

PERUMAL
v.
VENKATA-
RAMA.

Ranga(1). Sections 223 and 228 of the Code of Civil Procedure are alike applicable to Small Cause Courts (see sch. II), and under s. 228 the orders of a Court executing a decree are subject to the same rules in respect of appeal as if the decree had been passed by itself.

It is no doubt the case that no second appeal would lie from the order of the District Judge in such a case—*Gorachand Misser v. Raja Baykanto Narain Singh*(2); but with regard to a regular appeal the question whether it will lie seems to us to depend upon the character of the tribunal and not upon the nature of the claim.

The order of the District Judge must be set aside, and he must be directed to hear and dispose of the appeal. The costs will abide and follow the result.

APPELLATE CIVIL.

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

PATUMMA (COUNTER-PETITIONER), APPELLANT,

and

MUSE BEARI (PETITIONER), RESPONDENT.*

Civil Procedure Code, s. 230—Execution proceedings—Limitation.

An application was made in 1886 for execution of a decree dated 1873. In the interval, viz., in October 1879, the judgment-debtor was arrested on an application in execution by the decree-holder, but execution was not proceeded with further:

Held, that the application made in 1886 was time-barred under s. 230 of the Code of Civil Procedure.

APPEAL against the order of J. W. Best, District Judge of South Canara, on Civil Miscellaneous Petition No. 308 of 1886, reversing the order of J. P. Fernandes, District Munsif of Kassargode, in execution petition No. 92 of 1886.

This was an application for execution of a decree passed in Original Suit No. 145 of 1872, dated the 9th September 1873. The present application was made on 19th March 1886. In the interval, viz., in October 1879, process was issued on the application of the present petitioner, for the arrest of the judgment-

(1) I.L.R., 8 Mad., 8.

(2) 12 B.L.R., 261.

* Appeal against Order 33 of 1887.

dēbtor, who was accordingly produced in custody before the Court, but the application was struck off and the judgment-debtor was released. In 1882 and 1883 also applications for execution were made, but not proceeded with.

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The District Múnsif dismissed the present application as barred by limitation under s. 230 of the Code of Civil Procedure, but the District Judge, on appeal, reversed his order. The judgment-debtor preferred this appeal.

Gopala Ráu for appellant.

Srinivāsa Ráu for respondent.

The arguments adduced on this appeal appear sufficiently, for the purpose of this report, from the judgment of the Court (Collins, C.J., and Brandt, J.).

JUDGMENT.—We must hold the application for execution in this case to be barred by time.

The decree, which it is sought to execute, was passed on the 9th September 1873. The present application was made on the 19th March 1886:

An application was made in October 1879, in accordance with which process for the arrest of the judgment-debtor was issued and he was produced in custody before the Court; at that time Act X of 1877 was in force.

The period prescribed for taking proceedings to execute the decree under the law in force immediately preceding the passing of the code of 1882 expired on the 9th September 1885. If the application of October 1879 was granted, and that it was granted within the meaning of s. 230 of the Code of Civil Procedure admits of no doubt, the case is different from that in which only a notice to appear and show cause is issued. The creditor applied for an order for the arrest of the debtor, and his application was complied with; that the creditor did not proceed further cannot in any way alter the fact that his application for execution was granted.

Under the Limitation Act in force prior to the passing of Act X of 1877 no period was prescribed beyond which execution of decrees should not be allowed, provided they were kept alive in due manner; but in 1877 the legislature saw fit to enact that if once an application were made and granted under s. 230 of the Code of Civil Procedure, there should be an end to all execution proceeding on the completion of twelve years from the date of the

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decree (except in certain specified cases which it is not necessary here to advert to); at the same time three years' grace was given subject to the conditions stated in the last paragraph of s. 230 of Act X of 1877.

As observed in the case reported in *Kollu Shettati v. Manjaya*(1), the law immediately in force when Act X of 1877 was passed, and to which regard should be had in disposing of applications for execution of decrees, was the Limitation Act, and that only as regarded limitation; but when the Act of 1882 superseded the former Act, "the law in force immediately before the passing" of the Act of 1882 was the Limitation Act, *plus* the law regarding limitation contained in s. 230 of Act X of 1877; and under the latter, any application to execute the decree now in dispute was barred after the lapse of twelve years from the date of the decree, seeing that an application to execute it was made, and, as we find, granted in 1879.

We, accordingly, reverse the order of the District Judge and restore that of the District Munsif, and the appellant's costs in this Court and in the District Court will be paid by the respondent.

APPELLATE CIVIL.

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

KOMU (DEFENDANT No. 1), PETITIONER,

and

KRISHNA AND ANOTHER (PLAINTIFF AND DEFENDANT, No. 2),
RESPONDENTS.*

Mufassal Small Cause Court Act (Act IX of 1887), sch. II, art. 38—Jurisdiction—Suit for maintenance based on a family arrangement—Malabar law.

A suit for maintenance based on a family arrangement is within the jurisdiction of a Mufassal Small Cause Court.

A karnavan is not entitled of his own authority to set aside a family arrangement made on behalf of all the members of the tarwad.

PETITION under s. 622 of the Code of Civil Procedure, praying the High Court to revise the decree of V. P. deRozario, Subordinate Judge of Palghat, in Small Cause Suit No. 790 of 1886.

(1) I.L.R., 9 Mad., 456.

Civil Revision Petition No. 307 of 1886.