

barred. The orders of the Lower Courts must be reversed and the application for execution dismissed with costs throughout. RAMASAMI
v.
ANDA PILLAI.

The petitioner preferred this appeal under letters patent, section 15, against the above order of Wilkinson, J. The case came on for hearing before Muttusami Ayyar and Handley, JJ.

Ramanuja Charyar for appellant.

Sivasami Ayyar for respondent.

JUDGMENT.—The decision appealed against is correct. Assuming that there was an assignment by operation of law in consequence of the decree in the partition suit, the assignment operated not to make the son a joint decree-holder with his father in respect of the entire decree, but to entitle him only to a fifth share of the decree debt in severalty. The father and the son were not therefore joint decree-holders within the meaning of section 231 of the Civil Procedure Code, and the application for execution made by the latter cannot save the limitation in favor of the former under article 179 of the Act of Limitation. Nor can the order made on the son's application operate against the judgment-debtor as an estoppel. The decision of the Privy Council in *Mungul Pershad Dicht v. Grija Kant Lahiri Chowdhry*(1) can only apply when the parties to both applications are the same.

This appeal fails and we dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Parker.

• TIRUNARAYANA (RESPONDENT NO. 1 IN APPEAL
No. 144 OF 1885), PETITIONER,

1889.
March 25.

v.

GOPALASAMI AND OTHERS (APPELLANTS NOS. 1 TO 4 AND RESPONDENTS IN APPEAL NO. 144 OF 1886), COUNTER-PETITIONERS.*

Civil Procedure Code, s. 595—Final decree—Leave to appeal to Privy Council.

The plaintiff in a suit to recover certain property set up an adoption. The Court of First Instance held that the adoption was not proved and dismissed the suit without trying the issues framed with reference to other allegations in the

(1) L.R., 8 I.A., 123.

* Civil Miscellaneous Petition No. 975 of 1888.

Tiru-
NARAYANA
S.
GOPALA-
SAMI.

pleadings. On appeal by the plaintiff the High Court passed a decree setting aside the decree of the Court of First Instance, declaring the alleged adoption to be established and remanding the suit for the trial of the remaining issues. The defendants sought to appeal to Her Majesty in Council against the decree of the High Court.

The defendants' application was refused on the ground that that decree was not a final decree.

APPLICATION for leave to appeal to Her Majesty in Council against the decree of the High Court in appeal suit No. 144 of 1886, dated 6th July 1888.

The appeal above referred to was presented against the decree of T. Ganapati Ayyar, Subordinate Judge of Kumbakonam, in original suit No. 30 of 1886.

The plaintiff claimed certain property as the adopted son of one Tiruvengada Pillai. The Subordinate Judge held that the adoption of the plaintiff was not proved and dismissed the suit without trying all the issues raised. The plaintiff appealed against the decree of the Subordinate Judge, and the High Court, on appeal, declared that the appellant was the adopted son of Tiruvengada Pillai and remanded the suit for the trial of the untried issues.

The defendants now sought to appeal to Her Majesty in Council against the decree of the High Court before the trial of the above issues.

Mr. *W. Grant* and *Balaji Rau* for petitioner.

Subramanya Ayyar for counter-petitioner No. 1.

Rama Rau for counter-petitioners Nos. 2 to 4.

JUDGMENT.—We will follow the decision in *Mahant Ishwargar Budhgar v. Oudusamu Amarsang*(1), and hold that the decree made on the 6th of July 1888 is not a final decree within section 595, Civil Procedure Code, and we refuse to allow an appeal to the Privy Council. When the other issues not tried shall have been tried and accounts are taken, then the parties will probably be entitled to appeal to the Privy Council. The motion is refused.

Petitioner to bear the costs of first respondent, and no costs to defendants Nos. 2, 3 and 4.

(1) I.L.R., 8 Bom., 548.