APPELLATE CIVIL—FULL BENCH.

Before Sir Arnold White, Chief Justice, Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

KRISTNAMA CHARIAR (DECREE-HOLDER), APPELLANT,

v.

MANGAMMAL AND OTHERS (JUDGMENT-DEBTORS), RESPONDENTS.*

1902. July 31. August 1, 13.

Limitation Act—XV of 1877, sched. II, art. 179—Commencement of period of limitation for application to execute portion of decree not appealed against where portion has been appealed against—Commencement of period of limitation under s. 230 (a), Civil Procedure Code, for application to execute portion of decree not appealed against.

Under article 179 of schedule II to the Limitation Act, when a portion of a decree has been appealed against and a portion has not, the period of limitation for an application to execute the portion not appealed against runs from the date of the original decree.

In the case of a decree for the payment of money or the delivery of property, the period of limitation for an application to execute a portion of the decree which has not been appealed against runs, under section 230 (*a*) of the Code of Civil Procedure, from the date of the decree on appeal.

Muthu v. *Chellappa*, (I.L.R., 12 Mad., 479), dissented from.

QUESTIONS referred to a Full Bench. The appeal first came on for hearing before the Chief Justice and Mr. Justice Benson, who made the following

ORDER OF REFERENCE TO A FULL BENCH.—Two questions have been raised in this appeal.

1. Whether, under article 179, schedule II of the Limitation Act, when a portion of a decree has been appealed against, and a portion has not, the period of limitation for an application to execute the portion not appealed against runs from the date of the original decree or the date of the decree on appeal?

2. In the case of a decree for the payment of money or the delivery of property, whether under section 230 (*a*) of the Code the period of limitation for an application to execute a portion of the decree which has not been appealed against runs from the date of the original decree or the date of the decree on appeal.

* Appeal against Order No. 19 of 1901, against the order of A. C. Tate, Acting District Judge of Chingleput, dated 26th October 1900, in Execution Petition No. 13 of 1900, in Original Suit No. 6 of 1886.

KRISTNAMA CHARIAR v. MANGAMMAL.

As regards the first question there is considerable conflict of authority—see *Muthu* v. *Chellappa*(1) and *Viraraghava Ayyangar* v. *Ponnammal*(2) and the authorities referred to in the latter case.

We refer both the questions to a Full Bench.

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

S. Kasturiranga Ayyangar for appellant.

V. Krishnaswami Ayyar, *T. V. Seshagiri Ayyar* and *T. Pattabhirama Ayyar* for respondents.

The Court expressed the following opinions :—

Sir ARNOLD WHITE, C.J.—As regards the first question which has been submitted to us, I think the words of clause 2 in the third column of article 179 of the Limitation Act should be read as meaning what they say. We are asked to read into the plain words "where there has been an appeal" some such words as "and all the parties to the suit are parties to the appeal and the subject-matter of the appeal includes the whole subject-matter of the suit." I can see no good reason for doing so. It seems to me that the proper inference to be drawn from the fact that the Legislature has expressly limited the operation of Explanation I to clause 4 of the article, is that the Legislature did not intend that the plain words of clause 1 should be read as subject to the qualification or modification which, it has been argued, should be imposed upon them.

A rule of law that in any case in which there has been an appeal from a decree, limitation shall begin to run from the date of the decree on appeal, irrespective of whether the decree was appealed from in whole or in part, may not be altogether scientific; but it is simple, certain and intelligible and I think it is the rule which the Legislature intended to lay down. The Calcutta cases on which the learned Judges who decided the case of *Muthu* v. *Chellappa*(1) relied as laying down the sounder principle have not been followed in the recent Full Bench decision of the Calcutta High Court in *Gopal Chunder Manna* v. *Gosain Das Kalay*(3).

With all respect I cannot follow the reasoning of the learned Judges in the case of *Muthu* v. *Chellappa*(1).

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(1) I.L.R., 12 Mad., 479. (2) I.L.R., 23 Mad., 60.
(3) I.L.R., 25 Calc., 594.

I entirely agree with the observations made by the learned Judges who decided the case of *Vyaraghava Ayyangar* v. *Ponnammal*(1) in their discussion of the question now under consideration. The Bombay decisions are in conformity with the view of the law indicated in the Madras case above referred to (see *Sakhalchand Rirkhawdas* v. *Velchand Gujar*(2), *Abdul Rahiman* v. *Maidin Saiba*(3)) and this was also the view of two of the five Judges who constituted the Full Bench in the Allahabad case of *Mashiat-un-Nissa* v. *Rani*(4).

I am of opinion that our answer to the first question which has been referred to us should be that the period of limitation runs from the date of the decree on appeal.

The question of construction which is raised by the second question which has been referred to us seems to me to be more open to doubt. In my opinion, however, when a portion of a decree is appealed from, and a portion is not appealed from, the Appellate Court in adjudicating on the appeal affirms that portion of the decree to which no exception has been taken, and though the decree does not in terms affirm that portion, it must be read and construed as so doing.

I think our answer to the second question should be that the period of limitation runs from the date of decree on appeal.

BENSON, J.—I am of opinion that in both the cases referred to us the period of limitation begins to run from the date of the decree on appeal. There is only one decree that can be executed and that is the decree of the Appellate Court.

This appears to be the plain rule of law as laid down in article 179, schedule 2 of the Limitation Act. There is no indication in that article that the Legislature intended the Courts to consider how far each part of an original decree was "imperilled" by an appeal, and to vary the period of limitation accordingly. The view taken by this Court in the case of *Muthu* v. *Chellappa*(5) followed two early Calcutta cases, but the view taken in those cases has now been overruled by the unanimous decision of a Full Bench of the Calcutta High Court (*Gopal Chunder Manna* v. *Gosain Das Kalay*(6)). So far, therefore, as *Muthu* v. *Chellappa*(5) rests on the authority cited in it, it has now little or no force and

(1) I.L.R., 23 Mad., 60.
(2) I.L.R., 18 Bom., 203.
(3) I.L.R., 22 Bom., 500.
(4) I.L.R., 13 All., 1.
(5) I.L.R., 12 Mad., 479.
(6) I.L.R., 25 Calc., 594.

KRISTNAMA CHARIAR v. MANGAMMAL.

it does not purport to be based on an independent consideration of the language used by the Legislature. In the recent case of *Viraraghava Ayyangar* v. *Ponnammal*(1) a Division Bench of this Court dissented from the view taken in *Muthu* v. *Chellappa*(2) and agreed with the view of the Full Bench of the Calcutta High Court, but it did not refer the matter to a Full Bench as it was unnecessary for the decision of the case before them. The view of the Calcutta Full Bench was approved and followed by this Court in *Sri Rajah Venkata Chinayya* v. *Sri Perumboodori Krishnamacharyulu Garu*(3) and it is also the view that has been taken by the Bombay High Court in *Sakhalchand Rirkhavdas* v. *Velchand Gujar*(4) and *Abdul Rahiman* v. *Maidin Saiba*(5). It appears to me to be the correct view. Article 179, clauses 1 and 2, enact that the period of limitation for execution of a decree like the present is "three years from the date of the decree, or where there has been an appeal, the date of the *final* decree of the Appellate Court."

The article makes no distinction between those cases in which the whole decree is appealed against and those in which only a part of the decree is appealed against. If the Legislature thought such a distinction desirable it would not have been difficult to find apt language in which to give effect to the distinction but for the Courts to do what the Legislature has refrained from doing would be to alter the law and would, in my opinion, introduce an unnecessary element of uncertainty into the execution of decrees. The grammatical meaning of the words is simple enough and should be given effect to.

All periods of limitation are more or less arbitrary, and it is of the highest importance that they should be laid down with clearness and certainty, and that subtle distinctions not warranted by the language of the Legislature should not be introduced by the Courts.

In the cases referred to in section 230 (*a*) the period of limitation is 12 years "from the date of the decree sought to be enforced, or of the decree, if any, on appeal affirming the same." Here also no distinction is made by the Legislature in the case of

(1) I.L.R., 23 Mad., 60.
(2) I.L.R., 12 Mad., 479.
(3) A.A.A.O., No. 7 of 1885 (unreported).
(4) I.L.R., 18 Bom., 203.
(5) I.L.R., 22 Bom., 500.

a decree against a part only of which an appeal is preferred, and for the reasons above stated I do not think that any should be made.

In my opinion the period of limitation in both the cases referred to us begins to run from the date of the decree on appeal.

BHASHYAM AYYANGAR, J.—I am also of the same opinion. I see no reason whatever to depart from the strictly grammatical interpretation of the third column of article 179 of the second schedule to Act XV of 1877. An appeal may lie from a decree as a whole or from any part thereof and clause (2) of the third column of article 179 distinctly provides that where there has been an appeal—without making any distinction as to whether the appeal is against the whole decree or only against a part thereof—the period of limitation for execution of the decree begins to run from the date of the final decree of the Appellate Court. Under section 577, Civil Procedure Code, the decree of the Appellate Court will be one confirming, varying or reversing the decree appealed against. If the appeal, therefore, terminates in a final decree—whether that decree confirms, varies or reverses the decree appealed against and whether the appeal be against the whole decree or only a part thereof—the date of such final decree is the starting point of limitation for the execution of the decree. I see no anomaly whatever in this, nor any hardship to either party. It is of course open to the decree-holder to execute the decree appealed against while the appeal is pending and it is equally open to the judgment-debtor to satisfy the decree by payment or otherwise as the case may be, notwithstanding that an appeal is pending either against the whole or a portion of the decree. All that clause (2) of the third column of article 179 provides is that if a question of limitation should arise as to the execution of a decree which has been appealed against, limitation is to be computed not from the date of the original decree but from that of the appellate decree. And as it will generally lead to confusion—and in certain classes of cases even to anomalies—if limitation is to be reckoned from different starting points in respect of the execution of different parts of the same decree, the Legislature has fixed, without causing any hardship to either party, one and the same starting point.

In my opinion this is sound from a juridical point of view. When an appeal is preferred from a decree of a Court of First Instance, the suit is continued in the Court of Appeal and re-heard

KRISTNAMA CHARIAR v. MANGAMMAL.

either in whole or in part, according as the whole suit is litigated again in the Court of Appeal or only a part of it. The final decree in the appeal will thus be the final decree in the suit, whether that be one confirming, varying or reversing the decree of the Court of First Instance. The mere fact that a matter is litigated both in the Court of First Instance and again, though only in part, in the Court of Appeal, cannot convert or split the suit into two and there can be only one final decree *in that suit, viz., the decree of* the Court of Appeal. There cannot be two final decrees in such a suit, one by the Court of First Instance and the other by the Court of Appeal. Section 577, Civil Procedure Code, therefore provides that the appellate judgment may be for confirming, varying or reversing the decree appealed against. If the appeal be against a portion of the decree only and the appeal be dismissed the decree will be one confirming as a whole the decree appealed against, including the portion not appealed against and the confirmation is not limited to the portion appealed against. If such appeal be allowed, the decree appealed against will not be reversed by the appellate decree but only varied or modified and confirmed as to the rest, *i.e.*, the portion not appealed against. The portion appealed against and litigated in the Court of Appeal is varied or confirmed according as the objection taken, in the Court of Appeal, to such part of the decree prevails or fails. The rest of the decree is confirmed because no objection is raised thereto by the party concerned and it is not the function of a Court of Appeal, as distinguished from a Court of Revision, to give relief to any party who has not applied to it in the form and within the time prescribed for appeal.

When an appeal is preferred, the Court of Appeal is really seized of the whole suit though the relief given by it will be limited to the portion of the decree appealed against or objected to under section 561, Civil Procedure Code. This is very forcibly illustrated by section 13 of the Madras Civil Courts Act and the decisions thereon. Section 13 provides that from decrees of Subordinate Judges, appeals shall lie to the District Court except when the amount or value of the subject-matter of the suit exceeds Rs. 5,000, in which case the appeal shall lie to the High Court. It has been held, with reference to this, that even when the subject-matter of the appeal is far below Rs. 5,000, yet the appeal will lie to the High Court and not to the District Court, if the subject-matter of

the suit in the Court of First Instance exceeds Rs. 5,000 in value. This shows that in a case in which the Court of First Instance is subject to the appellate jurisdiction of two Courts according to certain pecuniary limits it is not the pecuniary value of the portion of the decree appealed against that determines the appellate forum, but the pecuniary value of the subject-matter of the suit in the Court of First Instance.

It was argued on behalf of the respondent that the grammatical interpretation must be departed from inasmuch as the decree may be severally appealed against in parts by different parties and the different appeals may be heard and disposed of on different dates, in which case there will be two or more decrees of the Court of Appeal bearing different dates. In my opinion, when there are different appeals from one and the same suit, they should all be finally disposed of together—which, as far as I know, is the practice—and only one decree passed in appeal. If the contingency referred to, which ought to be avoided, does happen, there will be no insuperable difficulty in adhering to the grammatical interpretation and holding that the date of the final decree referred to in clause (2) of the third column of article 179 is the date of the last of such decrees and if a question of limitation should arise in respect of the execution of any portion, time will have to be reckoned only from the date of such last decree of the Court of Appeal.