APPELLATE CIVIL.

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

RÁJARATHNAM (DEFENDANT), APPELLANT,

and

SHEVALAYAMMAL (PLAINTIFF), RESPONDENT.*

1887. Aug. 12.

Limitation Act (Act XV of 1877), s. 15—Period of injunction included.

A member of a firm sued for a partnership debt and obtained a decree; he died before execution. In a suit brought by his widow an injunction was issued restraining his partner from realising the partnership assets. Subsequently, a receiver was appointed for the partnership assets, and he applied for execution of the above decree:

Held that the time during which the injunction was in force was not to be excluded in computing the period of limitation.

APPEALS against the orders of C. W. W. Martin, District Judge of Salem, dated 18th March 1885, and made in Appeal Suits Nos. 98, 99, 100 of 1884, reversing the order of District Múnsif of Salem, dated 31st March 1884, and made on execution-petitions in Original Suits Nos. 131 of 1877, 20 of 1879, and 621 of 1879.

In the case, from which appeal No. 119 of 1885, was preferred, the facts were as follows:—

A and B were partners. On 6th December 1879 A obtained a decree in a suit brought by him on behalf of the partnership. A died on 31st December 1879 while the decree was unexecuted. On 4th October 1880 A's widow instituted Original Suit No. 17 of 1880, on the file of the District Court of Salem against B to wind up the partnership. On 29th October 1880, the plaintiff obtained an injunction against B, restraining him from realising the partnership assets. On 20th September 1882, a decree was passed apportioning the assets between plaintiff and defendant, and on 23rd February 1883 a receiver was appointed. On 28th May 1883, the receiver applied for the execution of the decree obtained by A on behalf of the partnership on 6th December 1879.

The facts of the other cases were similar and the Court disposed of all these cases together.

* Appeal against Order No. 119 of 1886.

RÁJARATHNAM v. SHEVALA-YAMMAL.

The District Múnsif held that the receiver's applications were barred by limitation; but his decree was reversed, on appeal, by the District Judge, who set out the reasons for his decision as follows:—

"I am of opinion that the principles on which the judgment of the Madras High Court proceeds in *Shunmugam* v. *Moidin*(1), when taken with the principles on which the decision in *Kalyánbhai Dipchand* v. *Ghanashám Lál Jadunáthji*(2) rests, make it justifiable to find that the present applications are not barred. The Madras judgment says 'an order prohibiting the collection of debts is an order prohibiting their collection by suits *or otherwise*.'

"The last two words include collection by execution-process, and, while that order existed, the plaintiff was not bound to proceed by execution-process any more than she was bound to proceed by suit. If she were not bound, and, if, in consequence, no laches are to be imputed to her, all the argument by which the Bombay High Court, following the decisions in *Issurree Dassee* v. *Abdool Khalak*(3), *Hurronath Bhanjo* v. *Chunnilall Ghose*(4), *Paras Ram* v. *Gardner*(5), has evaded the perpetration of a monstrous injustice apply to this case, *i.e.*, that an application to execute made by a decree-holder after the removal of an obstacle is an application for the continuation of the former proceedings. Though it is argued that there were no former proceedings in this case, because the present applications are the first *applications for execution*, I think it unnecessary to limit the term former proceedings to proceedings in execution; the whole course of the suit from its institution to its close by satisfaction, limitation or otherwise, constitutes the proceedings in the suit, and the continuation of the proceedings is their continuation from the point at which they were brought to a standstill by the injunction.

"The ruling of the Bombay Court I regard, therefore, as holding that s. 15 of the Limitation Act only alludes to suits, because it is necessary to make a positive rule to meet cases which had not already been brought into court, while there was no such necessity after cases had been brought into court because time ceased to run with the stay of proceedings.

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(1) I.L.R., 8 Mad., 229.
(2) I.L.R., 5 Bom., 29.
(3) I.L.R., 4 Cal., 415.
(4) I.L.R., 4 Cal., 877.
(5) I.L.R., 1 All., 355.

"I reverse the order of the Múnsif in all these cases and remand the suits to be again restored to their original numbers in the file and to be tried on their merits *de novo*."

The defendant preferred these appeals.

Ramasámi Mudaliar for appellant in appeal against order 106.

Kistnasámi Chettyar for appellant in appeals against orders 119 and 120.

Mr. *Norton* for respondents.

The arguments adduced on these appeals appear sufficiently, for the purpose of this report, from the judgment of the Court (Muttusámi Ayyar and Brandt, JJ.).

JUDGMENT.—It is conceded that, if the time during which the injunction issued in Original Suit 17 of 1880 was in force could not be deducted, the applications for execution in the cases before us would be barred by limitation. The only section under which the time can be excluded is s. 15 of Act XV of 1877. That section is applicable only to suits and s. 3 declares that a suit does not include an appeal or an application. There can be no doubt that it is sch. II, art. 179, that is applicable to execution of decrees, and, even assuming that art. 138 may apply, the period must be taken, in the absence of an express statutory direction, to continue to run when the rights to apply accrues and the period once begins to run. As to the cases referred to by the District Judge, we are of opinion that they are not in point, inasmuch as there were admittedly no previous applications for execution, which those now under consideration might be taken to continue or revive.

We set aside the order of the District Judge and restore that of the District Múnsif.