

## APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

MUTHU (PLAINTIFF), APPELLANT,

1889.  
July 10.

v.

CHELLAPPA AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Limitation Act—Act XV of 1877, sch. II, art. 179—Appeal against part of decree—Execution against judgment-debtors whose interests were not sought to be affected by the appeal.*

In a suit for land against several defendants, plaintiff obtained, on 14th June 1884, a decree against the shares of defendants Nos. 3 and 4, the shares of defendants Nos. 5 and 9 being exonerated. The decree-holder appealed against that portion of the decree which exonerated the shares of defendants Nos. 5 and 9, defendants Nos. 3 and 4 being brought on to the record of the appeal as respondents. The appeal having been dismissed, the decree-holder applied on 20th October 1887 for execution against the shares of defendants Nos. 3 and 4 :

*Held*, the application for execution was barred by Limitation Act, 1877, sch. II, art. 179.

APPEAL against the order of H. T. Ross, Acting District Judge of Madura, on civil miscellaneous appeal No. 2 of 1888, reversing the order of M. A. Tirumalacharyar, District Munsif of Dindigul, on civil miscellaneous petition No. 490 of 1887.

Application for execution of the decree in original suit No. 133 of 1882.

On the 14th April 1883, plaintiff obtained a decree for certain lands under a sale-deed executed by defendant No. 2, father of defendants Nos. 3 to 9. Defendants Nos. 3 and 4 had consented to be bound by the plaintiff's oath, and defendants Nos. 2 and 5 to 9 were *ex parte*.

On the 14th June 1884 a revised decree was passed exonerating the shares of defendants Nos. 5 to 9, and confirming the original decree as against defendants Nos. 3 and 4.

Plaintiff appealed against this decree, and on 20th October 1884 his appeal was dismissed.

On 20th October 1887, plaintiff applied for execution of his decree against third and fourth defendants' three-eighth share.

\* Appeal against Appellate Order No. 30 of 1888.

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The plea of limitation was set up. The District Munsif overruled this plea, holding on the authority of *Sangram Singh v. Bujharat Singh*(1), that the plaintiff was compelled to join defendants Nos. 3 to 9 as parties to his appeal, and granted the petition. The District Judge, on appeal, reversed this order, holding that defendants Nos. 3 and 4 were not necessary parties to the appeal, and that the petition was therefore barred under Limitation Act, 1877, sch. II, art. 179.

The decree-holder preferred this appeal.

*Ramachandra Ayyar* for appellant.

*Subramanya Ayyar* for respondents.

The arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court (*Muttusami Ayyar and Wilkinson, JJ.*).

JUDGMENT.—The decision of the Judge is clearly right. The decree obtained by the plaintiff (appellant) against the shares of defendants Nos. 3 and 4 was in no way imperilled by the appeal presented by him against that portion of the decree which exonerated the shares of defendants Nos. 5 to 9. This view is in accordance with the decisions in *Hur Proshad Roy v. Endayet Hossein*(2) and *Raghunath Pershad v. Abdul Hye*(3). As observed in the former case by the Court "the reason for suspending the operation of the law of limitation during the pendency of an appeal is that it is manifestly undesirable to force the execution of a decree while there is any doubt as to the rights of the decree-holder against the appellant." Our attention has been called to the case of *Nur-ul-Hasan v. Muhammad Hasan*(4), in which it was remarked as an *obiter dictum* that the terms of article 179 of the Limitation Act were so wide that they must be held to apply to every case in which an appeal had been presented, without regard to the interest of the person presenting the appeal and the extent of the power of the Appellate Court to interfere. We are unable to assent to this view. Suppose that A, obtaining a decree for the possession of land against B, presented an appeal against so much of the decree as disallowed A his costs, and the appeal was dismissed, it would be unreasonable to hold that the time for the execution of the decree, so far as it awarded A the land,

(1) I.L.R., 4 All., 36.

(3) I.L.R., 14 Cal., 26.

(2) 2 Cal. L.R., 471.

(4) I.L.R., 8 All., 573.

began to run from the date of the appeal decree. We consider that the sounder principle is that laid down in the Calcutta Court, and we therefore dismiss this civil miscellaneous second appeal with costs.

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## APPELLATE CIVIL.

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

NARASIMMA (PLAINTIFF), APPELLANT,

v.

SURYANARAYANA (DEFENDANT No. 1), RESPONDENT.\*

1889.  
March 11, 22.

*Rent Recovery Act (Madras)—Act VIII of 1865—Suit in Civil Court to enforce exchange of patta and muchalka—Declaratory decree—Civil Procedure Code, s. 53—Amendment of plaint.*

A suit in the Court of a District Munsif to enforce acceptance of a patta and execution of a muchalka by defendant in respect of a holding in a village to which plaintiff claimed title, was dismissed as not being maintainable :

*Held*, that the suit should not have been dismissed, but the plaint should have been amended by the addition of a prayer for a declaration of the plaintiff's title : and that the Court then would have had jurisdiction to grant by way of consequential relief the relief originally sought.

SECOND APPEAL against the decree of C. W. W. Martin, District Judge of Salem, in appeal suit No. 150 of 1886, reversing the decree of Sultan Mohidin Saheb, District Munsif of Krishnagiri, in original suit No. 265 of 1885.

Suit to enforce acceptance of a patta and execution of a muchalka.

The plaint alleged that the village in which the defendant occupied certain land had been sold to the plaintiff and that the plaintiff had called on the defendant to accept a patta and to execute a muchalka, and that the defendant had refused. The defendant in his written statement denied the plaintiff's title and alleged that he was holding under another landlord.

The District Munsif passed a decree "that the defendant do

\* Second Appeal No. 879 of 1888.