

APPELLATE CIVIL.

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

1894.
March 13.

KUPPU AMMAL (PLAINTIFF), APPELLANT,

v.

SAMINATHA AYYAR (DEFENDANT NO. 3), RESPONDENT.*

Limitation Act—Act XI of 1877, sched. II, art. 179, cl. (6)—Application for execution of maintenance decree—Previous applications held to be barred by limitation—Civil Procedure Code—Act XIV of 1832, s. 13—Res judicata.

On an application made in 1891 for the execution of a decree passed in 1870 it appeared that the decree directed the payment of maintenance to the plaintiff annually on a specified date, and the present application related to the period of three years from 1888 to 1891. There had been an application for execution in 1873. The next application was made in 1879 and it was dismissed as being barred by limitation :

Held, (1) that the question whether the application was barred by limitation was not *res judicata* ;

(2) that the application was not barred by limitation.

SECOND APPEAL against the order of J. A. Davies, District Judge of Tanjore, in appeal against order No. 70 of 1892, affirming the order of P. Subramania Pillai, District Munsif of Mayavaram, in execution petition No. 70 of 1892.

This was a petition under Civil Procedure Code, sections 234 and 269, praying that defendant No. 3 be brought on to the record of original suit No. 2 of 1869 as the representative of defendant No. 1, deceased, and applying for the execution of the decree in that suit in respect of Rs. 103-14-0, being the amount of maintenance payable under its terms to the petitioner, who was the decree-holder, for the period of three years, from the 26th February 1888 to the 26th February 1891.

The further facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

The application was dismissed in the Lower Courts as being barred by limitation.

The petitioner preferred this second appeal.

Krishnaswami Ayyar for appellant.

Seshagiri Ayyar for respondent.

* Appeal against Appellate Order No. 73 of 1892.

KUPPU
AMMAL
v.
SAMINATHA
AYYAR.

JUDGMENT.—The decree sought to be executed directed payment of maintenance annually on a specified date. It was passed in 1870 when Act XIV of 1859 was in force. There was an application for execution in 1873, which was within three years from date of the decree. The next application was not made till 1879. The Limitation Act then in force was No. XV of 1877. That application was dismissed as being time-barred. The present application was made in 1891. It has been held by the Courts below that the question of limitation is *res judicata* by the previous decisions and also that this application is barred by lapse of time. Therefore the questions are :

(1) Whether the question is *res judicata*, and (2) whether this application is time-barred.

As to the first question we are of opinion that the present claim is not *res judicata*, as the relief now claimed is distinct from that previously claimed. The two applications are for money payable for two distinct periods. The former decision is not sufficient to render the present claim *res judicata*; it can only affect the relief then claimed. The present application is clearly governed by Act XV of 1877, the law in force when it was made. It is an application falling under article 179, clause 6 of schedule II of the present Act, which allows of execution for maintenance accruing due on specified dates within three years.

Our attention has been drawn to the decision of the Privy Council in *Mungul Pershad Dichit v. Grija Kant Lahiri Chordhry*(1), and to that of the Bombay High Court in *Manjunath Badrabhat v. Venkatesh Govind Shanbhog*(2). But as pointed out in *Jugmohun Mahto v. Luchmeshur Singh*(3) and *Becharam Dutta v. Abdul Wahed*(4), the decision of the Privy Council proceeded solely on the language of section 1 of Act IX of 1871, which was repealed by Act XV of 1877. This latter Act contains no language excluding from its operation proceedings in suits instituted prior to its coming into force.

We set aside the order of the Courts below, and remand the case for disposal according to law.

The respondent must pay appellant's costs in this Court and in the lower Appellate Court.

(1) L.R., 8 J.A., 123.

(3) I.L.R., 10 Calc., 748.

(2) I.L.R., 6 Bom., 54.

(4) I.L.R., 11 Calc., 55.