LAKSHMANNA v. APPA RAU.

and as regards the prohibition to build, the words "except for "purposes not incompatible with the character of the holding as an agricultural holding" will be inserted, and in other respects the decree of the Judge is confirmed. The appeal has succeeded in part and failed in part, and we direct each party to bear his own costs.

APPELLATE CIVIL.

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

1893. October 18.

SAMIA PILLAI (DEFENDANT No. 2), APPELLANT,

v.

CHOCKALINGA CHETTIAR AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Limitation Act—Act XV of 1877, sch. II, art. 179—Step in aid of execution—Defect in application for execution.

Where there has been in fact an application for execution made by the party entitled to make it, it is to be regarded as a step in aid of execution within the meaning of the Limitation Act, art. 179, although by mistake a deceased judgment-debtor is named as the person against whom execution is sought.

APPEAL against the order of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in civil miscellaneous petition No. 628 of 1891.

This was an application made on the 20th August 1891 for execution of a decree obtained by the petitioner in original suit No. 30 of 1883 against three defendants. In February 1891 a petition was filed praying for execution of the decree against defendant No. 1, who was then in fact dead. The Subordinate Judge held that the petitioners were at that time aware of the death of defendant No. 1 and that his name was inserted in the petition through a *bonâ fide* mistake. In this view he held that that petition should be treated as a step taken in aid of execution for the purposes of limitation, and he accordingly directed that execution should issue.

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* Appeal against Order No. 84 of 1892.

The judgment-debtor preferred this appeal.

Parthasaradhi Ayyangar for appellant.

Rama Rau for respondents.

JUDGMENT.—The question for decision in this case is whether the last application for execution made on the 6th February 1891 was in accordance with law within the meaning of section 179 of schedule II of the Limitation Act so as to amount to a step in aid of execution sufficient to prevent the present application being time barred.

That the application was presented by the party entitled to execute the decree and in order to obtain execution is not denied, but it is contended that as first defendant who was dead at the time was named as the party against whom execution was sought, the application must be treated as a nullity and consequently the present application held to be time barred.

The Subordinate Judge observes that the mention of the deceased first defendant's name in column 9 of the application was probably a mistake made by the Vakil's gumastah. It was no doubt a *bonâ fide* mistake. Where there has been in fact an application for execution made by the party entitled to make it, the mere fact of a mistake having been made in giving the particulars required by section 235 of the Code of Civil Procedure cannot, we think, have the effect of rendering the application a nullity. This is also the view adopted in *Ramanadan* v. *Periatambi*(1) and *Fuzloor Ruhman* v. *Altaf Hossen*(2). In this view the application of 6th February 1891 is sufficient to save limitation both against first defendant's legal representatives and also against his joint judgment-debtors.

We dismiss this appeal with costs.

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(1) I.L.R., 6 Mad., 250. (2) I.L.R., 10 Calc., 541.