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means of access over the appellant's share which is claimed by the respondent in this case. It is unnecessary to consider whether the respondent surrendered any rights which he may have had by the agreement which is embodied in exhibit C, but we may observe that the evidence to show that exhibit C was obtained by coercion especially having regard to the fact that the consent mentioned in exhibit C was given by the elder brother to the younger in the presence of three mediators is extremely slender.

We must set aside the decrees of the lower Courts and grant the injunction asked for in the plaint. We do not think it is a case for damages. The respondent must pay the appellant's costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Sankaran Nair.

VAKKALAGADDA NARASIMHAM (THIRD DEFENDANT),
APPELLANT,

v.

VAHIZULLA SAHIB AND OTHERS (PLAINTIFF AND
DEFENDANTS Nos. 1, 2, 4 AND 5), RESPONDENTS.*

Civil Procedure Code, Act XIV of 1882, ss. 368, 582, 587—Limitation Act XV of 1877, sch. II, arts. 175 (c), 178—Article 175 (c) applies to applications made in second appeals as well as first appeals.

Section 587 of the Code of Civil Procedure authorises an application to bring in a plaintiff-respondent in second appeals and extends to such appeals the provisions of sections 368 and 582 of the Code of Civil Procedure. Such applications, however, are really made under sections 368 and 582 and for the purposes of limitation fall under article 175 (c) of schedule II of the Limitation Act and not under article 178.

THE facts necessary for this report are set out in the judgment.

T. V. Seshagiri Ayyar, K. Subrahmanya Sastri and K. R. Krishnaswami Ayyangar for appellant.

C. Ramachandra Rau Saheb and V. Ramesam for respondent.

JUDGMENT.—It is objected that this appeal has abated because the first respondent (plaintiff) died in June 1903 and his legal

* Second Appeal No. 1565 of 1902, presented against the decree of J. H. Robertson, Esq., Acting District Judge of Kistna, in Appeal Suit No. 88 of 1902, presented against the decree of M.R.Ry. T. Krishnaswami Naidu, District Munsif of Bezvada, in Original Suit No. 512 of 1900 (*vide* Civil Miscellaneous Petition No. 414 of 1905).

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representatives were not brought on to the record until August 1904 the time limited by the Limitation Act for bringing on a respondent being six months under article 175 (c). On the part of the appellant it is contended that this article does not apply to the case of a respondent in second appeal, but only to a respondent in first appeal and that the article applicable to second appeals is article 178 of the Limitation Act. He contends that article 175 (c) confines the limitation to cases coming within section 368 or sections 368 and 582 and does not apply to cases coming within section 587, Civil Procedure Code, which section alone applies to second appeals. The other side contends that as this application is in fact made under sections 368 and 582 of the Code of Civil Procedure he is bound by the limitation contained in article 175 (c) of the Limitation Act.

Section 587 of the Civil Procedure Code merely makes the provisions contained in chapter XLI of the Civil Procedure Code (of which section 582 is a part) applicable to second appeals. It lays down no period of limitation as applicable to second appeals, but merely directs that the procedure applicable to first appeals (chapter XLI) shall, as far as may be, be applied in the case of second appeals.

Section 582 makes the word "defendant" in section 368 include a "plaintiff-respondent" and therefore makes the procedure to be adopted for bringing in a plaintiff-respondent in a first appeal also applicable to a second appeal. It was therefore necessary that the application to bring in the plaintiff-respondent should be made under sections 368 and 582 of the Code of Civil Procedure. It does not cease to be an application under those sections, because it is an application that is authorised to be made under them by section 587.

As to the cases cited they do not apply because they do not refer to the section as now amended.

We therefore allow the objection and hold this application, Civil Miscellaneous Petition No. 987 of 1904, to bring in the legal representative of the first respondent is barred under article 175 (c) of the Limitation Act, and the appeal abates.

No sufficient reasons are, in our opinion, shown to excuse delay.

Costs are allowed.