APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

PUSARAPU VENKATA REDDAYYA (PLAINTIFF), APPELLANT,

v.

THORAM YARAKAYYA AND SEVENTEEN OTHERS (DEFENDANTS), RESPONDENTS.*

1921, February 18.

Limitation Act (IX of 1908), art. 182, clause (5) and explanation I—Transfer of part of decree—Execution application by transferee—Decree kept alive also for transferor.

An application for execution by a transferee of a part of a decree keeps, by virtue of clause (5) of article 182 of the Limitation Act, the decree alive so as to enable the transferor to further execute the decree. Explanation I to that article does not apply to a case where a decree originally passed in favour of one person has afterwards come to be owned by more persons than one in severalty.

SECOND APPEAL against the decree of J. J. COTTON, District Judge of Kistna at Masulipatam, in Appeal Suit No. 102 of 1915, preferred against the decree of V. C. MASCARENHAS, Subordinate Judge of Kistna at Ellore, in Original Suit No. 35 of 1913.

P. Somasundaram for appellant.

A. Krishnaswami Ayyar and *K. Satyanarayana Murti* for respondent.

The facts are set out in the Judgment.

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SADASIVA AYYAR, J.—The plaintiff is the appellant before us in this Second Appeal. He brought the suit as the assignee of a mortgage bond executed by the first defendant in 1889 in favour of the twenty-ninth defendant's father. The validity of the assignment itself

* Second Appeal No. 2405 of 1917.

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was questioned, but the District Judge was justified in rejecting that plea, as the assignor admitted the assignment.

The suit was brought for sale of the first defendant's rights in the mortgaged properties and the Subordinate Judge decreed the suit, the first defendant's interest being one-fourth share of the plaint properties as established in the preliminary decree for partition in a suit of 1897, brought by the first defendant as adopted son against the after-born natural son of his father. That decree for partition was dated January 1902 and it decreed partition of the immoveable properties in A and B schedules and of the moveables in C and D schedules to the plaint. The first defendant transferred that portion of the decree which related to the moveables in favour of one Seshamma and that transferee had kept alive at least her portion of the decree by successive applications till 19th April 1913, the present suit having been brought on the 23rd June 1913.

The District Judge dismissed the plaintiff's suit on the ground that the first defendant had lost all rights in the mortgaged properties, that is, the one-fourth share in the lands decreed to him under the partition decree (so far as the interests retained by him after assignment to Seshamma were concerned) by his not having made any application for the execution of that decree within the time prescribed by law. He further held that his rights were also barred by the adverse possession of the lands by his father's natural son.

This second ground of decision cannot be supported and is not relied on by the learned vakil for the respondent.

Then as regards the first ground, article 182 of the Limitation Act, clause 5, allows a decree-holder the right to execute his decree if within three years of the

date of his application there had been a previous application in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree. Seshamma was recognized as a decree-holder and she had filed an application on 16th April 1913 for execution of a portion of the decree transferred to her and hence if clause (5) is construed according to the plain import of the language used in the clause, the first defendant was entitled on the date of this suit to apply for execution of the decree as regards the A and B schedule immoveable properties mentioned in the decree, and the learned District Judge's view that the first defendant's right to execute this decree had become barred seems therefore to be clearly erroneous. But it is contended that by reason of the first sentence in explanation (1) to article 182, the first defendant cannot treat the application of Seshamma as an application made in accordance with law to enure for the first defendant's benefit also. The first sentence is:

"Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause (5) of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by."

This clause, it must be admitted, does not in terms apply to the present case because the decree was not passed severally in favour of more persons than one. I do not think it is permissible to restrict the provisions of clause (5) which are intended for the benefit of decree-holders by extending the words of the first sentence of explanation (1) to cases not falling within its exact language (as is sought to be done by the learned vakil for the respondent and as was sought to be done by the successor of the learned District Judge who decided the Appeal in the lower Court and submitted the findings

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which we had called for). The suggested extension implies that the legislature intended that not only where the decree was passed severally in favour of more persons than one, but also where the decree though passed only in favour of one, person was afterwards owned by more persons than one in severalty, owing to the conduct of the original single decree-holder or otherwise, the application mentioned in clause (5) should take effect in favour only of that person, among those who afterwards became entitled to own the decree, who made it. As I said, I am not prepared to so extend the effect of explanation I. My above view seems to be supported by *Ramasami* v. *Anda Pillai*(1) which is the judgment pronounced on review of *Ramasami* v. *Anda Pillai*(2).

In the result, the District Judge's decision is reversed and the decree of the Subordinate Judge restored with costs here and the lower Appellate Court. Time for redemption is extended by six months from this date.

SPENCER, J. SPENCER, J.—I agree.

N.R.

(1) (1891) I.L.R., 14 Mad., 252. (2) (1890) I.L.R., 13 Mad., 347.