APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., Chief Justice, Mr. Justice Sankaran Nair and Mr. Justice Tyabji.

P. ABDUL KHADIR (SECOND COUNTER-PETITIONER), APPELLANT,

v.

A. AHAMMAD SHAIWA RAVUTHAR AND FOUR OTHERS (PETITIONERS AND COUNTER-PETITIONERS), RESPONDENTS.*

1913. March 11 and 12.

Civil Procedure Code (Act V of 1908), sec. 48—"Fraud or force of one judgment-debtor, not extending the twelve years as against others."

The fraud or force of one of several judgment-debtors in preventing execution against him of a decree enables the decree-holder to get an extension of the 12 years provided for execution of the decree by section 48, Civil Procedure Code (Act V of 1908), only as against that judgment-debtor but not as against his other co-judgment-debtors who have not been guilty of such conduct.

Per Curiam :—The policy of the Limitation Act in the matter of execution of decrees may be different.

APPEAL under article 15 of the Letters Patent against the order of PHILLIPS, J., in appeal against Appellate Order No. 45 of 1910, preferred against the order of M. J. MURPHY, the acting District Judge of North Malabar, in Appeal No. 449 of 1909, presented against the order of B. CAMMARAN NAIR, the District Munsif of Cannanore in Regular Execution Petition No. 705 of 1909.

The following facts are taken from the judgment of SUNDARA AYYAR, J.:—

These are proceedings "in execution of the decree of the District Munsif's Court of Cannanore for money in Original Suit No. 591 of 1896. The present application for execution was presented on the 27th September 1909. The decree was passed on the 15th January 1897. So this application was put in more than twelve years after the date of the decree. The judgment-debtors objected that the application was barred by section 48 of the Code of Civil Procedure, as more than twelve years had elapsed since the date of the decree and the decree-holder had made a prior application for execution. The application immediately preceding the present one was presented on the 11th January 1909 for attachment of the defendants' moveables and for their arrest. While that application was still pending, the

* Letters Patent Appeal No. 120 of 1911.

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present one was put in. In addition to the reliefs asked for in the previous application the plaintiff prayed also for the attachment of immoveable properties belonging to the defendants. The District Munsif disallowed the objection, holding that the defendants were fraudulently evading the execution of the decree and that therefore the bar under section 48, Civil Procedure Code, did not apply. On appeal the District Judge confirmed the Munsif's finding of fraud so far as the first defendant was concerned, as he had evaded the execution of warrants of arrest taken out against him in order to defeat the execution. But he held that no fraud was proved against the second defendant. He was, however, of opinion that, as fraud had been proved against the first defendant, the plaintiff was entitled to execute the decree against both the defendants."

The second defendant appealed to the High Court against the order of the District Judge. On appeal SUNDARA AYYAR, J., dismissed the execution application in so far as the new prayer for attachment of the immoveables of the second defendant was concerned, holding that the fraud of the first defendant in preventing execution did not give the decree-holder an extension of the twelve years provided by section 48 of the Civil Procedure Code as against the second defendant also while PHILLIPS, J., holding the contrary allowed the execution application as against the second defendant also. The judgments of SUNDARA AYYAR and PHILLIPS, JJ., are reported in *Abdul Khadir* v. *Shaiwa Ravuthar*(1). Owing to this difference of opinion the present Letters Patent Appeal was filed by the second defendant.

J. L. Rosario, for the appellants.

C. V. Ananthakrishna Ayyar, for the respondents.

WHITE, C.J.

WHITE, C.J.—The only statement of fact which is necessary for the purpose of dealing with the question of law as to the construction of section 48 of the Civil Procedure Code which has been raised in this appeal is, I think, this. A creditor has obtained a joint and several decree against two judgment-debtors, defendants Nos. 1 and 2. The first defendant has by force or fraud prevented the execution of the decree at some time within twelve years immediately before the date of the application to execute the decree. The second defendant has not. I think it is reasonably clear that, if we give to the words of

(1) (1912) 22 M.L.J., 35.

sub-section 2 (*a*) in section 48 their natural meaning and construe the paragraph as meaning what it says, the construction adopted by SUNDARA AYYAR, J., is the right construction. The sub-section is as follows:—"Nothing in this section shall be deemed to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application." Now the words are "the judgment-debtor." No doubt the expression "the judgment-debtor" in the singular includes the plural. But as it seems to me it includes the plural in this sense: "where the judgment-debtor has, or if there are two or more judgment-debtors, the judgment-debtors have, by fraud or force, prevented the execution of the decree, etc." That construction of the section is in accordance with the literal meaning of the words and with the well-known principle of construction, which is now embodied in the statute, that the singular includes the plural. I express no opinion as to whether, when there are two or more joint judgment-debtors, the judgment-creditor can only ask for the extension of the period of limitation when all the judgment-debtors have by force or fraud prevented the execution of the decree. That question was not argued. The contention on the one hand was that the judgment-creditor could only pray in aid the benefit of the enactment as against the judgment-debtor who had by force or fraud prevented the execution of the decree and on the other hand that in a case where a joint judgment-debtor has by fraud or force prevented the execution of the decree, etc., the judgment-creditor is not only entitled to the benefit of the enactment as against that judgment-debtor but also as against any joint judgment-debtor who has not by fraud or force prevented the execution of the decree. It seems to me that the only way in which we could make it clear that the intention of the legislature was as Mr. Anantakrishna has contended would be, to add to the sub-section a definition clause to this effect; "for the purposes of this section the judgment-debtor means the judgment-debtor who has by fraud or force prevented the execution of the decree" or any joint judgment-debtor of that debtor. That would be reading into the section a great deal which is not there and, as it seems to me

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would be doing violence to the express language of the section. The other construction, in my opinion, is in accordance with the natural meaning of the words used. Mr. Ananthakrishna Ayyar has suggested that the policy of the Limitation Act is that where a decree is alive against one of several joint debtors, it is alive against all the joint debtors. I am not sure that I am prepared to accept that as a statement of the general policy of the Act; but even if it be so, when we have on the one side what is said to be the general policy of the Act and, on the other, the express words of a section dealing with a specific matter, I think that the express words ought to prevail.

Reliance has also been placed, in support of the contention against the view adopted by SUNDARA AYYAR, J., on article 182 of the Limitation Act. Mr. Ananthakrishna Ayyar has pointed out that under paragraph 5 the time was from the date of applying in accordance with law to the proper Court for execution, and that *Explanation I* says that where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, shall take effect against them all. That seems to me to be a very different matter from the matter which we are dealing with in this appeal. The principle, I take it, is that if the judgment-creditor does something which keeps alive a joint decree as against one of his joint judgment-debtors, the decree is to be regarded as alive as against all the joint judgment-debtors and if it is alive, it is of course capable of execution. That is a very different matter from the present case which is not the case of a judgment-creditor having done something but of the judgment-debtor having done something which, as regards him, no doubt entitled the judgment-creditor to say "my time has been extended." So far as I can see, there is no reason or principle why the judgment-creditor should be entitled to say, that, as regards the men who had not prevented by fraud or force, etc., he should also have the benefit of the enactment. I cannot see that there is any equity which the judgment-creditor can set up in this case, although it may be that in the cases which are referred to in article 182 of the Limitation Act there is an equity arising by the fact that he had done something for the purpose of realising the fruits of his judgment. Here the creditor does nothing but relies upon something which one of his joint judgment-

debtors has been doing. An argument was based on paragraph 2, in the third column of article 182, a suit (a decree ?) is kept alive by the fact that an appeal has been brought and it is reasonable enough that time should begin to run in favour of a party who does not appeal not from the date of the decree of the Court of First Instance, but from the date of the decree of the Appellate Court. It seems to me that there is not only no equity in favour of the judgment-creditor but that it would be inequitable that a judgment-debtor should be deprived of the benefit of the prescribed limitation by reason of acts done by his joint judgment-debtor, over whom he has presumably no control and for whose action he is not responsible. I may refer to the principle which is embodied in the Mercantile Law Amendment Act and that is in accordance with the principle which I think is applicable here. Before the Mercantile Law Amendment Act of 1856, the English law was that where one or more of several joint debtors were beyond the seas when the causes of action arose, the time did not begin to run either in favour of those abroad or those at home until the return of the former. Section 11 of the Mercantile Law Amendment Act provided that, where the cause of action lay against two or more joint debtors, the person who was entitled to the same should not be entitled to any time within which to commence and sue against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas.

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In my opinion, SUNDARA AYYAR, J., was right and the plaintiff's application is barred as against the second defendant so far as the prayer for attachment of immoveables is concerned. The order will be modified accordingly. No order as to costs throughout.

SANKARAN NAIR, J.—I agree.

SANKARAN NAIR, J.

TYABJI, J.—I also agree.

TYABJI, J.