

KOYYAMMU
v.
KUTTIAMMOO.
—
PHILLIPS, J.

English Law on the subject of prescription, for section 8 of the English Act (2 & 3 Will. 4, c. 71) which corresponds to section 16 of the Easements Act is restricted to rights of way and water, whereas section 16 of the Indian Act is applicable to all kinds of easements. This is one instance wherein English Law has not directly applied in India, and there being this one instance, it is not so difficult to hold that in other respects also the legislature did not wish to adopt all the provisions of the English Common Law. If that be so, there is no serious objection to reading the sections I have enumerated above in a natural meaning, and understanding them as referring to the acquisition of easements against owners who are not absolute. If that is so, the easement has at any rate been acquired by the plaintiffs against the defendants and for the purpose of this suit to which the owners of the land were not parties the plaintiffs would be entitled to an injunction.

I agree therefore that the Appeal must be dismissed with costs.

K.R.

APPELLATE CIVIL.

*Before Mr. Justice Oldfield and Mr. Justice
Seshayiri Ayyar.*

1919,
January 23.

RAMARAYA SHANBOGUE (PETITIONER), APPELLANT,

v.

SHERBOTT VENKATARAMANAYYA (RESPONDENT),
RESPONDENT.*

Civil Procedure Code (Act V of 1908), O. XXI, r. 1—Payment of decree amount into Court—Notice to decree-holder—Cessation of interest, whether from date of deposit or date of service of notice.

Interest does not cease to run in respect of a decree-debt deposited in Court until the decree-holder gets notice of the deposit.

CIVIL MISCELLANEOUS SECOND APPEAL against the decree of L. G. MOORE, the District Judge of South Kanara, in Appeal No. 359 of 1917, preferred against the order of JAGANNATHA RAO S. TAGOT, the District Munsif of Mangalore, in Regular Execution Petition No. 220 of 1917 (in Original Suit No. 502 of 1914).

* Appeal against Appellate Order No. 48 of 1918.

In this case the judgment-debtor against whom there was a money decree for nearly a thousand rupees with subsequent interest at six per cent deposited in Court the whole amount of the decree together with interest calculated up to the date of deposit, and prayed for issue of notice to the decree-holder and for entry of satisfaction of the judgment-debt. On notice being served on the decree-holder he claimed interest up to the date on which he was served with notice and was in a position to draw the money out of Court. The judgment-debtor contended that interest ceased from the date of deposit. Both the lower Courts allowed interest up to the date of service of notice. The judgment-debtor appealed.

K. P. Lakshmana Rao for the appellant.

K. Yegnanarayana Adiga for the respondent.

OLDFIELD, J.—The only question for decision is whether interest ceases to run on money paid into Court for a decree-holder under Order XXI, rule 1, on the date of that payment or on the date when the decree-holder receives notice thereof.

The Code is not explicit on the point and the authority relied on by the lower Appellate Court—*Krishnaswami Chettiar v. Ramaswami Chettiar* (1)—deals with a payment under the special provisions of the Transfer of Property Act. Looking, however, to the terms of Order XXI, rule 1, Code of Civil Procedure, I observe that there would be nothing to compel compliance by the judgment-debtor with clause 2, which enjoins the giving of notice of the payment to the decree-holder, if the running of interest stopped before and independently of it. There is further no reason why the decree-holder should be deprived of compensation for being kept out of his money, because the judgment-debtor chooses a particular method of paying it to him. On these grounds I would dismiss the appeal against Appellate Order with costs.

SESHAGIRI AYYAR, J.—I agree. Mr. Lakshmana Rao has raised an interesting question of law which is *res integra*. After decree, the judgment-debtor paid the decree amount into Court with interest up to the date of the deposit. Notice as provided by Order XXI (1) (2) was given. The Court below has held that it is only from that date that the decree amount ceased to carry

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further interest. I think this conclusion is right. No doubt, as pointed out by the learned vakil for the appellant, the analogy of the Transfer of Property Act is not very helpful as the legislature has provided specially for the cessation of interest only after the service of notice. I think there is a closer analogy in Order XXIV of the Code of Civil Procedure. Rule 3 says that interest on the deposit would cease to run from the date of the notice to the defendant. That is to say, the deposit being taken to have been made up correctly to the date of the deposit, the liability for interest on the sum which by the fact of the payment the defendant acknowledges to be due to the plaintiff ceases when the latter has notice of it and is put in the way of receiving the money from Court. True, that the order in question in terms only governs payment in the course of the hearing of a suit. I do not see why the same principle should not be applied to payments in the course of execution proceedings, especially as Order XXI, rule (1) (a), does not say that by the payment satisfaction of the claim of the decree-holder is *ipso facto* to be entered. The provision for notice rather indicates that the decree-holder's rights should be affected only after he is informed that the decree amount is available for him and that he can draw it out of Court. For these reasons I agree that the appeal should be dismissed.

N.B.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

1919,
January, 31.

KUPPIER (PLAINTIFF), APPELLANT,

v.

PERIAKARUPPA KAVUNDAN (FIRST DEFENDANT),
RESPONDENT.*

Transfer of Property Act (IV of 1882), Sec. 68—Usufructuary mortgage, invalid for want of attestation—Deprivation of possession not by mortgagor but by title paramount—Suit for mortgage money, whether maintainable.

Section 68 of the Transfer of Property Act does not entitle a person, who takes a usufructuary mortgage which is invalid for want of attestation and who is deprived of his possession by title paramount and not by any act of his mortgagor, to sue for the mortgage money. The default referred to

* Second Appeal No. 1270 of 1918.