KUNHIAMMA v. KUNHUNNI.

prevent multiplicity of actions and to prevent a man getting a declaration of right in one suit and then harassing his opponent with another suit for possession, we are unable to hold that plaintiff could sue in this suit for a bare declaration and immediately after institute a suit for possession. In our judgment section 42 of the Specific Relief Act is the only provision of the law, and the appellant's pleader can point out no other, under which a suit for a declaratory decree can be brought, and we cannot import into section 283 any other right than that which is conveyed by the words of the section.

We agree with the Lower Appellate Court that the suit is not maintainable and we dismiss the second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1892. May 2.

RAMA AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

VARADA (PLAINTIFF), RESPONDENT.*

Limitation Act—Act XV of 1877, sched. II, art. 179—Civil Procedure Code, s. 235—Formal defect in application for execution.

On an application for execution of a decree, it appeared that the only previous application for execution which had been made within a period of three years had been defective, by reason of its not containing the particulars required by Civil Procedure Code, s. 235 (*f*), and had been returned for amendment, but had not been amended :

Held, that the present application was not barred by limitation.

APPEAL against the order of C. Ramachandra Ayyar, Acting District Judge of Nellore, dated 11th December 1890, reversing the order of M. Visvanatha Ayyar, District Munsif of Kavali, on miscellaneous petition No. 695 of 1890.

The holder of the decree in original suit No. 219 of 1875, on the file of the District Munsif of Kavali, applied for execution by the above-mentioned petition. It appeared that the execution of the decree was not barred on 22nd July 1889, when an application for execution was made, but that application was returned

* Appeal against Appellate Order No. 19 of 1891.

for amendment as being irregular by reason of an omission to state the earlier of two previous applications that had been made and its result, and the amendment was not made. The present petition was preferred within three years from the date of the last-mentioned application, but more than three years from the date of the application next previous to it.

The District Munsif held that the present petition was barred by limitation and made an order dismissing it. The District Judge on appeal reversed this order and remanded the case.

The defendants preferred this appeal.

Mr. De Rozario and *Venkataramayya Chetti* for appellants.

Sankaran Nayar for respondent.

JUDGMENT. — It is argued that the application for execution is barred by reason of the application of 1889 having been returned for amendment with reference to clause (*f*) of section 235 of the Code, and the amendment not having been made within the time allowed for the purpose. The defect in the previous application consisted in omitting to state the earlier of two previous applications and its result. It is admitted that this omission was in no way calculated to prejudice the judgment-debtor or to mislead the Court; such being the case, though the application was formally defective with reference to the provisions of section 235, it substantially complied with them.

We are, therefore, unable to hold that it was not an application made in accordance with law within the meaning of article 179 of schedule II of the Limitation Act. This view is in accordance with the decision in *Ramanadan* v. *Periatambi*(1).

Our attention has been drawn to the decision of a Full Bench of the Calcutta High Court in *Asgar Ali* v. *Troilokya Nath Ghose*(2), but in that case the defect was not merely formal. The property sought to be attached was not fully described nor was a list of such property produced.

We dismiss this appeal with costs.

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(1) I.L.R., 6 Mad., 250. (2) I.L.R., 17 Cal., 631.