimalendu Das and others reported in AIR (1985) Calcutta

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12. Mr. Bisaria further submitted that Order XXI Rule 92(2) C.P.C. does not prescribe any period for deposit of monies but only provides that if the deposit is made within 30 days and an application filed then the Court would have no discretion to refuse to set aside sale. He submits that by extending the period of time to file an application the legislature has now left it to the discretion of the Court, to allow or disallow, the application if the deposit is not made within 30 days.

13. We have considered the submissions made by the parties. The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.

14. If the rationale in P. K. Unnis case is accepted there is a manifest contradiction. As seen the object and intention in amending Article 127, Limitation Act was to extend time to make deposit. This will not have been achieved if the rationale in P. K. Unnis case is accepted. If Order XXI Rule 92(2) C.P.C. and Art 127, Limitation Act operate in different fields then it would imply that the Legislature had undergone a useless formality in extending the period of limitation to file an application. Order XXI Rule 89 C.P.C. provides that an application to set aside sale can be made if the amounts mentioned therein are deposited. Thus the deposit has to precede or be made at the same time as the application. There would thus be no purpose in permitting filing of an application after 30 days if the deposit had to be made within 30 days and the legislature would have undertaken a useless formality.

15. A plain reading of Order XXI Rule 92 C.P.C. shows that the Court could either dismiss an application or allow an application. Order XXI Rule 89 C.P.C. prescribes no period either for making the application or for making the deposit. The Limitation Act also prescribes no period for making a deposit. However Article 127, Limitation Act prescribes a period within which an application to set aside a sale should be made. Earlier, this was 30 days, now it has been enhanced to 60 days. Unless there was a period prescribed for making a deposit, the time to make the deposit would be the same as that for making the application. This is so because if an application is made beyond the period of limitation, then a deposit made at that time or after that period would be of no use.

16. Normally, when the legislature wishes to prescribe a period for making a deposit, it does so by using words to the effect "No deposit shall be made after days" or "a deposit shall be made within . days" or "no application will be entertained unless a deposit is made within .. days". Order XXI Rule 92(2) C.P.C. does not use any such expressions. The relevant portion of Order XXI Rule 92(2) C.P.C. reads as follows :

"Where such application is made and allowed, and where, in the case of an application under Rule 89, the deposit required by that rule is made within 30 days from the date of sale the Court shall

make an order setting aside the sale."

Thus Order XXI Rule 92(2) C.P.C. is only taking away discretion of the Court to refuse to set aside the sale where an application is made and allowed and the deposit has been made within 30 days from date of sale. It is thus clear that Order XXI Rule 92(2) C.P.C. is not prescribing any period of limitation within which a deposit has to be made.

17. Viewed in this context the intention of the legislature in extending the period under Article 127 Limitation Act may be seen. It is very clear from the Statement of Objects and Reasons, which have been set out hereinabove, that the period under Article 127 Limitation Act was extended from 30 days to 60 days in order to give more time to persons to make deposits. The legislature has noted that the period of 30 days from the date of sale was too short and often caused hardships because Judgment-debtors usually failed to arrange for moneys within that period. The question then would be whether by merely amending Article 127 Limitation Act the legislature has achieved the object for which it increased the period of limitation to file an application to set aside sale.

18. Having given our careful consideration to the question, we are of the opinion that there is no anomaly and that there are no different periods of limitation for making deposits and/or filing an application for setting aside the sale. It is by virtue of Order XXI Rule 89 C.P.C. that an application for setting aside a sale and a deposit can be made. Order XXI Rule 89 C.P.C. does not prescribe any period within which the application is to be made or deposit is to be made. All that Order XXI Rule 92(2) provides is that if the deposit is made within 30 days from the date of sale and an application is filed then the Court would have no discretion but to set aside the sale. That does not mean that if the deposit is made after 30 days the Court could not entertain the application. If the deposit is made beyond the period of 30 days, but within the period of 60 days, then it will be within the discretion of the Court whether or not to grant the application. Thus, an application can be made within the period prescribed under Article 127, Limitation Act. As an application can be made within 60 days and, as stated above, no period for making a deposit is prescribed under Order XXI Rule 92(2) the deposit can also be made within 60 days. In our view, therefore, the view expressed in P.K. Unni's case that Order XXI Rule 92(2) C.P.C. prescribes a period of limitation for making a deposit is not correct.

19. In this view of the matter, we see no merits in the Appeal. We see no infirmity in the impugned Order. The Appeal stands dismissed. There will be no Order as to costs.

..CJI.

J.

(K. T. THOMAS) .J.

(R. C. LAHOTI) .J.

(N. SANTOSH HEGDE) .J.

(S. N. VARIAVA) August 23, 2001.