APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Devadoss.

PARAMESWARAN NAMBUDIRI AND ANOTHER (RESPONDENTS 1 AND 6), APPELLANTS,

1928, February 1.

v.

SESHAN PATTER AND OTHERS (PETITIONERS AND RESPONDENTS 2 TO 5), RESPONDENTS.*

Indian Limitation Act (IX of 1908), sec. 15, art. 182, Explanation I—Joint judgment-debtors—One of them adjudicated insolvent—Order of adjudication, whether amounts to stay of execution against insolvent or other judgment-debtors—Stay of execution against one judgment-debtor, whether excludes period of limitation against another joint judgment-debtor under sec. 15—Computation of limitation—Deduction of time under sec. 15.

Where a decree against joint-debtors was stayed as against one of them, the period during which the stay had effect cannot be deducted under section 15 of the Limitation Act, 1908, in computing the period of limitation as regards an application for execution against the other joint judgment-debtors.

Article 182, explanation I of the Limitation Act, 1908, cannot be regarded as if it were a general provision of the Act, or as an explanation annexed to section 15 of the Act. *Vellayyan Chetty* v. *Muthayya Chetty*, (1921) 13 L.W., 59, dissented from.

Semble : An order adjudicating a judgment-debtor as an insolvent does not operate as an order staying execution of the decree against him.

APPEAL against the appellate order of the District Judge of South Malabar in A.S. No. 17 of 1926, preferred against the order of the Subordinate Judge of Ottapalam in E.P. No. 272 of 1925 in O.S. No. 476 of 1913 on the file of the District Munsif of Palghat.

* Civil Miscellaneous Second Appeal No. 37 of 1927.

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The material facts appear from the Judgment.

The Advocate-General (*T. R. Venkatarama Sastri*) with *P. S. Narayanaswami Ayyar* and *P. S. Ramachandra Ayyar* for appellants.—The question in this case is whether the decree-holder can deduct the time occupied by (1) the pendency of the insolvency proceedings from 1914 to 1919, and (2) the pendency of the suit against the Official Receiver instituted by the members of the tarwad from 1919 to 1920. As regards the second point, the suit was only for a declaration that the tarwad properties were not liable to be sold and that the debts were not binding on the tarwad. There was no injunction against the respondent from executing the decree; *Satyanarayana Brahmam* v. *Seethayya*(1).

There is no abatement of insolvency proceedings by the death of the insolvent and no question of annulment; if insolvency were a bar to execution of the decree, it is a bar even now.

Insolvency of a judgment-debtor does not operate as a bar to execution as a stay of execution, even against the insolvent, as execution can be had against him with the leave of Court. Section 15 of Limitation Act, is no bar; *Ramaswami Pillai* v. *Govindasami Naiker*(2), *Sidhraj Bhojraj* v. *Alli Haji*(3).

In any event, the insolvency of the judgment-debtor (karnavan) is not a bar to execution against the tarwad properties. Insolvency of the karnavan is in his personal capacity; the decree can be executed against tarwad properties, in spite of the insolvency. Section 15 of the Limitation Act does not apply where execution can be had with the leave of Court, or against a joint judgment-debtor, against whom there is no injunction.

B. Sitarama Rao (with *N. R. Sesha Ayyar*) for respondent:—Insolvency operates as a stay of execution. The decisions in 42 Mad., 319, and 47 Bom., 244, are wrong. Section 15, Limitation Act, applies to conditional stays also. Section 15 should be liberally construed and applies to all cases where there is in effect any stay. Execution against one joint judgment-debtor keeps alive the decree as against the other joint judgment-debtor as well. Similarly stay of execution against the karnavan personally operates as a stay against the tarwad as well, and the decree against the tarwad is kept alive. Release of a judgment-debtor under section 55, clause 3, Civil Procedure

(1) (1927) I.L.R., 50 Mad., 417. (2) (1919) I.L.R., 42 Mad., 319.
(3) (1923) I.L.R., 47 Bom., 244.

Code, operates as a stay of execution, as he should be released from arrest under the section. This point has been expressly decided in *Vellayyan Chetty* v. *Muthayyan Chetty*(1). There is no limitation under the insolvency law from the date of the application for adjudication; and if the debt is kept alive in insolvency, it is also kept alive under the general law. The provisions of article 182, explanation I is a general rule of exemption under the Limitation Act.

The Advocate-General in reply.—The case of *Vellayyan Chetty* v. *Muthayyan Chetty*(1) is wrongly decided. There is no general principle in the law of limitation, that when a proceeding is kept alive against one judgment-debtor, it is not barred against another joint judgment-debtor. No such principle can be extracted from article 182, explanation I, and be engrafted into section 15 of the Limitation Act. The Limitation Act negatives such a general principle by the provisions of sections 19 and 20 of the Act. An argument based on article 182, explanation I, was negatived as inapplicable to a case falling under section 48, Civil Procedure Code. See *Abdul Khadir* v. *Ahammad Shaiwa Ravuthar*(2).

JUDGMENT.

The facts of this case may be stated as follows: In O.S. No. 476 of 1913 on the file of the District Munsif's Court of Palghat the 1st respondent obtained a decree against one Narayanan Akkitheripad who was the karnavan of the Kakkat Mana (a Nambudri family). The decree was dated 16th March 1914. By M.P. No. 1068 of 1914 the decree-holder applied to arrest the defendant. He was arrested on 27th July 1914 but was let off some time after, to take insolvency proceedings, on furnishing security. The judgment-debtor then filed I.P. No. 11 of 1914. He was adjudicated an insolvent on 31st August 1914. In 1916 the junior members of the defendant's family filed a suit impleading the Official Receiver for a declaration that the property in the hands of the said Narayana belonged to the family, that

(1) (1921) 13 L.W., 59. (2) (1915) I.L.R., 38 Mad., 419.

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the debt was his personal debt and that the family was not liable for it. That suit was filed on 18th December 1916 in the Subordinate Judge's Court of Calicut. It was afterwards transferred to the District Court of South Malabar which gave the declarations sought by the plaintiff, one of them being "that the said properties are not liable for the debts described in the aforesaid I.P. No. 11 of 1914 as they were not contracted for tarwad necessity". This decree was dated 2nd May 1919. Meanwhile in February 1919 the insolvent died. There was an appeal to the High Court (A.S. No. 353 of 1919). The High Court confirmed the decree of the Judge subject to one modification, namely, one of the declarations granted, that is the one quoted above, was deleted. The decree of the High Court was dated 7th December 1920. On 21st August 1922 a petition was filed for bringing his legal representative on record for purposes of execution. This was ordered without notice. On 9th February 1923, by E.P. No. 58 of 1923 the decree-holder applied to execute the decree against the family represented by the legal representatives. The objections now taken were then also taken but were not decided. The present Petition E.P. No. 272 of 1925 was filed on the 6th April 1925. The defendants' representatives raised the objection that the application is either incompetent or at any rate is barred by limitation. The Subordinate Judge and on appeal the District Judge overruled the defendant's objections. Hence this second appeal.

We may start with the position that the decree in O.S. No. 476 of 1913 was obtained against Narayanan in two capacities: (1) personally and (2) as manager of the family. It was as if there were two defendants in the case, the 1st defendant being Narayanan himself and the 2nd defendant being the Kakkat Mana

represented by its manager Narayanan. The family was a judgment-debtor and the decree was executable against the family. But the family was not directly on the record; it was on record as represented by Narayanan. When Narayanan died in February 1919, other persons had to be brought on record to represent the family. They were so brought in August 1922. But, except that there was a change in the person representing the family, the family was a judgment-debtor throughout. If the execution petition of 1923, E.P. No. 58 of 1923, was in time, the present petition which was filed within three years from it is also in time. Mr. B. Sitarama Rao, the learned vakil who appeared for the respondents, and who argued the case with his usual fairness and considerable ingenuity contended that the petition of 1923 was not barred. He contended (1) that the insolvency proceedings operated as an order staying execution of the original decree in the suit of 1913 within the meaning of section 15 of the Limitation Act, and (2) that, though the stay order may be as regards one judgment-debtor only, still, for the purposes of section 15 of the Limitation Act, the period from the date of the insolvency petition in August 1914 up to the death of the insolvent in February 1919 should be excluded from computation not only against the insolvent, but as against the family also. He also contended that the period between 2nd May 1919, the date of the District Judge's decree in the suit of 1916, and 7th December 1920, the date of the High Court's decree, should be excluded because during that period the District Judge's decree prevented his taking out execution. If these periods are excluded from computation the application of August 1922 was in time, being within three years from the date of the first execution petition of 27th July 1914.

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On the first point the learned Advocate-General who appeared for the appellants contended that an order adjudicating a person as an insolvent does not operate as an order staying execution of the decree against him; and he relied on *Ramaswami Pillai* v. *Govindaswami Naicker*(1), a case under the Provincial Insolvency Act III of 1907 followed in *Sidhraj Bhojraj* v. *Alli Haji*(2), a case under the Presidency Towns Insolvency Act III of 1909. He contended that an order to operate as a stay order must be an order completely and not partially stopping execution of the decree, and, as the decree may be executed with the leave of the Court even after insolvency, he contended that the insolvency proceedings did not operate as a stay order within the meaning of section 15. It may be observed that under the Act V of 1920, insolvency proceedings can operate only as a partial stay, for, unless the insolvent is protected by a special order they do not operate as staying execution regarding the person, but under the Act of 1907 they did operate to stop execution against person and property except that with the leave of the Court, execution may proceed. Mr. Sitarama Rao contended that the two decisions above mentioned are wrongly decided, and he relied upon a number of decisions to show that a partial stay order may be governed by section 15 of the Limitation Act. We think it is unnecessary to discuss this question any further, because we think the second contention of the respondent must fail and the appeal must be allowed.

The second contention of Mr. Sitarama Rao is that, where a stay order is expressly limited only to one judgment-debtor and permits execution against other judgment-debtors, still the period during which the stay

(1) (1919) I.L.R., 42 Mad., 319. (2) (1923) I.L.R., 47 Bom., 244.

order had effect must be excluded under section 15 of the Limitation Act even as regards execution against other judgment-debtors in computing the period of limitation, when they are joint judgment-debtors. In the present case there is no doubt that Narayanan and his Mana are joint judgment-debtors. He therefore contends that, though the insolvency proceedings did not stop execution against the family, and he might have taken out execution during all the time from March 1914 up to August 1923 without any obstacle, still for the purpose of computation the period from August 1914 to February 1919 must be excluded. For this position he relies on the decision in *Vellayyan Chetty* v. *Muthayya Chetty*(1). In that case the facts are that a decree was passed against several judgment-debtors. The first application was dated 16th August 1910. As against the 1st defendant execution of the decree was suspended between 23rd August 1910 and 10th September 1910. There was another application for execution on 30th August 1913 and a third application on 26th February 1916. The question in that case was whether the last application was barred. The Subordinate Judge held that it was in time so far as the 1st defendant was concerned but, so far as the other judgment-debtors were concerned, it was barred. There was an appeal to the High Court. The respondents were not represented before the High Court—a fact noticed by the learned Judges who decided the case with this remark "it is unfortunate that in this case we have not the advantage of hearing any argument on behalf of the respondents". The learned Judges held that the period between 23rd August and 10th September 1910 should be deducted not only as against the first

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defendant but also as against other judgment-debtors. Prima facie this looks somewhat anomalous. The limitation law is primarily a law for the prevention of laches, and it looks somewhat anomalous to say that while execution can be taken out against a person throughout a certain period a part of that period should be excluded from computation simply because there is a stay order in respect of another person to which section 15 of the Limitation Act applies and which should therefore be excluded from computation, certainly, so far as that other person is concerned. This result is arrived at by the learned Judges by reliance on article 182, explanation I, which says that in the case of joint debtors an application for execution against one may be regarded as an application for execution against all. If the explanation directly applies to the case then there is no question that the case is correctly decided; but the explanation does not apply to the case before us nor could it apply to the facts of *Vellayyan Chetty* v. *Muthayya Chetty*(1). In that case the application of 30th August 1913 was obviously barred against other judgment-debtors, because it was more than three years from the first application, dated 16th August 1910, unless the period between 23rd August and 10th September can be excluded even as against other judgment-debtors. For the purpose of such exclusion the explanation to article 182 cannot help because that explanation does not enable one to exclude a certain period from computation. It only enables an application against one judgment-debtor to operate against others also. It has nothing to do with computation. But the learned Judges seem to have relied on the explanation to article 182 as if it was an explanation also to section 15 and to

(1) (1921) 13 L.W., 59.

have extracted a general principle underlying the Limitation Act that if a period is to be excluded from computation as against one judgment-debtor, it should be excluded from computation as regards the other joint judgment-debtors also, as if such underlying principle was involved in the explanation. In the first place, the reasoning involved transposes the explanation to article 182 into a general section of the Limitation Act and certainly into an explanation to section 15—a process which is not permissible. Secondly, it is very clear that there is no such general principle in the Limitation Act that if a certain period is to be excluded as regards one judgment-debtor it should be excluded as regards other joint judgment-debtors also. Section 21 of the Act shows that where a fresh starting period of limitation has to be used for one judgment-debtor under sections 19 and 20 the benefit of these provisions cannot be used against other judgment-debtors even though they are joint judgment-debtors, unless acknowledgment or payment is made on behalf of all by a person duly authorized for the purpose. Mr. Sitarama Rao next invoked the analogy of section 48 of the Civil Procedure Code. Here again the analogy fails him for it has been held by a bench of three Judges in *Abdul Khadir* v. *Ahammad Shaiwa Rowther*(1) (Letters Patent Appeal) that for the purpose of section 48 of the Civil Procedure Code while the period during which the decree-holder was prevented from executing the decree by the fraud of one judgment-debtor should not count against the decree-holder so far as that judgment-debtor is concerned, the benefit of the section cannot be extended as against other judgment-debtors who were not guilty of such fraud. The learned Judges relied on

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Subramanya Chettiyar v. *Alagappa Chettiar by Agent Palaniappa Chetti*(1), as an authority for their conclusion; but the decision in *Subramanya Chettiar* v. *Alagappa Chettiar by Agent Palaniappa Chetti*(1) was simply a decision on explanation I to article 179 corresponding to the present article 182. That case was certainly correctly decided. We have no doubt that if the facts are such that the explanation to article 182 directly applies to them, then limitation even against other judgment-debtors is saved. But in *Vellayyan Chetty* v. *Muthayya Chetty*(2), the question is not whether an application against one should be regarded as an application against all, for which position only the decision in *Subramanya Chettiar* v. *Alagappa Chettiar by Agent Palaniappa Chetti*(1) is an authority, but whether the period which should be excluded from computation because there was a stay order against one judgment-debtor should be excluded from computation as against the other judgment-debtors even if there is no stay order against them. The decision in *Subramanya Chettiar* v. *Alagappa Chettiar by Agent Palaniappa Chetti*(1) is no authority for such exclusion from computation and we do not think it was correctly invoked as authority by the learned Judges who decided *Vellayyan Chetty* v. *Muthayya Chetty*(2) for their conclusion. We think that in that case the application of 30th August 1913 was barred as against the other judgment-debtors and therefore the application of 26th February 1916 also was barred. The case stands alone in the reports and has never been followed. We think it is incorrectly decided. It is easy to give examples of the very anomalous and startling results to which it would lead if the position in that case were accepted. The case

(1) (1907) I.L.R., 30 Mad., 268. (2) (1921) 13 L.W., 59.

where only one defendant appeals and the others do not appeal and the decree is not executed for several years against the non-appealing defendants but can afterwards be executed by reason of the appellate decree is only an apparent exception to our view, for that case is governed by article 182, clause (2) of the third column, the appellate decree being the real decree that is executed for the purpose of limitation. But apart from such case which is specially provided for in the Act, all cases where the decree can be executed against one defendant but cannot be executed against another defendant have different consequences for each set of judgment-debtors. We therefore think with great deference to the learned Judges that the case in *Vellayyan Chetty* v. *Muthayya Chetty*(1) was incorrectly decided, and if so the application of the decree-holder in this case of February 1923 (E.P. No. 58 of 1923) was barred by limitation and therefore the present application is also barred by limitation.

We allow the appeal and dismiss the application with costs throughout.

This decision does not preclude the petitioner from taking such steps as he is entitled to, in insolvency.

K.R.

(1) (1921) 13 L.W., 59.