APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., Chief Justice, and Mr. Justice King.

1934, October 2.

ALLADA LAKSHMIKANTA RAO (DEFENDANT—JUDGMENT-DEBTOR), APPELLANT,

v.

NADDELLA RAMAYYA (PLAINTIFF—DECREE-HOLDER), RESPONDENT.*

Indian Limitation Act (IX of 1908), *art.* 182 (4)—*Amended final decree—Execution of—Limitation for—Starting point of—Decree barred at date of application for amendment—Amendment formal and wholly unnecessary.*

Under article 182 (4) of the Indian Limitation Act a decree-holder seeking to execute an amended final decree has a period of three years starting from the date of the amendment of the decree, even if the final decree had become barred by the date of the application for the amendment of the decree or the amendment applied for was merely a formal one and was really unnecessary. Those are matters to be dealt with by the Court to which the application for amendment is made.

Nagendranath De v. *Sureshchandra De,* (1932) I.L.R. 60 Calc. 1 (P.C.), applied.

Ahammad Kutty v. *Kottekkat Kuttu,* (1932) I.L.R. 56 Mad. 458, considered.

APPEAL against the order of the District Court of Kistna at Masulipatam dated the 4th day of March 1929, and made in Appeal No. 171 of 1928 preferred against the order of the Court of the District Munsif of Gudivada, dated 3rd May 1928 and made in Execution Petition No. 86 of 1928 in Original Suit No. 147 of 1917.

Ch. Raghava Rao for appellant.

A. Lakshmayya for respondent.

Cur. adv. vult.

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* Appeal against Appellate Order No. 193 of 1929.

LAKSHMIKANTA RAO *v.* RAMAYYA.

BEASLEY C.J.

THE JUDGMENT of the Court was delivered by BEASLEY C.J.—This appeal raises a question of limitation. The final decree in the suit was passed on 2nd December 1921. On 21st October 1925 that decree was amended. It is contended here that the final decree of 2nd December 1921 had become barred by the date of the application for the amendment of the decree and its amendment on 21st October 1925. On 28th March 1927 the decree-holder applied for execution. This application was dismissed on 4th May 1927. He again applied on 4th November 1927. His application was again dismissed on 22nd November 1927. The execution petitioner filed another petition on 20th January 1928 and objection was raised that the petition was barred by limitation as having been presented more than three years after the passing of the final decree on 2nd December 1921. The District Munsif upheld this objection. The lower appellate Court reversed the District Munsif's decision. Hence this appeal.

It is argued here that the amendment of the decree was merely a formal one and that the final decree was an executable one even in its unamended form. In our view, we are not concerned with that. The fact that the final decree had already become barred or that the amendment applied for was unnecessary were matters to be dealt with by the Court to which the application had been made for the amendment, and we agree with the view of the District Judge that the effect of article 182 (4) of the Limitation Act must be that it is an answer to any objection taken with regard to the plea of limitation so far as the earlier final decree is concerned. The words of article 182 (4) of the

Limitation Act are: where the decree has been amended a period of three years' limitation is given starting from the date of the amendment of the decree. It was the amended decree that the decree-holder sought by his subsequent applications to execute. We propose to give the words of that article of the Limitation Act their plain meaning following the principle of construction laid down by the Privy Council in *Nagendranath De* v. *Sureshchandra De*(1). The headnote of that case reads as follows [See 53 M.L.J. 329]:

"Under the Limitation Act, article 182, clause 2, 'where there has been an appeal,' time for execution of the decree runs from the date of the decree of the appellate Court. The words of the article are plain and without any qualification either as to the character of the appeal or as to the parties to it. *Held*, therefore, that, where an appeal, irregular in form and insufficiently stamped, was dismissed both on the ground of irregularity and upon the merits, it was nevertheless an 'appeal' within the meaning of article 182, clause 2, and though the judgment-debtors against whom the execution was now sought were not parties to the appeal, time only ran against the decree-holders from the date of the appellate Court's decree dismissing the appeal. Equitable considerations are out of place in the construction of the Statute of Limitation and the strict grammatical meaning of the words must be given effect to."

On page 334, SIR DINSHAH MULLA, in delivering the judgment of their Lordships' Board, says:

"Their Lordships think that nothing would be gained by discussing these varying authorities in detail. They think that the question must be decided upon the plain words of the article: 'Where there has been an appeal,' time is to run from the date of the decree of the appellate Court. There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. The fixation of periods of limitation must always be to some extent

(1) (1932) 53 M.L.J. 329; I.L.R. 60 Calc. 1, 6 (P.C.).

arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place and the strict grammatical meaning of the words is, their Lordships think, the only safe guide."

This decision of the Privy Council is not quoted by MADHAVAN NAIR J. in *Ahammad Kutty* v. *Kottekkat Kuttu*(1), who in consequence does not rely on the express language of the article and does not apply the principle there laid down. In our opinion, applying that principle, this appeal must be dismissed with costs.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Burn.

1934, October 25.

ATHIMANNIL MUHAMMAD (PLAINTIFF), APPELLANT,

v.

THE MALABAR DISTRICT BOARD (DEFENDANT), RESPONDENT.*

Madras Local Boards Act (XIV of 1920), *sec.* 225, *sub-ss.* (1) *and* (3)—*Contract entered into with Vice-President of Local Board—President cancelling same acting under section* 106 (1) *of the Act—Suit for damages filed after six months—Limitation—Test, whether the action is one on contract or independent of contract, only a working rule—Real test, whether the act complained of was done in pursuance of a statute.*

M filed a suit against a District Board, more than six months after the date of the accrual of the cause of action, claiming damages on the ground that its President improperly cancelled a contract of lease, for one year, of the tolls in

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(1) (1932) I.L.R. 56 Mad 458.

* Appeal No. 94 of 1930.