

APPABI is a sound one and I must hold that there is no appeal  
 v.  
 THAILAMMAL from such an order as in this case.

This letters patent appeal must, therefore, be dismissed with costs.

BARDSWELL J.—I agree.

A.S.V.

---

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and  
 Mr. Justice Bardswell.*

MODALI ADEMMA (PETITIONER), PETITIONER,

2.

LANKA VENKATA SUBBAYYA AND ANOTHER (RESPONDENTS  
 2 AND 3), RESPONDENTS.\*

*Decree—Transmission for execution—Jurisdiction of transferee  
 Court to entertain application for execution—Receipt of  
 copy of decree by it not a condition of.*

The transfer of a decree to another Court for execution dates from the date when the order of transfer is made, and, when once the order of transfer is made, the Court to which the decree is transferred has jurisdiction to entertain applications for execution even though a copy of the decree has not been received by it.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the order of the Court of the District Munsif of Markapur, dated 30th October 1928, in Execution Petition No. 267 of 1928, in Small Cause Suit No. 326 of 1916 on the file of the Court of the District Munsif of Kanigiri.

*Kasturi Seshagiri Rao* for petitioner.

*L. S. Veeraraghava Ayyar* and *M. V. Venkatesan* for respondents.

---

\* Civil Revision Petition No. 734 of 1929.

## JUDGMENT.

ADEMMA  
v.  
VENKATA  
SUBBAYYA.  
—  
BEASLEY C.J.

BEASLEY C.J.—This civil revision petition raises an interesting question of practice. It has been put before us by our learned brother KRISHNAN PANDALAI J. on account of a conflict of opinion of two single Judges, one of KRISHNASWAMI AYYAR J. in *Arimuthu Chetty v. Vyapuripandaram*(1) and the other of JACKSON J. in *Nanjunda Chettiar v. Nallakaruppan Chettiar*(2). Our learned brother KRISHNAN PANDALAI J. was inclined to agree with the earlier decision.

The question is, when does an order of transfer of a decree take effect so as to enable the Court to which the decree is transferred to entertain applications for execution? This is a matter of some importance in some cases; and it is so in this case because, if the view in *Arimuthu Chetty v. Vyapuripandaram*(1) is to prevail, then the petitioner's application for execution was not barred by limitation; and, in my view, the question of limitation has an important bearing in coming to a decision upon this point. In *Arimuthu Chetty v. Vyapuripandaram*(1) the view expressed is that, even though a copy of the decree has not been received by the executing Court, the decree-holder is entitled to apply to that Court for execution. JACKSON J. in *Nanjunda Chettiar v. Nallakaruppan Chettiar*(2) takes the contrary view. In the former case KRISHNASWAMI AYYAR J. says:

“I am not at all sure, having regard to the provisions of rules 6, 7 and 8 of Order XXI, that the Court to which a decree is sent for execution is authorised to execute it before a copy of the decree is received; but I think there is force in the contention that, when once an order is made sending a decree to another Court for execution, that by itself is sufficient to entitle the decree-holder to apply to the Court to which the decree is sent for execution.”

(1) (1911) I.L.R. 35 Mad. 588, 590.

(2) (1928) 27 L.W. 423; 55 M.L.J. 120.

ADEMMA  
 v.  
 VENKATA  
 SUBBAYYA.  
 BEASLEY C.J.

JACKSON J. considers that, as the Court to which the decree is sent for execution has no authority to execute it until it is received, it has no authority to entertain the application for execution. In my opinion, the two things do not necessarily go together. For one thing, a judicial order dates from the time when the order is made and therefore the transfer of a decree to another Court for execution dates from the date when the order of transfer is made. There is another matter to be considered in this connection and it is this, that, if the view taken in *Nanjunda Chettiar v. Nallakaruppan Chettiar*(1) is the correct one, then the following position will arise: The decree-holder after the order of transfer is once made by the Court passing the decree cannot thereafter apply to that Court for execution. That Court has finished with the matter and by its order of transfer has transferred the decree to another Court. In the meanwhile what is the decree-holder to do? It may take some days to transmit the decree and the record and during that time what is to become of the rights of the decree-holder? He has no rights at all which he can avail himself of if the correct view is that taken by JACKSON J. in *Nanjunda Chettiar v. Nallakaruppan Chettiar*(1). They are in a state of suspense and, during the interval between the despatching of the decree by the transferring Court and the receipt of it by the executing Court, the decree-holder is powerless to do anything. That may bring with it the following unfortunate result. The decree-holder has a period of time given to him during which to execute his decree and after that time has expired he is barred by limitation. It seems to me that, if the executing Court cannot entertain an application by a

---

(1) (1928) 27 L.W. 423.

decree-holder for execution until the receipt of the decree, and the order for transfer has been passed two or three days previously, the period of limitation given to a decree-holder is thereby reduced; because although within time at the date of the order of transfer he may be out of time at the date of the receipt of the decree by the executing Court and I know of no case where a period of limitation once given to a person can be abridged, though there are numerous cases where the period is extended. This seems to me to answer this question. In my opinion, the view taken in *Arimuthu Chetty v. Vyapuripandaram*(1) is the correct one. That being so, this civil revision petition must be allowed with costs.

ADENMA  
 v.  
 VENKATA  
 SUBBAYYA.  
 BEASLEY C.J.

BARDSWELL J.—I agree.

A.S.V.

---

(1) (1911) I.L.R. 35 Mad. 588, 590.