hold that there is other sufficient cause why no order should be made would be to ask us to do a thing that we ought not to do especially in the circumstances of this case. VENKATA-RAMA AIYAR v. BURAN SHERIFF. ODGERS, J.

As to the costs one set has been paid into the Official Receiver's hands and the other set is under stay. It therefore cannot be said that this whole amount is due or can be immediately set off against Rs. 1,059.

I think therefore this civil miscellaneous appeal must fail and be dismissed with costs.

MADHAVAN NAYAR, J.—I agree and have nothing to add. MADHAVAN NAYAR, J.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Sundaram Chetti.

KANNAN (7TH RESPONDENT), APPELLANT, 1926, September 14.

v.

AVVULLA HAJI (PETITIONER), RESPONDENT.*

Limitation Act (IX of 1908), art. 182 (5)—Application for delivery by decree-holder-purchaser, whether a step in aid.

An application by a decree-holder-purchaser for delivery of property purchased by him in execution, is a step in aid of execution within article 182, clause (5) of the Limitation Act (IX of 1908). *Lakshmanan Chettiyar* v. *Kannammal*, (1901) I.L.R., 24 Mad., 185, followed.

In order that an application by the decree-holder should serve as a step in aid, it is not necessary that it should be made in a pending execution application. *Kunhi* v. *Seshagiri*, (1882) I.L.R., 5 Mad., 141, followed. In these matters the principle of *stare decisis* is applicable.

* Appeal against Appellate Order No. 142 of 1924.

KANNAN v. AYVULLA HAJI.

APPEAL against the Order of the District Court of North Malabar at Tellicherry in Appeal Suit No. 529 of 1923 preferred against the Order of the Principal District Munsif of Badagara in Regular Execution Petition No. 708 of 1922 in Original Suit No. 951 of 1915.

D. A. Krishna Variar for Appellant.

T. S. Viswanatha Ayyar for Respondent.

JUDGMENT.

The question in this appeal is whether an application under Order XXI, rule 95, for delivery of property by a decree-holder who has purchased the property in execution of his own decree is a step in aid of execution within the meaning of the expression in Article 182, clause (5) of the third column of the Limitation Act. The argument of Mr. Krishna Variar for the appellant may be summarized under the following heads:—

1. *Lakshmanan Chettiyar* v. *Kannammal*(1), which is a case in point, is opposed to the decisions before and after it.

2. The expression "purchaser at a sale in execution of a decree" in Article 138 of the Limitation Act is equally applicable to a decree-holder who purchases property in execution of his own decree as well as to a person who is a stranger to the decree, and therefore the former should be held to occupy the same position as the latter in regard to applications made after the court sale.

3. When the judgment-debtor's property is purchased in court sale by the judgment creditor the decree is wholly or partially satisfied and thereafter there is

(1) (1931) I.L.R., 24 Mad., 185.

no decree to be executed to the extent of the value of the property sold.

4. An application by a decree-holder can be a step in aid of execution only when an execution application is actually pending. Such an application cannot be said to be pending when a decree has been satisfied by the decree-holder purchasing the property of the judgment-debtor in court sale.

In *Lakshmanan Chettiyar* v. *Kannammal*(1), it was held that an application by the decree-holder for delivery of the lands purchased by him in execution of his decree was a step in aid of execution as the execution was not complete so long as the purchaser had not secured possession. This case is directly in point and the authority of this case has not been challenged for quarter of a century. It would not be right to question the correctness of a decision, which has been accepted as laying down the law correctly for a number of years. The Court should follow the principle of *stare decisis* in deciding points already decided by the Court. A decision of a Bench on a point of law should be held to be good till the Privy Council upsets it or takes a view opposed to it or a Full Bench of the High Court overrules it. As the authority of *Lakshmanan Chettiyar* v. *Kannammal*(1) is said to be opposed to the decisions preceding it and decisions subsequent to it, we proceed to consider whether it is so or not.

It is urged that the decisions in *Ramanadhan Chetti* v. *Kunnappu Chetti*(2), and in C.M.A. No. 122 of 1895 (unreported) are against the view of this Court in *Lakshmanan Chettiyar* v. *Kannammal*(1). In *Ramanadhan Chetti* v. *Kunnappu Chetti*(2), the facts were :—

(1) (1901) I.L.R., 24 Mad., 185. (2) (1870) 6 M.H. C.R., 304.

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The defendant became the purchaser of the property sold in execution of a decree and the price for which the sale took place was sufficient to satisfy the decree. Instead of paying the purchase money into Court the defendant retained the whole sum with the assent and knowledge of the plaintiff upon the understanding that he should give a receipt to the Court for himself and on behalf of the plaintiff and afterwards should pay to the plaintiff his portion of the amount decreed. The defendant presented a petition to that effect to the Court and obtained the necessary certificate confirming the sale. The defendant having failed to pay the amount to the judgment-creditor to which he was entitled, the latter brought a suit for the amount. It was contended that section 11 of Act XXIII of 1861 corresponding to section 47 of the present Code was a bar to the suit. The learned Judges held that the plaintiff's suit was not barred. There is no doubt an observation of the learned Judges that the execution proceedings were completely at an end and no subsequent application under the decree could have been entertained by the Court which executed it. But the observation of the learned Judges should be considered in connexion with the facts of the case. It is not proper to rely upon one or two sentences in a judgment without reference to the facts of the case. In that case the decree-holder consented to take the amount of the decree from the auction purchaser and allowed satisfaction of the decree to be entered up. The auction purchaser not having paid the money, he had to bring a suit. The decree having been satisfied there was no decree to be executed. It would be the same thing if a decree-holder, instead of executing the decree, takes a fresh document from the judgment-debtor in satisfaction of the decree; and in such a case if the judgment-debtor fails to pay the amount under the

document, can the decree-holder execute the decree in satisfaction of which he took the document? It is an arrangement subsequent to the passing of the decree between the judgment-creditor and the judgment-debtor whereby the decree is satisfied, and if the subsequent agreement is not acted up to, the only remedy is to enforce the agreement. *Ramanadhan Chetti* v. *Kunnappu Chetti*(1) therefore is not an authority for the contention that the decree-holder's application in this case is not a step in aid of execution, nor is it against the view of the learned Judges in *Lakshmanan Chettiyar* v. *Kannammal*(2) In C.M.A. No. 122 of 1895 SHEPHARD, J., sitting as a single Judge followed the decision in *Ramanadhan Chetti* v. *Kunnappu Chetti*(1). But the facts of the case were not the same as those in *Lakshmanan Chettiar* v. *Kannammal*(2). In C.M.A. No. 122 of 1895 the facts were as follows:— The second defendant in the case objected to the delivery proceedings on the ground that the purchaser got possession of the lands sold to him and that the Court should ascertain the price and position of the plots sold and direct delivery of possession. SHEPHARD, J., held that such an application did not lie inasmuch as there had been a sale and the decree-holder was put in possession, and in the circumstances the execution came to an end because the sale itself was not questioned. It is difficult to see how this decision has any bearing on the question in *Lakshmanan Chettiyar* v. *Kannammal* (2). It may be noted in passing that SHEPHARD, J., who decided C.M.A. No. 122 of 1895, was one of the Judges who decided *Lakshmanan Chettiyar* v. *Kannammal* (2) in 1900. *Kuppuswami Chettiar* v. *Rajagopala Ayyar* (3) is strongly relied upon as supporting the appellant's contention. In that case the judgment-debtor

(1) (1871) 6 M.H.C.R., 304. (2) (1901) I.L.R., 24 Mad., 185.
(3) (1922) I.L.R., 45 Mad., 466.

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had made an application to the Court for entering up satisfaction. The decree-holder had objected to satisfaction of the decree being entered and filed a statement called counter statement denying the receipt of the decree amount and asking that the petition should be dismissed. It was contended that the counter-statement was a step-in-aid of execution. AYLING and VENKATASUBBA RAO, JJ., held that the statement was not a step in aid of execution. The observation of AYLING, J., who delivered the judgment of the Court that an application to be a step-in-aid of execution should be made in a pending execution application is strongly relied on. AYLING, J., differs from the observations of RAMESAM, J., in *Sankara Nainar* v. *Thangamma*(1). With very great respect we are unable to agree with the view of AYLING, J., that an application in order to be a step-in-aid of execution should be made in a pending execution application. We shall deal with this point specifically under the fourth head. The facts of the case in *Kuppuswami Chettiar* v. *Rajagopala Ayyar*(2) are distinguishable from the present. In that case the so-called counter-statement was not an application to have the decree executed or to enable the Court to do anything which would further the execution of the decree. As we have observed, the observations in a judgment should be considered in connexion with the facts of the case. If *Kuppuswami Chettiar* v. *Rajagopala Ayyar*(2) is considered as an authority in favour of the appellant we should respectfully dissent from it. But we hold that this is not an authority on the point now in question. *Balaguruswami Naicken* v. *Guruswami Naicker*(3), to which one of us was a party is also relied upon. In that case the mortgagee decree-holder applied for the payment out of a sum of money in Court which was not realized

(1) (1922) I.L.R., 45 Mad., 202. (2) (1922) I.L.R., 45 Mad., 466.
(3) (1925) 48 M.L.J., 506.

in execution of the decree. It was held that that application was not a step-in-aid of execution. The observation at page 509 that "Where an act of the plaintiff is not in furtherance of execution or in a pending execution it cannot be said to be a step-in-aid of execution" does not help the appellant. It is clearly stated that the act must either be in furtherance of execution or in a pending execution and the passage cannot be twisted to mean that the application should be in a pending execution application. That case therefore is not against the decision in *Lakshmanan Chettiyar* v. *Kannammal*(1). The decision in *Kuppuswami Chettiar* v. *Rajagopala Ayyar* (2) was followed by another Bench of this Court in C.M.A. No. 120 of 1923. The facts in that case were very similar to the facts in *Kuppuswami Chettiar* v. *Rajagopala Ayyar*(2). There also the judgment-debtor applied to the Court to have satisfaction of the decree entered and the decree-holder put in a statement objecting to the satisfaction being entered. The Court held that the filing of such statement was not a step-in-aid of execution. The learned Judges, PHILLIPS and MADHAVAN NAYAR, JJ., negatived the contention that an application in order to be a step-in-aid of execution should be made in a pending execution application. It is clear from the above discussion that there is no case so far as this High Court is concerned which is against *Lakshmanan Chettiyar* v. *Kannammal*(1) or which questions its correctness.

The argument that the expression "purchaser at a sale in execution of a decree" in Article 138 covers the case of a judgment-creditor who purchases the property in execution of his own decree is untenable. It is well settled that a decree-holder who purchases property in

(1) (1901) I.L.R., 24 Mad., 185. (2) (1922) I.L.R., 45 Mad., 466.

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execution of his own decree cannot bring a suit for possession of the property purchased by him. Article 138 of the Limitation Act must be read along with the provisions of the Civil Procedure Code. Section 47 of the Civil Procedure Code bars a suit by a decree-holder for possession of the property purchased by him in execution of his own decree. Vide *Kattayat Pathunayi* v. *Raman Menon*(1), *Sandhu Taraganar* v. *Hussain Sahib*(2), and *Muttia* v. *Appasami*(3). To hold that an application like the present is not an application in execution of a decree would be tantamount to holding that the above decisions are incorrect; for it has been consistently held that when the decree-holder applies for delivery of possession of the property purchased by him, the Court should consider the objections and an appeal lies under section 47 against the order made by the executing Court and there is no warrant either in principle or in authority to hold a different view.

The contention that there is nothing to be executed after the decree-holder purchases the property in execution of the decree is denying the decree-holder a right to which he is entitled. The mere fact that he purchases the property of the judgment-debtor is not *pro tanto* satisfaction of his decree. He is allowed to give credit for the value of the property purchased by him, but that alone would not be sufficient to satisfy the decree. Till he obtains possession it cannot be said that his decree is satisfied to the extent of the value of the property purchased. He has to apply to the Court for delivery of possession. The contention that the moment he buys the property of the judgment-debtor he ceases to be the decree-holder and assumes the capacity of a stranger purchaser is not supported by any authority.

(1) (1903) I.L.R., 26 Mad., 740. (2) (1905) I.L.R., 28 Mad., 87.
(3) (1890) I.L.R., 13 Mad., 504.

When the law prescribes a certain course to be pursued by the decree-holder even when he becomes the purchaser of the property it is not open to rely upon the expression used in Article 138 of the Limitation Act and to hold that his capacity as decree-holder ceases the moment he becomes the purchaser in Court sale. We hold that the execution is not complete till the decree-holder obtains possession of the property purchased by him in execution of his decree.

An act or an application in order to be a step-in-aid of execution need not be in a pending execution application. This point was decided so far back as *Kunhi* v. *Seshagiri*(1), and it is too late in the day to question the principle of that decision. In that case the judgment-creditor applied to the Court which passed the decree for a certificate that a copy of the Revenue Register was necessary, to enable him to obtain such copy from the Collector's office and thereupon to execute the decree by attaching the land. It was held that that application was a step-in-aid of execution. INNES, J., observed at page 143

"I agree with the observations in *Chunder Coomar Roy* v. *Bhogebutty Prosonno Roy*(2), that any application in furtherance of an application to put a decree into execution may be held to be an application to enforce the decree".

MUTTUSWAMI AYYAR, J., concurred in this view. This case was followed in *Abdul Kadar Rowthar* v. *Krishnan Malaval Naiyar*(3). In *Sankara Nainar* v. *Thangamma* (4), RAMESAM, J., observed

"In my opinion there is no warrant for the view that an application to take a step-in-aid of execution should be made in execution".

We entirely agree with the observation of RAMESAM, J.

(1) (1882) I.L.R., 5 Mad., 141. (2) (1873) I.L.R., 3 Calc., 235 at 238.
(3) (1915) I.L.R., 38 Mad., 695. (4) (1922) I.L.R., 45 Mad., 202.

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When the decisions of our own High Court are almost unanimous as regards a certain point it is unnecessary to consider what the views of the other High Courts are on that point. We may, however, remark that the views of the Bombay and Calcutta High Courts are in accordance with our view. In *Sadasiva Bin Maharu* v. *Narayan Vithal*(1), the point before us was specifically decided and in *Kailash Chandra Tarfdar* v. *Gopal Chandra Poddar*(2), a Full Bench of the Calcutta High Court held the same view as that in *Lakshmanan Chettiar* v. *Kannammal*(3). There are conflicting views in the decisions of the Allahabad High Court. The Patna High Court no doubt takes a different view.

On a careful consideration of the cases on the point we have no hesitation in answering the question in the affirmative. The appeal fails and is dismissed with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Jackson.

1926, October 27.

VITTAL RAO AND ANOTHER, MINORS, BY GUARDIAN MADHURAMMA (PETITIONERS), APPELLANTS,

v.

R. HANUMANTHA RAO AND 7 OTHERS (RESPONDENTS), RESPONDENTS.*

Sec. 4, Succession Certificate (Act VII of 1889)—Insurance money payable after death, whether a "debt" due to the deceased within sec. 4.

Under a policy of insurance, the policy amount was payable to the assured if he attained a stated age or to his representatives

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* Appeal against Order No. 510 of 1925.

(1) (1911) I.L.R., 35 Bom., 452. (2) (1926) 43, C. L.J., 345.

(3) (1901) I.L.R., 24 Mad., 185.