

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Benson.

1904.
March 4.

SREENIVASA CHARIAR AND ANOTHER (SECOND AND THIRD
PETITIONERS AND REPRESENTATIVES OF PLAINTIFF, DECEASED),
APPELLANTS,

v.

PONNUSAWMY NADAR AND OTHERS (JUDGMENT-DEBTORS AND
DEPENDANTS, FIRST REPRESENTATIVE OF PLAINTIFF, DECEASED),
RESPONDENTS.*

Limitation Act—XV of 1877, sched. II, art. 179—Application to take a step in aid of execution—Execution petition—Adjournment of sale on application of judgment-debtor consented to by decree-holder—Subsequent application within three years of date of adjournment but more than three years from previous application—Limitation.

A decree-holder applied for execution of his decree. The last preceding application had been made more than three years before the present one. In that application the decree-holder asked that the properties of the judgment-debtor might be sold. The judgment-debtor then applied for a postponement of the sale, to which the decree-holder consented. The present application was made within three years from the date of the judgment-debtor's application for a postponement of the sale. The sale had, in fact, not been carried out:

Held, that the application was barred by limitation. The mere consent by a decree-holder to the application made by the judgment-debtor was not 'an application' by the decree-holder, within the meaning of article 179 of schedule II to the Limitation Act.

Held also, that the acknowledgment of indebtedness in the application of the judgment-debtor for a postponement of the sale did not give a fresh starting point for limitation under section 19 of the Act; nor could a part-payment of the principal be relied upon under section 20, as the same principle applied to sections 19 and 20.

Kuppasami Chetty v. Rengasami Pillai, (I.L.R., 27 Mad., 608), followed.

EXECUTION PETITION. The date of the decree was October 10th, 1898. The present application for execution was presented on April 11th, 1902. Petitions in execution were presented in October 1898 and January 1899. The last preceding application had been presented on February 2nd, 1899, which asked that the property of the judgment-debtor might be sold. The Subordinate Judge held that the present application was not barred by limitation

* Civil Miscellaneous Second Appeal No. 62 of 1903, presented against the order of P. D. P. Oldfield, Esq., Acting District Judge of Tanjore, in Civil Miscellaneous Appeal No. 1515 of 1902, presented against the order of M.R.Ry. P. S. Gurnmurthi, Subordinate Judge of Kumbakonam, in Execution Petition No. 126 of 1902 (Original Suit No. 51 of 1898).

because the judgment-debtors had on 14th April 1899 applied by miscellaneous petition for an adjournment of the sale to June 22nd, 1899, and for the sale to be held on that date without fresh proclamation, such application having been consented to by the decree-holders. The sale had not been carried out on the postponed date and the petition of February 2nd, 1899, was dismissed. The acting District Judge, on appeal, held that the present application was barred by limitation. He stated the question thus: "Is a consent by a decree-holder's pleader to the adjournment of a sale a step in aid of execution, such as will keep a decree alive?" He dealt with numerous cases, and continued:—"The decree-holder points out, first, that the debtor's application to which he consented was not merely one for a postponement but also one for sale on an adjourned date without fresh proclamation. He argues that having consented to this application it must be considered as having been made by him, and he must have the benefit of it." He dealt with the cases cited in support of this argument, and in the result held that the course of decisions is that some actual application by the decree-holder is necessary, and not a mere passive consent. He rejected the petition.

V. C. Desikachariar for appellant.

Mr. C. Krishnan for respondent.

JUDGMENT.—We agree with the District Judge that the mere consent of the decree-holder to the application, dated the 14th April 1899, made by the judgment-debtor is not in any sense 'an application' by the decree-holder. That being so, the consent cannot be pleaded under article 179, schedule II of the Limitation Act as saving the bar by limitation.

Further, the acknowledgment of indebtedness in the application of the judgment-debtor, dated the 14th April 1899, cannot be pleaded to give a fresh starting point for limitation under section 19 of the Limitation Act (*Rama Rau v. Venkatesa Bhandari*(1)) nor can the part-payment of the principal (proved by exhibit A) be pleaded under section 20 of the Act as giving a new period of limitation, as the same principle applies to both this section and section 19, as was recently decided by this Court in the case of *Kuppusami Chetty v. Rengasami Pillai*(2). We therefore dismiss this second appeal with costs.

SREENIVASA
CHARIAR
v.
PONNUSAMMY
NADAR.

(1) I.L.R., 5 Mad., 171.

(2) I.L.R., 27 Mad., 608.