

dismiss this appeal with costs on the ground that the construction which ought to be placed on a statute should be such as fairly and reasonably executes the intention of the legislature where that intention is plain.

JAMBUVAI-
YAN.
VENKATA-
RAYAR.

The appellant preferred the present appeal under Letters Patent, section 15.

Sivasami Ayyar for appellant.

Mr. Parthasaradhi Ayyangar for respondent.

JUDGMENT.—It is conceded that if the Subordinate Court had, in the first instance, decreed in plaintiff's favour, it would have had jurisdiction to entertain an application under section 344, but it is contended that it is otherwise, since the Subordinate Court dismissed the plaintiff's claim and the decree in his favour was passed by the Appellate Court.

If this argument be valid, the jurisdiction of the Subordinate Court would also be ousted, if the plaintiff had obtained a decree in his favour in the first instance, and that decree had subsequently been confirmed on appeal, since the decree to be executed would be that of the Appellate Court.

There can be no doubt that the Subordinate Court must execute the decree of an Appellate Court, reversing its own, and that in that respect it is regarded for all intents and purposes as the Court which passed the decree.

We think the order of the learned Judge was right and dismiss this appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

BARROW (RESPONDENT No. 1), APPELLANT,

v.

JAVERCHUND SETT (APPELLANT), RESPONDENT.*

1895.
September 17.

Limitation Act—Act XV of 1877, s. 14, sched. II, art. 179—Exclusion of time of proceeding bonâ fide in Court without jurisdiction—Step in aid of execution—Application for sanction to an agreement to give time to a judgment-debtor.

On an application made in June 1892 for execution of a decree for the payment of a sum of money by instalments passed in 1883 by a Subordinate Court,

* Letters Patent Appeal No. 52 of 1894.

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it appeared that the Subordinate Court, after executing it in part, had transferred it to the Presidency Court of Small Causes, which proceeded to execute it up to 23rd February 1887, and that on a further application made on 5th March 1888, it was discovered that the transfer of the decree was a mistake, as the amount exceeded Rs. 2,000, and the decree was returned to the Subordinate Court on 5th July 1888. On 26th February 1889 an application was made to the Subordinate Court to sanction an agreement to give time for the satisfaction of the judgment-debt under Civil Procedure Code, section 257 (A), but sanction was never given, and on 28th July 1891 the decree-holder applied to have the decree transferred to another Court, and in September applied for execution and realised Rs. 250 towards the debt.

Held by Parker, J., that the time during which the decree was in the Presidency Court of Small Causes should be deducted in the computation of the period of limitation for the present application under Limitation Act, section 14, clause 3.

Held by Shephard and Best, JJ., that whether or not such deduction should be made, the present application was barred by limitation for the reason that the application on 26th February 1889 was not a step in aid of execution.

APPEAL under Letters Patent, section 15, against the judgment of PARKER, J., delivered in appeal against order No. 161 of 1892 reversing the order of V. P. DeRozario, Subordinate Judge of South Malabar, in miscellaneous petition No. 86 of 1892.

Application by the assignee of the plaintiff for the execution of the decree in original suit No. 39 of 1882 on the file of Subordinate Court, Calicut.

The application was dismissed by the Subordinate Judge as being barred by limitation under the circumstances set out in the following judgment of PARKER, J. :—

PARKER, J.—The decree of which execution is sought was passed on 3rd April 1883 by the Calicut Subordinate Court for a sum of Rs. 7,220 with costs and interest from date of decree till payment, and was made payable by monthly instalments of Rs. 60 each. After some execution had been had at Calicut, the decree was, on 23rd July 1884, transferred for execution to the Madras Small Cause Court. Execution was had by instalments in Madras and payments, amounting to Rs. 1,050, were made up to 23rd February 1887. On 5th March 1888, a further application for execution was made in the Small Cause Court, and it was then discovered that under the penultimate clause of section 223, Code of Civil Procedure, the decree ought never to have been sent for execution to the Small Cause Court at all, since the amount exceeded Rs. 2,000. It was accordingly returned for execution to the Calicut Subordinate Court on 5th July 1888.

On 5th February 1889 an arrangement was made by the parties at Madras for the discharge of the balance of the decree by monthly instalments at a different rate from that prescribed by the decree, and a petition to enforce this agreement was put in in the Calicut Subordinate Court on 26th February 1889. A notice went on petitioner's application, but the Court never formally sanctioned the arrangement. On 28th July 1891, petitioner applied to have the decree transferred to the Palghat Subordinate Court for execution, and it was transferred on 30th July. An application for execution was made at Palghat on 25th September 1891 and Rs. 250 was realized. This last application was made on 20th June, 1892 and the Subordinate Judge has now held that execution is barred.

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The Subordinate Judge bases his order on two grounds—(i) that (the present application being to enforce the decree and not the unrecognized arrangement of 5th February 1889) no certain time for the payment of the instalments has been fixed by the decree, and (ii) that as all proceedings in the Madras Small Cause Court were invalid, they cannot avail to keep the decree alive, and the application of 23rd July 1884 to transfer the decree to Madras cannot be regarded as a step in aid of execution. The Subordinate Judge held that the decree had become barred on 3rd April 1887 (1886).

There can be no doubt that the application of 23rd July 1884 was made in good faith and was intended as a step in aid of execution. The mistake was not discovered by the Madras Small Cause Court for nearly three years, and the Madras Court received and executed the decree. I think the case falls within the purview of section 14, clause 3, of the Limitation Act, and that the time occupied in executing the decree in Madras ought to be deducted. See *Rajbullubh Sahai v. Joy Kishen Pershad*(1) and *Krishnayyar v. Venkayyar*(2).

Against this view the decision in *Chattar v. Newal Singh*(3) was quoted, but that case referred to an application for a kind of relief which obviously could not be granted, and does not touch the question of a *bona fide* mistake in seeking relief in the wrong Court.

Taking this view, the application of 26th February 1889 was in time, since the decree was only returned to the Calicut Subordinate Court on 5th July 1888, and no limitation has arrived since 1889.

(1) I.L.R., 20 Cal., 29.

(2) I.L.R., 6 Mad., 81.

(3) I.L.R., 12 All., 64.

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Though by some informality the arrangement of February 1889 was not sanctioned, I think the application can still be viewed as a step in aid of execution of the decree.

Further, I do not agree with the Subordinate Judge that it is impossible to ascertain from the decree the dates on which the instalments are to be paid. It seems to me clear they are intended to be paid monthly from 3rd April 1883, and this is all that is necessary. See *Kaveri v. Venkamma*(1) and *Lakshmi Bai Bapuji Oka v. Madhavrao Bapuji Oka*(2).

The order of the Subordinate Judge must be reversed and execution allowed. The appellant is entitled to his costs in this appeal.

The judgment-debtor preferred this appeal under Letters Patent, section 15.

Sankaran Nayar for appellant.

Respondent was not represented.

JUDGMENT.—Even if the period during which the application was pending in the Madras Court of Small Causes should be excluded under section 14 of the Limitation Act, the application of 26th February 1889, being one for sanctioning the agreement to give time for payment, and not for execution of the decree, was clearly not a step in aid of execution; the subsequent application is, therefore, barred.

We must, therefore, allow this appeal and restore the order of the Subordinate Judge. Under the circumstances, we make no order as to costs of this appeal.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

SAMINADHA PILLAI AND OTHERS (DEFENDANTS NOS. 1
TO 4, 7, 8, 11 AND 15), APPELLANTS,

v.

THANGATHANNI (PLAINTIFF), RESPONDENT.*

*Hindu law—Inheritance—Obstructed heritage—Succession per capita—
Succession on extinction of a divided branch of a family.*

On the death, without issue, of a Hindu who was divided from the rest of his family, his property passed in succession to his widow and mother. On the

(1) I.L.R., 14 Mad., 396.

(2) I.L.R., 12 Bom., 65.

* Appeals Nos. 121 and 124 of 1894.