PASSANHA v. THE MADRAS DEPOSIT AND BENEFIT SOCIETY.

In our opinion the learned Chief Judge has rightly decided both the questions referred. Defendants are to pay the costs of this reference.

Solicitors for plaintiff—*Grant & Laing.*

Solicitors for defendants—*Barclay & Morgan.*

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Wilkinson.

1888. Jan. 12.

GOPILANDHU (PLAINTIFF),

and

DOMBURU (DEFENDANT No. 2).*

Limitation Act, sch. II, art. 179 (4)—*Application for copy of decree not a step in aid of execution.*

The application by a decree-holder for a copy of a decree with intent to apply for execution is not a step in aid of execution within the meaning of cl. 4 of art. 179 of sch. II of the Indian Limitation Act, 1879.

REFERENCE under s. 617 of the Code of Civil Procedure by M. Visvanatha Ayyar, District Munsif of Aska.

The case was stated as follows:—

"Gopilandhu Patnayak obtained a decree for Rs. 40-1-5 against Domburu Maharana, defendant No. 2, on 28th April 1884, in small cause suit No. 137 of 1884, on the file of this court. The decree-holder applied for execution of the said decree for the first time on 20th May 1887. It is alleged in the petition that it is not barred by limitation, firstly, inasmuch as the petitioner had applied for a copy of the decree on 17th September 1884; secondly, inasmuch as the judgment-debtor had made two payments out of court to him, viz., Rs. 9 in June 1884 and Rs. 10 in December 1884, and had got receipts for these payments.

"The decree-holder did not certify these payments to the court, nor did the judgment-debtor file the receipts and ask the court to call upon him to certify these payments. The adjustment out of court was specified for the first time in the present application for execution. The dates of these payments cannot give the decree-holder a fresh starting point of limitation.

---

* Referred Case No. 14 of 1887.

"The decree-holder, through his pleader, applied to this court on 17th September 1884 for a copy of the decree. The said application recites that the copy is required to enable him to execute the decree.

"The decree-holder's pleader contends that the said application is an application 'in accordance with law to the proper court to take some step in aid of execution of the decree,' under cl. 4 of art. 179 of the Limitation Act. He relies upon a certain passage in the judgment of the Calcutta High Court in *Ganga Pershad Bhoomick* v. *Debi Sundari Dabea*(1) and upon the case in *Kunhi* v. *Seshagiri*(2) as favoring his contention.

"In the latter of the two cases cited above, an application by a judgment-creditor to the court which passed the decree for a certificate that a copy of a revenue register of the land is necessary to enable him to obtain such copy from the Collector's office and thereupon to execute the decree by attaching the land was declared to be a step in aid of execution within the meaning of cl. 4, art. 179, of the Act. This decision no doubt indicates a tendency to construe the clause in a more liberal spirit.

"Under s. 238, Civil Procedure Code, it is indispensable that an application for attachment of land registered in the Collector's office should be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue. An application for a certificate that a copy of the revenue register is necessary is a legitimate and necessary step in aid of execution.

"But the Civil Procedure Code does not make it obligatory on the judgment-creditor to file a certified copy of the decree with his application for its execution. I doubt, therefore, whether the application for a copy of the decree can be regarded as a step in aid of execution within the meaning of cl. 4 of art. 179. As a matter of fact, applications for execution are accompanied by copies of decrees sought to be executed. When they are not accompanied by such copies, the courts generally call upon the applicants for execution to produce copies of the decrees so as to facilitate an examination by the officers of the court to see whether the contents of the applications, as required under s. 235, Civil Procedure

(1) I.L.R., 11 Cal., 227. (2) I.L.R., 5 Mad., 141.

GOPILANDHU v. DOMBURU.

Code, are correctly entered before they are filed, as the records of the suits are generally sent away to the District Court for safe custody.

"These particulars can no doubt be verified by reference to the entries in the suit registers; but it must be admitted that a copy of the decree is essential to a judgment-creditor to enable him to specify in his application for execution the particulars required by (g) and (h) of s. 235.

"On the other hand, if an application for a copy of the decree be regarded as a step in aid of execution, the starting date prescribed in every one of the cl. 1, 2, and 3 of art. 179 would virtually be a dead letter.

"The passage on which the judgment-creditor's pleader relies in the other case quoted by him is as follows:—'This was an application to get back the copy of the decree, for purposes of execution, *made by a lady who had not then been substituted for the decree-holder on the record.* We think that this application also cannot be considered as a step in aid of the execution of the decree.' The pleader lays stress on the words italicized in the above passage, and says that their Lordships would have regarded it as a step in aid of execution had it not been for the defect, viz., that she had not been substituted for the decree-holder on the record by the date of the application to get back the copy of the decree. It is doubtful whether their Lordships intended such a thing.

"As the question is one of importance as my order in execution of the small cause decree now sought to be executed is final, and, as I entertain reasonable doubt as to the soundness or otherwise of my views on the point, I have thought it fit to make this reference. I have, however, dismissed the application for execution as being barred by limitation, subject to the decision of the High Court on the following question:—'Whether, under the circumstances stated in this reference, the application of the decree-holder on 17th September 1884 to this court for a copy of the decree with intent to apply for execution is a step in aid of execution of the decree within the meaning of cl. 4 of art. 179 of the Limitation Act."

The parties did not appear.

The Court (Kernan and Wilkinson, JJ.) delivered the following

JUDGMENT:—Further information was called for after this

petition was presented. It now appears that, when the decree-holder applied for a copy of the Munsif's decree, the original was in that Court. Therefore, it was not necessary then for the decree-holder to obtain the copy before he could obtain the execution. The Munsif says that it is the practice of the office to require a copy to be furnished before execution is issued, and that execution could not be obtained unless the copy was furnished to the office; but the Civil Procedure Code makes no provision for such practice, and the application for execution, without production of the copy, would be "according to law" as provided by art. 179, cl. 4. The practice of the office cannot affect the question of limitation. The principle of the decision in *Kunhi* v. *Seshagiri*(1) applies, and that is that the true meaning of "step in execution" under art. 179, cl. 4, is a step which is necessary to be taken before execution can be had.

The dates are—

Decree, 28th April 1884.

Application for execution, 20th May 1887. Therefore the application was more than three years after the decree.

We answer the reference by saying the application for copy of decree and obtaining it were not steps, nor was either of them a step in execution of the decree within art. 179 of the Limitation Act.

CROWN SIDE.

Before Mr. Justice Kernan.

1888.
April 18.

QUEEN-EMPRESS

against

VENKATAPATHI AND FOUR OTHERS.*

Criminal Procedure Code, s. 289—Prosecutor's right to reply.

Where documentary evidence was put in by the accused during the case for the Crown and before examination of the accused:

Held, under s. 289 of the Code of Criminal Procedure, that the Crown had the right of reply—*Queen-Empress* v. *Grees Chunder Banerjee* (I.L.R., 10 Cal., 1024) dissented from.

---

(1) I.L.R., 5 Mad., 141.

* Calendar Nos. 3 and 4 of 1888 of the 2nd Madras Sessions.