KONDUKU RUNGA REDDI v. SUBBIAH SETTY AND KUMBAHALA SUBBAMMA.

Courts; but nearly every case brought in a Small Cause Court involves a certain amount of investigation of the accounts of the parties in order to arrive at the sum to be awarded. Such cases, and this is one of them, are not suits for an account within article 31 of the Provincial Small Cause Courts Act. No question of limitation arises. We are of opinion that the suit was cognisable by the Small Cause Court. We must therefore reverse the order of the learned Judge and restore the decree of the Munsif with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Davies.

1905. February 7.

SARAMMA (DEFENDANT—COUNTER-PETITIONER), APPELLANT,

v.

SESHAYYA (PLAINTIFF—PETITIONER), RESPONDENT.*

Limitation Act XV of 1877, sch. II, art. 179—'Application in accordance with law'—Application by guardian on behalf of one found to be a major at the time—Jurisdiction of Court to review its own order when an appeal lay.

An application for execution made by A as guardian on behalf of B who was a major at the time the application was made is not an 'application in accordance with law' within the meaning of article 179, schedule II of the Limitation Act and will not operate as a bar to limitation, though it may perhaps be a good application for other purposes.

Taqui Jan v. *Obaidulla*, (I.L.R., 21 Calc., 866, distinquished).

Neither can such an application be considered an application by B under section 235 of the Code of Civil Procedure.

A Court can review its own order in execution although an appeal might have been but was not preferred.

THE decree in connection with the execution of which, this appeal arose, was passed in favour of the plaintiff by the District Court of Godavari in Appeal No. 287 of 1896, reversing the decree of the District Munsif of Tanuku in Original Suit No. 285 of 1895.

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* Civil Miscellaneous Second Appeal No. 76 of 1904 presented against the order of F. H. Hamnett, Esq., District Judge of Godavari, in Appeal Suit No. 549 of 1903, presented against the order of M.R.Ry. P. V. Ramachendra Ayyar, District Munsif of Ellore, in E.P. No. 490 of 1903 (Original Suit No. 285 of 1895 on the file of the District Munsif's Court at Tanuku).

The present respondent was the plaintiff and the father of the appellant was the defendant in Original Suit No. 285 of 1895. The plaintiff was a minor at the time and applications for execution of the decree were put in on various occasions by his mother. The application in question in this appeal was presented on 23rd March 1903 by the plaintiff, the preceding application having been presented on the 23rd June 1902 by the mother of the plaintiff acting as his guardian. On the application of the 23rd March 1903, the defendant objected on the ground that such application was barred as the plaintiff had attained majority more than four years before. Execution was ordered to proceed on the 17th April 1903. Subsequently a review petition was put in by the defendant on the 23rd June 1903, and the Munsif on this petition dismissed the application for execution on the ground that, as the plaintiff became a major at the latest on the 3rd January 1900, the application by his mother of the 23rd June 1902 was null and void, and consequently the present application was barred.

On appeal by the plaintiff, the District Judge held that the application by the mother though irregular, was not altogether null and void, and that it could be considered a step in aid of execution within article 179, schedule II, of the Limitation Act. He accordingly reversed the order of the Munsif.

The defendant preferred this appeal.

K. Subrahmania Sastri for appellant.

T. V. Seshagiri Ayyar for respondent.

JUDGMENT.—The question for consideration in this appeal is whether the application of 23rd June 1902 was effective for the purpose of keeping alive the decree and preventing the execution thereof being barred by limitation. The application was made by the mother as guardian of the respondent who was described as a minor. It has been found that when the application was made he was a major. The District Judge was of opinion that the application by the mother was nothing more than an irregularity and that the proceedings were only technically defective. There is some evidence that the respondent was aware of his mother's proceedings, but there is nothing to show that he constituted her his agent for the purpose of making the application. The question is not whether the proceedings by the mother were void for all purposes, but whether they amounted to an application according

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to law for a step in aid of execution within the meaning of article 179 in the second schedule to the Limitation Act. In our opinion the application was not according to law for the purposes of article 179. In *Taqui Jan* v. *Obaidulla*(1), the Calcutta case on which the learned Judge relied, no question of the law of limitation arose. No doubt the Judges observe "If we were to uphold this decision the result would be, the suit being now barred by limitation, that the plaintiff, because of this error, whether intentional or not, would lose the whole of his cause of action." It does not follow that because certain proceedings are effective (assuming them to be effective) for the purpose of keeping alive a cause of action, that similar proceedings must be held to be "in accordance with law," and therefore effective for the purpose of keeping alive the right to execute a decree. On behalf of the respondent, it was contended, that the application should be treated as the application of the respondent; that it fulfilled the requirements of section 235 of the Code of Civil Procedure, and was therefore in accordance with law since it was verified by the mother and the section did not require that it should be signed by the applicant. On the face of the application it is clear that it was the application of the mother and not that of the respondent. It was also argued that the Munsif had no jurisdiction to review his own order and that, as he, in the first instance, directed execution to issue, and there was no appeal from this order, no appeal now lies from the order of the District Judge reversing the order of the Munsif made on review. We are of opinion that the Munsif had jurisdiction to review his own order and that, seeing that an application to review had been made to him, an appeal against the original order was unnecessary.

As regards the question of fact involved in this case, the Munsif finds by implication, that the respondent was eighteen years old on 3rd January 1900. The Judge finds that he must have been eighteen on 23rd June 1902. The present application was made on 23rd March 1903. If, therefore, the respondent became a major on some date subsequent to 23rd March 1900 the present application would be within three years of his attaining his majority and therefore in time irrespective of the application made by the mother.

(1) I.L.R., 21 Calc., 866.

The case must go back to the District Judge for an express finding as to the date on which the respondent attained the age of eighteen. Further evidence may be taken. The finding should be submitted within six weeks; and seven days will be allowed for filing objections.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Subrahmania Ayyar.

VIJIARAGHAVALU NAIDU AND OTHERS (DEFENDANTS), APPELLANTS,

v.

SRINIVASALU NAIDU (PLAINTIFF), RESPONDENT.*

1905. January 27. February 28.

Limitation Act XV of 1877, sch. II, art. 179—"Step in aid of execution"—A "batta memorandum" praying for issue of sale proclamation.

A so-called "batta memorandum" which applies for the issue of a sale proclamation and on which a sale proclamation is issued accordingly, is a "step in aid of execution" within the meaning of article 179, schedule II of the Limitation Act, although an order for the issue of such proclamation might have been made previously.

Maluk Chand v. *Bechar Natha*, (I.L.R., 25 Bom., 639), distinguished.

Ambica Pershad Singh v. *Surdhari Lal*, (I.L.R., 10 Calc., 851), followed.

THE facts necessary for this report are stated in the judgment.

The Hon. Mr. *P. S. Sivaswami Ayyar* for appellant.

T. V. Seshagiri Ayyar for *V. Krishnaswami Ayyar* for respondent.

JUDGMENT.—The "batta memorandum" dated July 10th, 1900, asks that process may issue and for this purpose the necessary "batta" was deposited. The so-called "batta memorandum" is something more than a mere memorandum of the deposit of the batta. It is an application for the issue of the sale proclamation, though it also refers to the deposit of the batta. The sale proclamation was issued the following day.

We are of opinion that the "batta memorandum" was an application to take a step in aid of execution. It is none the less an application for a step in aid of execution, because the

* Civil Miscellaneous Second Appeal No. 35 of 1904, presented against the order of R. D. Broadfoot, Esq., District Judge of Chingleput, in Appeal Suit No. 217 of 1903, presented against the order of M.R.Ry. V. Saminatha Ayyar, District Munsif of Poonamallee, in Execution Petition No. 540 of 1903 (Original Suit No. 433 of 1895).