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to have his rights decided by a Court of competent jurisdiction, and that the decision of the Governor in Council, affirming the decision of the District Court, cannot be supported. The legal right to bring a suit, and to have it determined by the proper Court created for the purpose of determining such suits, cannot be barred upon the considerations of policy or expediency which are urged by the judgment under appeal.

Their Lordships have already humbly reported to His Majesty as their opinion that the appeal ought to be allowed and consequential directions given, but their Lordships reserved their reasons, and also the question of the costs, as to which the parties were to be at liberty to apply to their Lordships for directions.

Mr. Bonnerjee, who appears for the appellant, now asks their Lordships to direct that the costs both here and below be costs in the cause, and their Lordships direct accordingly.

In the meantime the money deposited by the appellant in the Privy Council office as security for costs should be repaid to him.

Appeal allowed.

Solicitors for the appellant—Messrs. *Lawford, Waterhouse & Lawford.*

APPELLATE CIVIL—FULL BENCH.

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

1904. July 27, 28. September 20.

SUPPA REDDIAR (DEFENDANT—COUNTER-PETITIONER), APPELLANT,

v.

AVUDAI AMMAL (ASSIGNEE-PETITIONER), RESPONDENT.*

Limitation Act—XV of 1877, sched. II, art. 178—Obstruction to execution—Removal by decision in favour of decree-holder—Decree-holder's right to move the Court—Application to be regarded as a continuation of previous application.

A mortgage decree was obtained against the counter-petitioner on 28th February 1894. On 16th May 1895, the decree-holder assigned the decree to

* Civil Miscellaneous Second Appeal No. 11 of 1904, presented against the order of W. W. Phillips, Esq., District Judge of Tinnevelly, in Appeal Suit No. 118 of 1903, presented against the order of M.R.Ry. S. Raghava Ayyangar, District Munsif of Srivilliputtur, on Execution Petition No. 905 of 1902, in Original Suit No. 793 of 1898.

petitioner, who applied for execution on 6th December 1897. That application was struck off, and so was one which followed it. On 15th June 1898, petitioner again applied for execution, but counter-petitioner contended that the assignment was for his benefit and that, in consequence, petitioner was not entitled to execute the decree. The District Munsif held an enquiry under section 232 of the Civil Procedure Code and dismissed the application, being of opinion that counter-petitioner's contention was true. Petitioner thereupon brought a suit to establish her claim that the assignment was for her own benefit. On 20th February 1901, the Appellate Court declared that petitioner had obtained a valid assignment of the decree and was entitled to execute it. On 24th November 1902, petitioner filed the present execution petition. On the question of limitation being raised :

Held, that the petitioner's right to execute the decree was not barred by limitation on 24th November 1902. The application should be treated not as an application for execution, but as an application to revive or continue an application for execution that had been wrongly dismissed, as a competent Court has declared. Article 178 was, therefore, applicable, and time had begun to run from the date of the appellate decree declaring petitioner's right to execute, dated 20th February 1901.

Narayana Nambi v. Pappi Brahmani, (I.L.R., 10 Mad., 22), overruled.

EXECUTION PETITION. The case first came before Subrahmania Ayyar and Sankaran Nair, JJ. The facts are fully set out in the following

ORDER OF REFERENCE TO A FULL BENCH :—In this case the respondent's assignor obtained a mortgage decree against the appellant on the 28th February 1894.

On the 16th May 1895, the decree-holder assigned the decree to the respondent, who applied for execution on the 6th December 1897. After notice that application was struck off on the ground that the encumbrance certificate was not produced. Respondent again applied on the 25th February 1898 and sale was ordered. As batta was not paid, this application also was struck off on the 15th April 1898.

Then on the 15th June 1898 the respondent again applied for execution. The appellant having contended that the assignment was for his benefit and that therefore the respondent was not entitled to execute the decree, the District Munsif held an enquiry under section 232, Civil Procedure Code, and dismissed the application, being of opinion that the appellant's contention was true.

Thereupon the respondent brought a suit, as she was entitled to do (*Bommanapatti Veerappa* v. *Chintakunta Srinivasa Rau*(1)), to

(1) I.L.R., 26 Mad., 264.

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establish her claim that the assignment was for her own benefit. The suit was dismissed in the first Court, but the Appellate Court on the 20th February 1901 "declared that the plaintiff (respondent) has obtained a true and valid assignment of the decree in Original Suit No. 793 of 1893 and is entitled to execute it."

The respondent then filed this application on the 24th November 1902, and the question is whether her right to execute the decree is barred by limitation. The effect of the order of the District Munsif passed under section 232, Civil Procedure Code, was, so long as it remained in force, to render the execution of the decree impossible, and it was after the appellate decree recognizing the appellant's right to execute the decree as assignee that it became competent to her to apply. If article 179 of the Limitation Act alone applied to the case in such circumstances, the right to execute the decree must be held to be barred in spite of the apparent injustice of such a view.

The High Courts of Calcutta, Bombay and Allahabad have declined to accept such a conclusion. In substance they adopt the view that when an obstruction to the execution of the decree arises necessarily involving litigation and such obstruction is removed by a decision in favour of the decree-holder, whether in execution proceedings or otherwise, the right of the decree-holder to move the Court with reference to the execution of the decree should be treated as governed by article 178 of the Limitation Act and where such application is made within the time fixed by that article and action taken thereunder, such action should be viewed as a continuation of the previous application and for the execution of the decree if any, even though the same has been dismissed in consequence of the obstruction subsequently removed (*Raghunath Sahay Singh* v. *Lalji Singh*(1), *Kalyanbhai Dipchand* v. *Ghanasham Lal Jadunathji*(2), *Chintaman Damodar Ayashe* v. *Balhastri*(3), *Narayan* v. *Sono*(4), *Thakur Prasad* v. *Abdul Hasan*(5)).

In this Court, however, a different view of the law was adopted in *Narayana Nambi* v. *Pappi Brahmani*(6), notwithstanding the opinion of Turner, C.J., in *Virasami* v. *Athi*(7), which was in

(1) I.L.R., 23 Calc., 397.
(2) I.L.R., 5 Bom., 29.
(3) I.L.R., 16 Bom., 294.
(4) I.L.R., 25 Bom., 345.
(5) I.L.R., 23 All., 13.
(6) I.L.R., 10 Mad., 22.
(7) I.L.R., 7 Mad., 596.

accordance with his own view in *Paras Ram* v. *Gardner*(1), Mr. Justice Parker, who took part in the decision in *Narayana Nambi* v. *Pappi Brahmani*(2), apparently modified his views on the point. See *Chathappan Nayar* v. *Kunhammed Kutti*(3) referred to in *Sasivarna Tevar* v. *Arulanandam Pillai*(4). This decision in *Sasivarna Tevar* v. *Arulanandam Pillai*(4), and the one in *Suryanarayana Pandarathar* v. *Gurunada Pillai*(5), do not seem entirely to accept the decision in *Narayana Nambi* v. *Pappi Brahmani*(2).

In this state of authorities we refer to a Full Bench the question whether the respondent's right to execute the decree was, on the 24th November 1902, barred by the law of limitation.

The case came on for hearing in due course before the Full Bench constituted as above.

V. Krishnaswami Ayyar for appellant.

M. R. Ramakrishna Ayyar for respondent.

OPINION.—We think that the application in this case should be treated not as an application for execution, but as an application to revive or continue an application for execution that had been wrongly dismissed as a competent Court has declared. The article applicable is therefore 178 of the second schedule of the Limitation Act and time began to run from the date of the appellate decree declaring the respondent's right to execute, which was the 20th February 1901. This application was therefore in time. We follow the decisions of the other High Courts cited in the order of reference and overrule the decision in *Narayana Nambi* v. *Pappy Brahmani*(2). Our answer to the reference is in the negative.

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(1) I.L.R., 1 All., 355. (2) I.L.R., 10 Mad., 22.
(3) C.M.A. No. 108 of 1895 (unreported).
(4) I.L.R., 21 Mad., 261. (5) I.L.R., 21 Mad., 257.