

ABDUR
RAHIM AND
AYLING, JJ.
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RAMASAMI
CHETTI
PONNA
PADAYACHI.

under mortgage and the mortgagor or his successor in interest goes on paying interest on the debt or otherwise acknowledges his liability, persons in peaceable and unchallenged possession and enjoyment of such property in assertion of their own rights, whatever the length of time during which their possession and enjoyment might have lasted, would not be secure in their title. I am of opinion that the weight of authority, as well as reason, is against the contention of the appellant and the appeal must be dismissed with costs.

AYLING, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1911.
March 30.
April 7.

H. VYDIANATHA AIYAR (COUNTER-PETITIONER), APPELLANT,

v.

K. SUBRAMANIA PATTAR (PETITIONER), RESPONDENT.*

Limitation Act (IX of 1908), art. 182—Part of a decree containing unascertained amount—Execution of whole decree three years after ascertainment—No bar—Policy of Limitation Act as to period of limitation for execution of decrees.

For the purposes of limitation regarding execution of a decree, the decree must be taken as a whole and ordinarily when a portion of the decree is not executable by reason of the fact that the amount due under that portion is left to be determined at a future time, limitation begins to run as regards execution of the whole decree only from the time of ascertainment of the amount left undetermined, even though it might have been open to the party to have executed the other portions earlier.

Haji Ashfaq Husain v. Lala Gauri Sahai, (1911) 13 C.L.J., 351; (S.C.), (1911) I.L.R., 33 All., 264 (P.O.). *Rainachalam Ayyar v. Venkatrama Ayyar*, (1906) I.L.R., 29 Mad., 46 and *Krishnan v. Nilakandan*, (1885) I.L.R., 8 Mad., 137, followed.

Gopal Chunder Mania v. Gosain Dass Kalay, (1898) I.L.R., 25 Calc., 594 (F.B.); *Krishnama Ohariar v. Mangammal*, (1903) I.L.R., 26 Mad., 91. (F.B.); *Abdul Rahman v. Maidin Saiba*, (1898) I.L.R., 22 Bom., 500 and *Gauri Sahai v. Ashfaq Husain*, (1907) I.L.R., 29 All., 623, applied.

Subramanya Chettiar v. Alagappa Chettiar, (1907) I.L.R., 30 Mad., 268, and *Nepal Chandra Sadookhan v. Anrita Lall Sadookhan*, (1899) I.L.R., 26 Calc., 888 referred to.

* Appeal Against Appellate Order No. 38 of 1910

C.M.A. No. 74 of 1903 (unreported), not followed.

A decree in a second appeal, dated 30th July 1906, was as follows:—

“Appellant (defendant) do pay respondent (plaintiff) Rs. 64-11-4 for his costs in this second appeal, Rs. 78-3-7 for his costs in the memorandum of objections and also his costs in the lower Appellate Court which will be ascertained and taxed by that Court.” The costs in the lower Appellate Court were ascertained by that Court on 1st December 1906. The application for the execution of the whole decree was made on 7th August 1909, i.e., more than three years after the decree in Second Appeal but within three years after ascertainment by the lower Appellate Court;

Held, that the execution of the decree was not barred.

The policy of the Limitation Act in the case of execution of decrees is to lay down a simple rule and to treat the decree as a whole except when the decree itself directs that different portions of the relief granted are to be rendered by the defendant to the decree-holder at different times.

Per Curiam.—Under article 182, there is only a single starting point, where there has been an appeal, review or amendment, although it might be open for a decree-holder to apply for the execution of a part of the decree before proceedings in appeal, review or amendment have terminated.

APPEAL against the order of K. IMBICHUNNI NAIR, the Subordinate Judge of South Malabar at Palghat, dated the 21st day of December 1909, in Appeal Suit No. 809 of 1909, presented against the order of U. GOVINDAN NAIR, the District Munsif of Chowghat, in Miscellaneous Petition No. 2022 of 1909 (in Original Suit No. 701 of 1901).

The facts of this case are set out in the judgment.

C. V. Ananthakrishna Ayyar for the appellant.

T. K. Govinda Ayyar for the respondent.

JUDGMENT.—The question in this case is whether the execution of the decree in S.A. No. 915 of 1903 of this Court is barred by limitation. The decree which was dated the 30th July 1906 provided that the appellant in the Second Appeal (defendant) should pay the respondent (plaintiff) “Rs. 64-11-4 for his costs in this second appeal, Rs. 78-3-7 for his costs in the memorandum of objections and also his costs in the lower Appellate Court which will be ascertained and taxed by that Court.” The costs in the lower Appellate Court were ascertained by that Court on the 1st December 1906. The application for the execution of the whole decree was presented on the 7th August 1909, that is, more than three years from the date of the High Court decree in S.A. No. 915 of 1903, but within three years after the date of the ascertainment of the costs of the lower Appellate Court by that Court. The District Munsif held that the application for execution was

BENSON
AND
SUNDARA
AYYAR, JJ.
—
VYDIANATHA
AYYAR
V.
SUBRAMANIA
PATTER.

BENSON
AND
SUNDARA
AYEAR, JJ.

VIJAYANATHA
AIYAR
2.
SUBRAMANJA
PATTER.

barred except with regard to the costs of the lower Appellate Court. The Subordinate Judge modified his order and held that no portion of the decree was barred by limitation.

It is conceded that so far as it related to the costs of the lower Appellate Court, the execution was not barred as the decree with respect to that portion became complete only within three years of the date of the application. But it is contended by the appellant that the rest of the decree is barred as execution could have been applied for with respect to it immediately after the date of the decree of this Court in Second Appeal. After careful consideration we have come to the conclusion that the decision of the lower Appellate Court is right. Article 182 of the Limitation Act prescribes the rule of limitation with respect to execution of decrees. The starting point is mentioned in the third column. Where an appeal is preferred from a decree or a review of judgment or amendment of the decree is applied for, limitation runs with respect to the execution of the whole decree only when the proceedings in appeal, review or amendment come to an end. This shows that the intention of the legislature is to treat the decree as a whole although only a part, sometimes a very small part, may be the subject of an appeal, or an application for review of judgment or amendment of decree. Different starting points for portions of a decree against the same defendant seem to be contemplated only in the case where the decree directs payments to be made on certain dates, in which case limitation will run for the enforcement of each payment from the date when it is directed by the decree to be made. Although the language of clauses 2, 3 and 4 might possibly be capable of a different construction, it is now fully established by judicial decisions that there is only a single starting point where there has been an appeal, review or amendment although it might be open in some of the cases falling within their purview for the decree-holder to apply for the execution of a part of the decree before the proceedings in appeal, review or amendment have terminated. See *Gopal Chunder Manna v. Gosain Das Kalay*(1), *Krishnyama Chariar v. Mangammal*(2), *Abdul Rahiman v. Maidin Saiba*(3), and *Gauri Sahai v. Ashfaq Husain*(4). We think that in the present case also the decree must be taken as a whole for deciding the question of

(1) (1898) I.L.R., 25 Calc., 504 (F.B.). (2) (1903) I.L.R., 26 Mad., 91 (F.B.).
(3) (1898) I.L.R., 22 Bom., 500. (4) (1907) I.L.R., 29 All., 623.

limitation. If the direction were that the costs of the lower Appellate Court should be paid when ascertained by the Subordinate Court the case might be different. We are of opinion that the decree must be interpreted as one for the payment of a certain sum of money composed of three items, and one of these items, namely, the costs of the lower Appellate Court, was not ascertained until the 1st December 1906. It was held in *Ratnachalam Ayyar v. Venkatrama Ayyar*(1), that where a decree is for the payment of a sum of money to be thereafter ascertained, limitation would run only from the date of the ascertainment of the amount, a view which has been enunciated in several other cases [see also *Krishnan v. Nilakantan*(2)]. We are of opinion that the same rule should apply where a portion only of the amount decreed is left to be ascertained in future. It has also been decided that an application for execution of a portion of a decree or against some only of the judgment-debtors would give a fresh starting point for the execution of the whole decree. See *Subramanya Chettiar v. Alagappa Chettiar*(3), and *Nepal Chandra Sadookhan v. Anwita Lall Sadhookhan*(4).

BENSON
AND
SUNDARA
AYYAR, JJ.
VIDIANATHA
AYYAR
v.
SUBRAMANIA
PATTER.

Mr. Anantakrishna Aiyar for the appellant relies on two cases in support of his contention. The first of them, *Pryag Singh v. Raju Singh*(5), does not really decide the question and need not be further considered. The other decision is a judgment of SUBRAMANIA AYYAR and BODDAM, JJ., in C.M.A. No. 74 of 1903. The decree in that case provided for the payment of costs and mesne profits, the mesne profits being left to be ascertained subsequently in execution. The application for execution was presented more than three years after the decree but within that period after the ascertainment of the mesne profits. The learned Judges held that the application was barred with respect to the costs but not with regard to the mesne profits. The judgment with reference to execution for the costs is extremely brief and no reasons are given in support of it. With all deference to the learned Judges we are unable to follow the decision. The policy of the Limitation Act in the case of execution of decrees is in our opinion to lay down a simple rule and to treat the decree as a whole except when the decree itself directs that different portions of the relief granted are

(1) (1906) I.L.R., 29 Mad., 46.

(2) (1885) I.L.R., 8 Mad., 137.

(3) (1907) I.L.R., 30 Mad., 268.

(4) (1889) I.L.R., 26 Calc., 88 S.

(5) (1898) I.L.R., 25 Calc., 208.

BENSON
AND
SUNDARA
AIYAR, JJ.

VYDIANATHA
AIYAR
v.
SUBRAMANIA
PATTER.

to be rendered by the defendant to the decree-holder at different times. Our conclusion is in accordance with the decision of the Privy Council in *Haji Ashfaq Husain v. Lala Gauri Sahai*(1). We must therefore dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Sūndara Ayyar and Mr. Justice Aylīng.

SREE KRISHNA DOSS (DECREE-HOLDER), APPELLANT,

v.

ALUMBI AMMAL (JUDGMENT-DEBTOR), RESPONDENT.*

1911.
April 28
and
May 3.

Limitation Act (IX of 1908), art. 182—Execution of decree of Presidency Small Cause Court—Section 48, Civil Procedure Code (Act V of 1908) not applicable to such court—Transfer to City Civil Court for execution of a decree more than 12 years old—Art. 182 applicable—Section 48 applicable to City Civil Court, no bar.

Although a decree may be transferred by the court which passed it, to another court, for execution, the law of limitation applicable for its execution is that applicable to the decrees of the former court, *i.e.*, of the court which passed them.

A different rule will lead to anomalous consequences.

A decree of the Presidency Small Cause Court (Madras) passed in 1896 was transferred for execution to the City Civil Court. Section 48, Civil Procedure Code, not being applicable to the Court of Small Causes: *Held*, that an application for the execution presented to the City Civil Court in 1910 was not barred, the article applicable to the case being article 182 of the Limitation Act and that the fact that section 48, Civil Procedure Code, was applicable to the City Civil Court, was immaterial.

Sambasiva Mudaliar v. Panchanada Pillai, (1908) 17 M.L.J., 441; S.C. (1908) I.L.R., 31 Mad., 24.

Tincourie Dawn v. Debendro Nath Mookerjee, (1890) I.L.R., 17 Calc., 491, and *Jogemaya Dassi v. Thackomoni Dassi*, (1897) I.L.R., 24 Calc., 473 (F.B.), followed.

Her Highness Ruckmaboye v. Lulloobhoy Mottichund, (1852) 5 M.I.A., 234, not applicable.

Per Curiam.—A transfer of a decree by the court which passed it to another court does not make the decree one passed by the latter Court. Even after transfer, the control of the execution is still left, in several respects, in the hands of the court which passed the decree (*e.g.*) recognition of assignment, application for execution against legal representative, stay of execution, issuing precepts and certificate of non-execution or partial execution, etc.

(1) (1911) 13 Calc. L.J., 351.

* Appeal Against Order No. 114 of 1910.