

RAMANATHAN
CHETTY
v.
ALAGAPPA
CHETTY.

I think, accordingly, that the learned Subordinate Judge is right in his view that no question of limitation arises, as well as in the construction which he has placed upon the disputed passage in the decree. It is unnecessary for me to add therefore that, even had I felt less convinced of these propositions, I should much have doubted the desirableness of interfering in revision. The Civil Revision Petition is dismissed with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Madhavan Nair.

1928,
July 19.

VAPU ROWTHER (DEPENDANT—COUNTER-PETITIONER),
PETITIONER,

v.

SIVAKATAKSHAM PILLAI (PLAINIFF—PETITIONER),
RESPONDENT.*

*Indian Limitation Act (IX of 1908), art. 182, cl. (5)—
Application by decree-holder for leave to bid and to set off
price against decree amount—Step in aid of execution of a
decree.*

An application for leave to bid and to set off the price against the decree amount, filed by a decree-holder, is a step in aid of execution, falling within article 182 (5) of the Limitation Act, 1908.

Nabadiip Chandra Maiti v. Bepin Chandra Pal, (1908) 12 C.W.N., 621, followed.

PETITION under section 115, Civil Procedure Code, to revise the order of the District Court of East Tanjore in A.S. No. 278 of 1926, preferred against the order of

* Civil Revision Petition No. 876 of 1928.

the District Munsif of Mayavaram in E.P. No. 387 of 1926 in Small Cause Suit No. 1907 of 1914, Sub-Court, Mayavaram.

The material facts appear from the judgment.

V. K. John and *S. Panchapagesa Sastri* for petitioner.

Respondent was not represented.

JUDGMENT.

VENKATASUBBA RAO, J.—The point to decide is, is the execution application in time? That would depend upon, whether the previous application was for taking some step in aid of execution. The present application was within three years of the previous one and we are therefore to determine whether the latter was an application to take some step within the meaning of article 182 of the Limitation Act.

The lower Courts have held in favour of the decree-holder. He is not here represented, but Dr. V. K. John, who appears for the judgment-debtor, has drawn our attention to numerous authorities on the point. I may mention that it was in a pending execution petition that the previous application was made. That application was for leave to bid and to set off the price against the decree amount. The question is, does such an application fall within article 182 (5) of the Limitation Act?

On this point, there is no decided case of the Madras High Cour. The test in such cases has been laid down in *Kuppuswami Chettiar v. Rajagopala Aiyar*(1), and it has been approved in the subsequent decisions, *Krishna Pattar v. Seetharama Pattar*(2) and *Hamidudin Sahib v. Ghouse Sahib*(3). The article says that the application must be to the proper Court to take some step in aid of

VAPU
ROWTHEN
2.
SIVAKATAK-
SHAM
PILLAI.

VENKATA-
SUBBA RAO, J.

(1) (1921) I.L.R., 45 Mad., 466.

(2) (1926) 24 L.W., 488.

(3) (1926) 24 L.W., 498.

VAPU
ROWTHER
v.
SIVAKATAK-
SHAM
PILLAI.
—
VENKATA-
SUBBA RAO, J.

execution. First, is the step in furtherance of execution, in other words, does it advance execution? Secondly, is the Court asked to take that step? In applying this test, there has been great difficulty and divergence of opinion. Let us examine if an application for *mere* leave to bid is a step within the meaning of the article. Our attention has not been drawn to any Madras case on the point: but it has been held by the Allahabad and Bombay High Courts that an application of that kind is such a step; see *Bansi v. Sikree Mal*(1), *Dalel Singh v. Umrao Singh*(2) and *Vinayakrao Gopal Deshmikh v. Vinayak Krishna*(3). In the second of these cases, the learned Judges observe thus:—

“The fact that a decree-holder is prepared to bid for property and is anxious to purchase . . . brings the decree within nearer distance of complete execution and satisfaction. . . . There are indeed *three* steps. There is the step of the application which the decree-holder makes; there is the step taken by the Court of granting permission, and there is the further step which the decree-holder again takes of availing himself of such permission by bidding at the sale.”

This view is also shared by some Judges of the Calcutta High Court. In *Troylokyia Nath Bose v. Jyoti Prokash Nandi*(4), BANERJEE, J., thus states his reason for that view:—

“An application to the Court by the decree-holder to give him leave to bid is to my mind an application to the Court to take some step, that is, to do something which would aid execution, that is, make it effective by securing a higher price for the property to be sold.”

In *Hira Lal Bose v. Dwija Charan Bose*(5), MOOKERJEE, J., while also being of the opinion, that such an application may be a step in aid, observes that the rule

(1) (1890) I.L.R., 13 All., 211.

(2) (1900) I.L.R., 22 All., 399.

(3) (1895) I.L.R., 21 Bom., 331.

(4) (1903) I.L.R., 30 Calc., 761.

(5) (1905) 10 O.W.N., 209.

is not an inflexible one, and it may depend upon circumstances whether an application for leave to bid is or is not a step, within the meaning of the article. While I am disposed to agree with the decision in *Dalel Singh v. Umrao Singh*(1), the point does not now really arise in that form. In the present case, the application for leave to bid is coupled with that for leave to set off. Such an application, it has been held in *Nabadip Chandra Maiti v. Bepin Chandra Pal*(2), fulfils the requirements of the article. This is the only decided case on the precise point involved in this petition and I see no reason to dissent from it. Dr. John contends that the Court in such cases is merely invited to make an order and not to take some step. In one sense, this is perfectly true. The learned Counsel contends that the step which the Court is asked to take must be something like attaching or selling property. I am not prepared to place this restricted view upon the words. In *Desireddy Yellamandar v. Sikakolli Chinna Pitchayya*(3), OLDFIELD and NAPIER, JJ., have held, that a wide construction must be placed on the words "step in aid of execution" in article 182. Indeed, to accept Dr. John's contention would be against the *ratio decidendi* adopted in several cases including those of our own High Court. The Civil Revision Petition fails and is dismissed.

Before closing, I may remark that the decided cases on the subject reveal an extreme conflict of view, while they fail to disclose even a principle of general or uniform application. The wording is so uncertain that it leads to the spending of efforts in barren and fruitless discussion, and a good deal of time of the Court is thus wasted. Such a large body of case-law has now

VAPU
ROWTHER
v.
SIVAKATAK-
SHAM
PILLAI.
—
VENKATA-
SUBBA RAO, J.

(1) (1900) I.L.R., 22 All., 399.

(2) (1908) 12 C.W.N., 621.

(3) (1914) 16 M.L.T., 103.

VAPU
ROWTHNER
v.
SIYAKATAM
SHAM
PILLAI.
—
VENKATA-
SUBBA RAO, J.

grown up on the point, that the Legislature may well, with the aid of the decided cases, catalogue the applications which, in its opinion, ought to serve as steps in aid of execution. This is a suggestion I venture to make with a view to make the law more certain, for certainty, especially in the law relating to execution, is essential.

MADHAVAN
NAIR, J.

MADHAVAN NAIR, J.—I do not desire in this case to express any opinion on the question whether an application for leave to bid at an auction will be a step in aid of execution within the meaning of article 182 (5) of the Limitation Act. It may be possible to argue on the strength of the decisions of this Court and according to the principles mentioned in *Kuppuswami Chettiar v. Rajagopala Aiyar*(1), *Krishna Pattar v. Seetharama Pattar*(2), and *Hamidudin Sahib v. Ghouse Sahib*(3), that such an application is not an application asking the Court to take a definite step in furtherance of execution. In this case, whatever view we may hold about the nature of such an application, it is clear that the execution application contained a request that the decree-holder should be permitted to set off the purchase money against the decree amount. This, in my opinion, is a request to the Court to take a step effectively furthering the execution of the decree. The precise point had not been decided in this Court, but it has been decided in *Nabadip Chandra Maiti v. Bepin Chandra Pal*(4), that such an application is a step in aid of execution. I am prepared to follow this decision. I would therefore agree with the opinion of the lower Courts that the application in question is a step in aid of execution and dismiss this Civil Revision Petition.

K.R.

(1) (1921) I.L.R., 45 Mad., 466.

(2) (1926) 24 L.W., 488.

(3) (1926) 24 L.W., 498.

(4) (1908) 12 C.W.N., 621.