

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Sankaran-Nair.

1907.
December 11.
1908.
January 8.

ANNAMALAI MUDALIAR (PETITIONER), APPELLANT,

v.

RAMIER AND OTHERS (RESPONDENTS), RESPONDENTS.*

Limitation Act, Act XV of 1877, sched II, art. 179, cl. (4)—Civil Procedure Code, s. 232—Application by transferee decree-holder to be recognized as such is a step in aid of execution in accordance with law.

An application purporting to be under section 232, Civil Procedure Code, by the transfer of a decree, praying to be recognised as assignee plaintiff in the suit and, stating that when so recognised, he would file an execution petition, *i.e.*, when the Court passed an order as prayed for, and the defendant does not appeal against such order, is a step in aid of execution, and an application in accordance with law within the meaning of article 179, clause (4) of schedule II of the Limitation Act.

THE facts are sufficiently stated in the judgment.

T. Narasimha Ayyangar for appellant.

T. V. Seshagiri Ayyar for respondents.

JUDGMENT.—In this case the appellant, a transferee decree-holder, on the 2nd December 1901 presented a petition under section 232, Civil Procedure Code, which, after stating that he had obtained an assignment of the decree, and that when recognised a transferee-plaintiff he would have to obtain an order absolute and then file an execution petition, prayed the Court to pass an order recognising him as assignee-plaintiff in the suit. It was ordered, accordingly, on the 15th February 1902. On the 11th March 1904 the appellant applied for an order absolute under section 89 of the Transfer of Property Act, but the lower Court held the application to be barred as more than three years had elapsed since the date of the decree (15th August 1900), and the application for the 2nd December 1901 was not, in the opinion of the Court, an application to take a step in aid of execution in accordance with law within the meaning of clause 4 of

* Civil Miscellaneous Appeal No. 251 of 1904, presented against the order of M. R. by K. Ramachandra Ayyar, Subordinate Judge of Negapatam in Civil Miscellaneous Petition No. 241 of 1904, in Original Suit No. 23 of 190.

article 179 of the second schedule to the Indian Limitation Act. We are unable to agree with this conclusion. The petition, as appears from its terms, was intended as a step in aid of execution, as it sought the recognition by the Court of the petitioner's right to execute, which recognition it was open to the Court to grant or withhold. The question then arises was it an application in accordance with law? It is, no doubt, true, as pointed out by Sir Bhashyam Aiyangar in *Ramachandra Aiyar v. Subramania Chettiar* (1), that section 232, Civil Procedure Code, does not provide for an application in this form, but contemplates that the transferee should apply for execution of the decree without any preliminary of the kind, merely giving notice of the application to the transferor and the judgment-debtor. Consequently when, instead of applying for execution, the appellant put in his application for recognition as transferee, the Court might have returned the petition to him for amendment as not in accordance with the section. Instead of doing this, the Court made the order prayed for and the defendant did not appeal against it as he might have done. Under these circumstances the application must be taken to have been in accordance with law. It was clearly a step in aid of execution, and as it must be taken to have been in accordance with law, the present application is not barred. We may also observe that it has recently been held in *Pitamb Singh v. Tota Singh* (2) that an application for recognition by a transferee decree-holder is an application to take a step in aid of execution in accordance with law. We must, therefore, set aside the order of the lower Court and remand the case to it for disposal according to law. The respondents will pay the appellant the costs of this appeal.

ANNAMALAI
MUDALIAR
v.
RAMIYER.

(1) 14 M.L.J., 393.

(2) I.L.B., 29 All., 301.