SUBRAMANYAN v. MANDAYAN.

compel plaintiff to redeem items 3, 4, 6, 7, and that plaintiff was entitled to redeem items 1 and 2 on payment of Rs. 161, being the proportionate amount of Rs. 300 payable for their redemption according to the relative produce of the seven parcels of land.

The Subordinate Judge, referring to s. 60 of the Transfer of Property Act, held that it did not apply.

On the authority of *Marana Ammanna* v. *Pendyala Perubotulu* (1) and *Chandika Singh* v. *Pohkar Singh* (2) confirmed the decree of the Múnsif.

Defendant appealed.

Subramanya Ayyar for appellant.

Rangáchárydr for respondent.

The Court (Collins, C.J. and Parker, J.) delivered the following

JUDGMENT:—The defendant, the mortgagee, on 12th July 1881, accepted Rs. 30 as the proportionate amount of the mortgage due on one item of land and lent a further sum upon the remaining six items.

By so doing he seems to us to have destroyed the indivisibility of the original contract. The plaintiff, on 14th April 1880, had become the purchaser of the equity of redemption of two items, and hence, we think, he is entitled to redeem those two upon payment of the proportionate amount due thereon—*Maranda Ammanna* v. *Pendyala Perubotulu*. (1)

We dismiss this second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

1886. July 30.

KOLLU SHETTATI (JUDGMENT-DEBTOR), APPELLANT,

and

MANJAYA (DECREE-HOLDER), RESPONDENT.*

Civil Procedure Code, s. 230—Limitation—12 years' rule—'Law in force' prior to that Code—Includes Act X of 1877.

In s. 230 of the Code of Civil Procedure, 1882, the words 'law in force' include the Civil Procedure Code, 1877, as well as the Limitation Act then in force:

(1) I.L.R., 3 Mad., 230. (2) I.L.R., 2 All., 906.

* Appeal against Appellate Order 5 of 1886.

Held, therefore, where an application forexecution of a decree of 1872 had been made and granted in January 1882 and under s. 230 of the Code of Civil Procedure, 1877, further execution became barred, before the date on which Civil Procedure Code, 1882, came into force, that no application within three years from such date could be granted under s. 230 of that Code.

APPEAL against an order of H. M. Winterbotham, Acting District Judge of South Canara, confirming an order made by K. Krishna Ráu, District Múnsif of Udipi, in execution of the decree in suit 157 of 1871.

The decree-holder, Manjaya Shetti, applied on the 18th March 1885 for execution. The decree was passed on the 4th September 1872. The judgment-debtor, Kollu Shettati, pleaded that the application was barred by limitation.

The facts are set out in the judgment of the District Court as follows :—

"The decree (execution of which is sought) was for money, and bears date 4th September 1872.

"The application in question was presented on 18th March 1885. Admittedly the decree is one coming within the provisions of s. 230 of Act XIV of 1882, inasmuch as an application for execution was made and granted under that section in 1883; but this was before the expiry of twelve years from the date of the decree.

"The second application (now in question) was made after the lapse of twelve years from the date of decree, but within three years from the passing of Act XIV of 1882; and the Múnsif held that the application was not barred by the concluding proviso of s. 230, notwithstanding the fact that under the provisions of Act X of 1877 the decree was incapable of execution at the time when this application was made.

"That execution was barred under Act X of 1877, is clear from the fact that on January 26th, 1882, one application for execution was made and granted. I have referred to the record and find that the reason why that application failed was that the decree-holder neglected to deposit process-fees for the arrest of the judgment-debtor.

"Under Act X of 1877, no subsequent application could therefore be granted after the expiration of twelve years from the date of decree.

"The Múnsif's interpretation of the last paragraph of s. 230 of Act XIV of 1882 seems to me based on the extraordinary proposition that Act X of 1877 was not part of "the law in force

KOLLU SHETTATI v. MANJAYA.

immediately before the passing off" Act XIV of 1882, and I had drafted, but had not delivered a judgment setting aside his order.

"Respondent's vakíl has, however, drawn my attention to the ruling of Allahabad High Court reported in I.L.R. Allahabad, vol. 6, page 189, which is precisely to the point.

"In that case three Judges took the same view as the Múnsif, and two Judges (one of whom was the Chief Justice) took the view which I should have adopted if I had been left without a guide.

"The Múnsif's decision is in accordance with that of the majority of the Court, and under the circumstances I decline to pronounce it incorrect."

This appeal must be dismissed with costs.

Kollu Shettati appealed.

Srinivása Ráu for appellant.

Gopála Ráu for respondent.

The Court (Muttusámi Ayyar and Brandt, JJ.) delivered the following

JUDGMENT:—The expression 'Law in force' as used in Act XIV of 1882, s. 230, must be taken to include all the rules of limitation which were in force immediately before the passing of that Act. In this view it would include Act X of 1877 as well as the general Act of limitation. In our judgment this is the natural result of the rules of grammatical interpretation which we are bound to follow. The expression as used in Act X of 1877 would, no doubt, refer only to the general Act of limitation, because the special rule in regard to twelve years was brought into operation for the first time by that enactment.

We agree with the learned Judges who decided *Goluck Chandra Mytee* v. *Harapriah Debi*,(1) and with the minority of the learned Judges who took part in *Musharraf Begam* v. *Ghalib Ali*.(2) It is conceded by the learned pleader for the respondent that, if the interpretation we are inclined to place on the last clause of s. 230 of Act XIV of 1882 were to prevail, the application for execution would be barred.

We set aside the orders of the Courts below and direct that the respondent's application for execution be dismissed with costs throughout.

(1) I.L.R., 12 Cal., 559. (2) I.L.R., 6 All., 189.