

ment-creditor seeks to attach ancestral property after it has vested in the son by survivorship under Hindu law upon the father's death, he cannot be considered as executing the decree against the property of the deceased judgment-debtor within the meaning of s. 234. How far the son's pious obligation would make him liable for the decree debt is a matter to be investigated in a fresh suit. The respondents' pleader concedes that the course of decisions is against him, but contends that the attachment made by Venkatanarayana Pillai in May 1884 was in force when the attachment now in dispute was made. Having regard to the facts set out by the Judge, we are unable to accept this view. If the former attachment were in force, there was no necessity for the respondents' making the present attachment.

VENKATA-
RAMA
v.
SANTHIVELU.

We set aside the orders of the Courts below and the attachment of two-thirds of three-eighths of Kilakanjirankulam. The respondents will pay the appellant's costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

ELAYADATH (COUNTER-PETITIONER No. 1), APPELLANT,

v.

KRISHNA (PETITIONER), RESPONDENT.*

1889.
December 4.

*Transfer of Property Act—Act IV of 1882, ss. 92, 93—Time fixed for redemption—
Application to execute the decree.*

In a suit to redeem a kanom a redemption decree was passed which provided that the kanom amount and the value of improvements be paid in three months. The decree amount was not paid within that period, but the decree-holder applied to execute the decree at a later date:

Held, that the decree-holder was not then entitled to have the decree executed. *Poresh Nath Mojudar v. Ramjadar Mojudar* (L.L.R., 16 Cal., 246) dissented from.

SECOND APPEAL against the order of L. Moore, Acting District Judge of South Malabar, in civil miscellaneous appeal No. 317 of 1888 reversing the order of V. Raman Menon, District Munsif of Angadipuram, in civil miscellaneous petition No. 419 of 1887,

* Appeal against Appellate Order No. 5 of 1889.

ELAYADATH
v.
KRISHNA.

wherein the petitioner prayed for the execution of the decree in original suit No. 593 of 1886.

The decree sought to be executed, which was dated 28th June 1887, was a decree for the redemption of a kanom: it provided as follows:—

“The Court doth order and decree that the defendants do surrender to the plaintiff the plaint kutiyirup (dwelling) as per boundaries and measurements noted in the Commissioner’s plan and specified in the schedule below on the plaintiffs paying into Court within three months the kanom amount Rs. 2-13-9 and Rs. 107-0-1, the value of kuyikurs and ohamayoms, in order that the same may be paid to the first defendant, and that the first defendant do pay to the plaintiff the porapad at 3 annas 6 pies per annum as stipulated in the kychit A from 1062 till execution of the decree or for three years from this day (whichever event first occurs) and that the first defendant do pay plaintiff’s costs.”

The decree amount was not paid within three months, but the District Munsif held that “the direction in the decree to deposit kanom and value of improvements within three months does not absolutely debar petitioner of his right to redeem under Transfer of Property Act, s. 92,” and he made an order granting the petition.

The Acting District Judge on appeal reversed the above order, observing that the District Munsif was bound to give effect to the directions contained in the decree.

The decree-holder preferred this appeal.

Subba Rau for appellant.

Sankaran Nayyar for respondent.

JUDGMENT.—We are of opinion that the District Judge is right.

The application by the mortgagor for permission to pay after the expiration of the period fixed in the decree does not fall under the proviso of section 93 of the Transfer of Property Act. It is conceded that there was no application by the mortgagee for foreclosing the right of redemption. If the appellant’s contention were to prevail, the Act of Limitations would be rendered ineffectual in regard to execution of decrees for redemption. Sections 92 and 93 of the Transfer of Property Act ought to be read together, and the proviso of the latter section has no application when the mortgagee does not apply for a foreclosure, or where the

original decree does not contain the last clause mentioned in section 92. ELAYADATH
v.
KRISHNA.

We are not prepared to follow the decision in *Poresh Nath Mojumdar v. Ranjodu Mojumdar*(1).

The appeal is dismissed with costs.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Muttusami Ayyar.*

KRISHNA (PLAINTIFF), APPELLANT,

v.

CHATHAPPAN (DEFENDANT No. 2), RESPONDENT.*

1888.
November 25.

*Limitation Act—Act XV of 1877, ss. 5, 14—“Sufficient cause” to excuse delay—
Error in law.*

Land was sold in execution of a decree which was passed against the defendant for a sum exceeding Rs. 5,000. A suit to set aside the sale was instituted in a Subordinate Court and was dismissed. The plaintiff who desired to appeal against the decree dismissing his suit was advised that the appeal lay to the High Court in which a memorandum of appeal was accordingly filed. On its appearing that the value of the property sold was less than Rs. 5,000, the High Court returned the memorandum of appeal for presentation to the District Court. The District Judge rejected it on the ground that it was barred by limitation, holding that the delay caused by the error which the appellant committed in taking proceedings in the wrong Court could not be excused :

Held, that the District Judge should have decided whether the appellant under the special circumstances of the case in appealing to the High Court acted on an honest belief formed with due care and attention.

Per cur : “We are not prepared to hold that a mistake in law is under no circumstances a sufficient cause within the meaning of s. 5 of the Limitation Act.”

APPEAL against the order of J. H. A. Tremenhære, Acting District Judge of North Malabar, in miscellaneous petition No. 666 of 1888.

The order appealed against dismissed a petition which prayed that an appeal against a decree of the Subordinate Judge of North Malabar be ordered to be placed on the file, though presented after the period allowed by the law of limitation.