

***THE HON'BLE SRI JUSTICE M.LAXMAN**

+ CIVIL REVISION PETITION No.4172 OF 2009

% 11—10—2022

Nagubandi Pullaiah and Another

...Petitioners

vs.

\$ Madhuri Srinivas Rao (died)
Per his LRs

... Respondents

!Counsel for the Petitioners: Sri Hari Sreedhar

^Counsel for Respondents: Sri A.Suryanarayana

<Gist :

>Head Note :

? Cases referred

1. 2004 (2) ALL MR 518
2. MANU/SC/0872/2019

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

CIVIL REVISION PETITION No.4172 OF 2009

Between:

Nagubandi Pullaiah and Another

...Petitioners

And

Madhuri Srinivas Rao (died)
Per his LRs

... Respondents

JUDGMENT PRONOUNCED ON: 11.10.2022**THE HON'BLE SRI JUSTICE M.LAXMAN**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

M.LAXMAN, J

THE HON'BLE SRI JUSTICE M. LAXMAN**CIVIL REVISION PETITION No. 4172 of 2009****ORDER:**

1. The present Civil Revision Petition is filed against the order dated 03.08.2009 in E.P. No.336 of 2008 in O.S. No. 706 of 1998 on the file of III Additional Junior Civil Judge, Khammam, wherein and whereby the execution petition filed by the revision petitioners for enforcement of judgment and decree dated 03.02.1999, was dismissed.

2. This revision is at the instance of decree holders. Respondent No.1 herein is the judgment debtor. During the pendency of this revision, respondent No.1 died and his legal heirs were brought on record as respondent Nos.2 to 5. The decree holders obtained decree for recovery of possession and mandatory injunction for removal of structures in the E.P. schedule property, apart from granting of damages.

3. The Executing Court had dismissed the E.P. on the ground that the execution of the decree for mandatory injunction was barred by limitation and consequently, the Execution Petition filed for the recover possession was also dismissed. Hence, the present revision.

4. The learned counsel for the revision petitioners has submitted that the Executing Court has not properly appreciated the reliefs which are sought in execution. According to him, the decree was consisting of reliefs of mandatory injunction as well as the recovery of possession. For enforcement of mandatory injunction, the limitation prescribed under Article 135 of the Limitation Act is only 3 years, whereas for other decrees, the limitation prescribed under Article 136 of Limitation Act is 12 years. For the relief of recovery of possession, the limitation prescribed is 12 years; whereas for mandatory injunction, it is 3 years. Both the reliefs are inseparable and intertwined and the main relief of recovery of possession is not independently executable.

5. On the other hand, learned Counsel for the respondents has submitted that the Executing Court has rightly dismissed the petition on the ground that the relief of mandatory injunction cannot be executed beyond the 3 years from the date of decree when there is no stipulation of date for performance. According to him, before handing over of vacant possession, the decree-holder should obtain decree for demolition of structures by executing decree for mandatory injunction, which is not done

in the present case. Therefore, the Court below has rightly dismissed the application and requires no interference.

6. In the light of the above submissions, it is apt to refer Articles 135 & 136 of Limitation Act, which read as under:

Art. No.	Description of suit	Period of limitation	Time from which period begins to run
135	For the enforcement of a decree granting a mandatory injunction.	Three years	The date of the decree or where a date is fixed for performance, such date.
136	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 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. 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.

7. A reading of Article 135 shows that for enforcement of decree of mandatory injunction, three years limitation is contemplated. That three years limitation commences from the date of decree where no time is fixed for performance and if the time is fixed from the date of fixed time, the limitation commences.

8. Insofar as Article 136 is concerned, it is a residuary provision for other decrees other than mandatory injunction and the time stipulation is 12 years. The limitation commences when decree or order is enforceable. However, when time is contemplated for payment of money, delivery of any property on any particular date or where recurring periods are contemplated when the default in making the payment or delivery in respect of which execution is sought, is the starting point.

9. In the present case, the decree granted was for comprehensive. That means, it included mandatory injunction as well as the recovery of vacant possession. For executing the larger relief of recovery of vacant possession, the relief of mandatory injunction is necessarily to be executed. If mandatory injunction cannot be executed, the main relief which is granted for recovery of vacant possession becomes futile and

inexecutable. For the main relief, the limitation contemplated is twelve years, whereas the relief of mandatory injunction was only three years. When the relief granted covers two distinct limitations, the larger limitation contemplated for the relief has to be taken into consideration while determining whether the execution petition was within time or not. Further, when the two reliefs granted in the decree, if they are inseparable, the larger time prescribed has to be taken.

10. A similar question arose before the High Court of Bombay (Aurangabad Bench) in case of **Ramdas Shriram Chaudhari Vs. Guna Kondu Dhanger & others**¹ wherein it was held at para No.12 as follows:

“The execution of the decree should not be made futile on mere technicalities which does not, however, mean that where a decree is incapable of being executed under any provisions of law it should, in all cases, be executed not-with-standing such bar or prohibition. However, if a decree is granted for two reliefs and the second relief is contingent upon the first, a rational approach is necessitated keeping in view the prolonged factum of litigation resulting in the passing of a decree in favour of a litigant. The policy of law is to give a fair and liberal and not a technical construction enabling the decree holder to reap the fruits of his decree. In short, when the decree is passed in respect of two reliefs for which different period of limitation is prescribed and if the second relief is separable from the first relief, then in that case the bar of limitation for enforcing that part of the decree will come in the way of the decree holder. For example, if the decree is for possession and compensation and if the decree for recovery of the

¹ 2004 (2) ALL MR 518

amount of compensation is not enforced within the prescribed time limits, then enforcement of the said part of the decree would be barred by limitation. However, if the second part of the decree is inseparable from the first part of the decree i.e. if the second relief is inseparable from the first relief as in the present case of recovery of possession coupled with the mandatory injunction to demolish the house then the period of limitation for enforcement of the main relief should be treated for enforcement of such type of decree by giving fair and liberal and not technical construction to enable the decree holder to reap the fruits of his decree.”

11. The Apex Court in **Sopanrao and Others Verses Syed Mehmood & Others**² had also an occasion to consider the limitation aspect when two inseparable reliefs are sought in a suit i.e., one relief is shorter duration and the other relief is larger duration and held that the larger limitation prescribed has to be taken into consideration to decide whether the suit is within time or not. The relevant para reads as under:

“9. It was next contended by the learned counsel that the suit was not filed within limitation. This objection is totally untenable. Admittedly, the possession of the land was handed over to the Trust only in the year 1978. The suit was filed in the year 1987. The appellants contend that the limitation for the suit is three years as the suit is one for declaration. We are of the view that this contention has to be rejected. We have culled out the main prayers made in the suit hereinabove which clearly indicate that it is a suit not only for declaration but the plaintiffs also prayed for possession of the suit land. The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. In a suit filed for possession based on title the plaintiff is bound to prove

² MANU/SC/0872/2019

his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff. In the instant case, even if the case of the defendants is taken at the highest, the possession of the defendants became adverse to the plaintiffs only on 19.08.1978 when possession was handed over to the defendants. Therefore, there is no merit in this contention of the appellants”.

12. A reading of the above ratios laid down by the Mumbai High Court as well as the Apex Court, it is clear that when the reliefs sought are inseparable and have two distinct limitations, the limitation prescribed for larger relief is the foundation to decide whether the suit or execution petition is within time or not. Merely because one relief sought is barred by limitation, the other larger relief which is still within time cannot be said to be barred by limitation. If such contention is accepted, the main relief granted would be unexecutable even though it is within limitation for the simple reason that the ancillary relief which is granted in aid of main relief is barred by limitation. Therefore, I hold that the Court below has committed error in dismissing the execution petition as barred by limitation. Such finding requires interference.

13. Accordingly, the Civil Revision Petition is allowed by setting aside order dated 03.08.2009 passed in E.P. No.336 of 2008 in O.S. No. 706 of 1998 by the III Additional Junior Civil Judge, Khammam. Consequently, the execution petition is restored. The Executing Court shall proceed with the execution as early as possible, preferably within a period of three months from the date of receipt of copy of this Order. No order as to costs. As a sequel, pending miscellaneous applications, if any, shall stand closed.

M. LAXMAN, J

DATE: 11.10.2022

Note: L.R. Copy to be marked.

B/o. BDR / DRM