share of one member of a Hindu family in specific family property cannot sue for partition of that portion alone, and obtain delivery thereof by metes and bounds. Still less can he do so in a case like the present where he sues on an allegation that the property is the self-acquisition of the vendor, and it is proved that it is joint family property. The course, which the plaintiff should take is pointed out in the case to which we have referred. He can recover nothing in this suit.

The decree of the District Judge was, therefore, right. We confirm it and dismiss this second appeal with costs.

APPELLATE CIVIL.

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

1896. October 14. November 12.

PERUMAL AYYAN (PLAINTIFF), APPELLANT,

v.

ALAGIRISAMI BHAGAVATHAR AND OTHERS (DEFENDANTS), RESPONDENTS. *

Limitation—Article 132, *Limitation Act—Hypothecation bond for payment on certain date—On default in payment of interest whole amount payable on demand—Meaning of "payable on demand."*

When a hypothecation bond provided for the repayment of the principal sum on a certain date with interest in the meantime payable monthly, and further provided that, on default in payment of interest, the principal and interest should become payable on demand:

Held, that the period of limitation prescribed by article 132 of the Limitation Act began to run from the date of the default. *Hanmantram Sadhuram Pity* v. *Bowles*(1) and *Ball* v. *Stowell*(2) distinguished.

SECOND APPEAL against the decree of J. W. F. Dumergue, District Judge of Madura, in Appeal Suit No. 829 of 1894, reversing the decree of K. Krishnama Chariar, District Munsif of Madura, in Original Suit No. 307 of 1894.

This was a suit brought on a registered bond to recover, by the sale of certain property thereby hypothecated, the sum of

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* Second Appeal No. 850 of 1895.

(1) I.L.R., 8 Bom., 561. (2) I.L.R., 2 All., 322.

PERUMAL AYYAN v. ALAGIRISAMI BHAGAVATHAR.

Rs. 724-7-9, being the balance of principal and interest due on the bond.

The bond was executed on the 9th of February 1882 by the first defendant in favour of the plaintiff. Its terms are set out in the judgment. It provided for the payment of the principal in two years and for the payment of interest in the meantime monthly. On default in the payment of interest the principal with interest at an enhanced rate became payable on demand. Default in payment of interest was made in March 1882, and, except for a payment of Rs. 150 on the 18th October 1885, the defendant had not paid anything on account of the bond. The plaintiff never made any demand for payment; but instituted this suit on the 18th June 1894. The defendants pleaded, amongst other things, that the suit was barred by limitation. The District Munsif held that article 132 of the Limitation Act was applicable—a finding that was not disputed in appeal. He also held that the cause of action arose on the 9th February 1884—the expiry of the two years prescribed by the bond for repayment; and in the result passed a decree ordering the payment of the sum claimed with interest, and in default directing the sale of the hypothecated property.

On appeal the District Judge reversed the decree of the District Munsif. He held that the money became payable when the first default was made in payment of interest, that is, in March 1882. He further held that the payment of Rs. 150 on the 18th October 1885 did not operate under section 20 of the Limitation Act to give a fresh starting point for the period of limitation since the money was not paid as interest, and that, if it was regarded as part payment of principal, the fact of payment did not appear in the handwriting of the first defendant.

The plaintiff appealed.

Bhashyam Ayyangar, *Pattabhirama Ayyar* and *Gopalasami Ayyangar* for appellant.

Sivasami Ayyar, *Madahava Rau* and *Natesa Ayyar* for respondents.

JUDGMENT.—The only question argued before us is that of limitation. The decision on that question depends upon the construction to be placed on the terms of the bond as to the time when the money became due and payable. The bond runs as follows:—

"As I have received Rs. 300 (three hundred) in respect of "both items in accordance with the said particulars, I shall pay "you every month Rs. 3, being the interest on the said amount at "1 per cent. per mensem and (shall pay) the principal Rs. 300 in "two years' time and receive back this, the three deeds and the "former debt bond. If, in the meantime, the hypothecated chits "fall to my lot, I shall receive the sums due thereon, and pay them "endorsing payment herein below. If there be default in making "payments as aforesaid, in subscribing to the said chits, or in "paying the interest every month, I shall pay in full the principal "with interest at 1½ per cent. on demand by the holder out of my "said hypothecated properties and other properties. I shall pay "the commission due for taking the first collections."

This bond was executed on the 9th February 1882. If, therefore, the interest had been regularly paid, the principal would not have become due until the 9th February 1884, and the suit having been instituted within twelve years from that date, viz., in June 1894, would not have been barred by limitation. It is, however, admitted that no payment at all was made until October 1885, and the Lower Appellate Court has found that the payment then made was not made on account of interest, but on the general account, and that this payment did not, therefore, give rise to a new *tempus a quo* so as to save the bar by limitation.

The Lower Appellate Court held that the money became due on the first default in payment of interest, viz., in March 1882, and that, as the suit was not brought within twelve years from that date, it was barred.

It is admitted that there is nothing to show that any demand for payment was made by the plaintiff before the 9th February 1884, and it is argued by the appellant before us that, in the absence of such demand, the money did not become due until the 9th February 1884, and that the suit was, therefore, improperly dismissed as time barred.

We do not think that this contention can be sustained. It is conceded that, if the bond ran simply "I shall pay the principal "with interest on demand," no demand would have been necessary to make the money due, and that time would have run from the date of the bond, *Hempammal* v. *Hanuman*(1) and *Rameshwar*

(1) 2 M.H.C.R., 472.

PERUMAL AYYAN v. ALAGIRISAMI BHAGAVATHAR.

Mandal v. *Ram Chand Roy*(1). The fact that there is a previous covenant to pay the money within a certain date does not, we think, alter the meaning or effect of the words in the later clause making the money payable on demand. The words 'on demand' must, we think, be regarded as a technical expression equivalent to 'immediately' or 'forthwith.' That, we think, was the intention of the parties. The defendant having failed to pay the interest according to the stipulation in the first part of the bond, the money became payable forthwith, and no actual demand was necessary to complete the plaintiff's cause of action.

The appellant's vakil has referred to *Hanmantram Sadhuram Pity* v. *Bowles*(2) and *Bait* v. *Stowell*(3), but neither of them is on all fours with the present case. In the former, the words were 'if so required,' and the High Court held that there was a deliberate omission by the plaintiff to realize the condition on which the amount should become payable. In other words, it held that the intention of the parties was that the money should not be payable unless and until the plaintiff required the defendant to pay it. In the second case, it was found that the money was to become due only on default in payment of both premia and interest, and there was no proof that there was default in payment of the premia.

In the present case, we are of opinion that the plaintiff's right to sue accrued on first defendant's first failure to pay the stipulated interest, that is, in March 1882. The Lower Appellate Court has found as a fact, that the payment made by first defendant in October 1885 was not made on account of interest. That is a finding of fact which we cannot question in second appeal. Time, therefore, ran against plaintiff from March 1882, and his suit, not having been brought within twelve years from that date, was barred by limitation and was rightly dismissed.

We, therefore, confirm the decree of the Lower Appellate Court and dismiss this second appeal with costs.

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(1) I.L.R., 10 Calc., 1034. (2) I.L.R., 8 Bom., 561. (3) I.L.R., 2 All., 322.