

APPELLATE CIVIL—FULL BENCH.

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

KONDURI SURYANARAYANA RAO (PLAINTIFF),
APPELLANT,

v.

VAGASANA VENKATRAJU (ELEVENTH DEFENDANT),
RESPONDENT.*

*Indian Limitation Act (IX of 1908), ss. 31, 19 and 20—Object
of Legislature in enacting sec. 31—Application of sec. 31
to cases contemplated by ss. 19 and 20 of the Act—
“Prescribed” in ss. 19 and 20—Meaning of.*

A executed a simple mortgage over certain properties in favour of S in 1892 and in favour of V in 1902. The prevailing view in Madras following the Full Bench Ruling, *Narayana Ayyar v. Venkataramana Ayyar*, (1902) I.L.R. 25 Mad. 220 (F.B.), was that a simple mortgagee had sixty years within which to bring a suit on the mortgage. In 1905 A executed another mortgage in favour of S. Later on in *Vasudeva Mudaliar v. Srinivasa Pillai*, (1907) I.L.R. 30 Mad. 426 (P.C.), the Privy Council, overruling *Narayana Ayyar v. Venkataramana Ayyar*, held that a simple mortgagee had only twelve years within which to bring a suit on the mortgage. S filed a suit on his mortgage of 1905 and claimed priority over V's mortgage of 1902 on the footing that that mortgage was a renewal of the earlier mortgage of 1892.

Held (1) that S was entitled to priority ;

(2) that the declared object of the Legislature in enacting section 31 of the Limitation Act was to remove the hardship caused by the Privy Council decision to parties who had theretofore acted on the basis of the sixty years' rule being applicable even to suits on simple mortgages ;

(3) that section 31 must be interpreted as “prescribing” a period of limitation even for the purposes of the application of sections 19 and 20 of the Limitation Act ; and

* Letters Patent Appeal No. 74 of 1932.

(4) that there was no warrant for construing the word "prescribed" in sections 19 and 20 of the Limitation Act as meaning "prescribed" in the second Schedule to the Limitation Act.

Somisetty Seshayya Chetty v. Rolla Subbadu, (1930) 59 M.L.J. 881, followed.

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APPEAL under Clause 15 of the Letters Patent against the judgment of JACKSON J. dated the 4th day of March 1932 and passed in Second Appeal No. 436 of 1928 preferred to the High Court against the decree of the Court of the Subordinate Judge of Ellore in Appeal Suit No. 10 of 1927 preferred against the decree of the Court of the District Munsif of Bhimavaram in Original Suit No. 98 of 1925.

K. Bhimasankaran for appellant.

Ch. Raghava Rao for respondent.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—The only point for determination in this appeal is a question of limitation which arises under the following circumstances. The plaintiff sued on a mortgage bond (Exhibit A) of 1905 and the principal contesting defendant (the eleventh defendant) had a mortgage in his favour, of 1902 (Exhibit I). To get over the *prima facie* priority of Exhibit I the plaintiff relied on the fact that his mortgage, Exhibit A, was practically a renewal of Exhibit B, which, being dated 24th May 1892, was long anterior to Exhibit I. The learned Subordinate Judge, in appeal, accepted the plaintiff's claim to priority and gave him a decree as prayed for. On second appeal to this Court, JACKSON J. reversed this decision, holding that, on the date of Exhibit A, the claim under Exhibit B had become barred by limitation and

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therefore the plaintiff was not entitled to priority as against the eleventh defendant. Hence this Letters Patent Appeal.

The way in which a renewal of an earlier mortgage operates as against intermediate transferees of the mortgaged property has been discussed in *Velayuda Reddi v. Narasimha Reddi*(1) and *Yagnanarayana v. Venkata Krishna Rao*(2). According to these decisions the new mortgage may operate to keep alive the rights under the old mortgage, as against intermediate transferees, on the analogy of part-payment; but the starting point for an action for the recovery of the debt will be fixed, not merely as against the mortgagor but also as against intermediate mortgagees, in accordance with the terms of the new contract. The importance of this principle in the present case arises out of this fact, namely, that the renewal under Exhibit A was effected at a time when, according to the law as declared by a Full Bench of this Court, *Narayana Ayyar v. Venkataramana Ayyar*(3), the claim under Exhibit B had not become barred by limitation, and Exhibit A allowed time for payment by instalments up to 1916. If the principle applied by the Privy Council in *Abdul Aziz Khan v. Appayasami Naicker*(4) could be invoked here, it might well be contended that the rights, not merely of the mortgagor and the mortgagee but of the puisne mortgagee as well, must be judged by the law as understood at the date of Exhibit A, notwithstanding a judicial declaration of law to a different effect by later pronouncements of authority.

(1) (1916) 32 M.L.J. 263

(2) A.I.R. 1925 Mad. 1108.

(3) (1902) I.L.R. 25 Mad. 220 (F.B.).

(4) (1903) I.L.R. 27 Mad. 131 (P.C.).

If however the eleventh defendant is entitled to rely upon the later decision of the Privy Council, *Vasudeva Mudaliar v. Srinivasa Pillai*(1), and contend that, on the application of the twelve years' rule of limitation, the remedy under Exhibit B must be held to have become barred on the date of Exhibit A, the plaintiff may as well claim the benefit of section 31 of the Limitation Act of 1908, which was introduced to remedy the hardship caused by this very decision of the Privy Council. This position was not disputed before us on behalf of the respondent.

The main contention on behalf of the respondent was that section 31 of the Limitation Act of 1908 only provided a special period of grace of two years for instituting suits on mortgages of a particular description and that, where no suit had been instituted within the period so allowed, no general benefit could be held to have accrued to the holders of such mortgages as if their mortgages had been revived even for purposes of sections 19 and 20 of the Limitation Act. This question has been dealt with by a Bench of this Court in *Somisetty Seshayya Chetty v. Rolla Subbadu*(2), and we see no reason to depart from the view there taken that, with reference to the special class of cases dealt with in section 31, that section must be interpreted as prescribing a period of limitation even for the purposes of the application of sections 19 and 20 of the Limitation Act. The argument that the word "prescribed" in these sections must be understood as only meaning prescribed *in the second Schedule* in the Limitation Act is not warranted by the language of the sections

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(1) (1907) I.L.R. 30 Mad. 426 (P.C.).

(2) (1930) 59 M.L.J. 881.

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and is opposed to the weight of authority. Mr. Raghava Rao had to admit that that construction would exclude the possibility of a *second* acknowledgment or part-payment ever being available to save limitation, because it could be made available only by reading the schedule with section 19 or 20 of the Act.

The only decision in favour of Mr. Raghava Rao's contention, namely, *Dayaram v. Laxman*(1), has not been followed by the other High Courts and the preponderance of authority is certainly in favour of the view taken in *Somisetty Seshayya Chetty v. Rolla Subbadu*(2). The declared object of the Legislature in enacting section 31 was to remove the hardship caused by the Privy Council decision to persons who had theretofore acted on the basis of the applicability of the sixty years' rule even to suits on simple mortgages. There is no reason why a provision introduced for this purpose should be unnecessarily restricted in its scope or why the Legislature should be assumed to have intended that all persons holding such mortgages should immediately rush to Court, even though the mortgagors were prepared to make part-payments or execute renewals. The effect of such a narrow construction is particularly noticeable in this case, because in view of the terms of Exhibit A the mortgagee *could* not have filed a suit between 1908 and 1910 for the instalments now in question (namely, of 1913-16) and after having accepted Exhibit A he could not, even as against the mortgagor, have fallen back on his cause of action under Exhibit B.

(1) (1911) 13 Bom. L.R. 284.

(2) (1930) 59 M.L.J. 881.

Alternatively, Mr. Raghava Rao contended that the decision in *Somisetty Seshayya Chetty v. Rolla Subbadu*(1) should be restricted to acknowledgments or part-payments made between August 1908 and August 1910, and, in that view, that decision cannot avail the plaintiff in the present case. But, having regard to the principle on which that decision rests, there is no warrant for such restriction.

We are of opinion that the claim under Exhibit B was enforceable, or at any rate must be deemed to have been enforceable, on the date of Exhibit A, and that the plaintiff is accordingly entitled to claim priority as against the eleventh defendant on that footing. The decision of JACKSON J. is therefore set aside and the decree of the Subordinate Judge restored. The eleventh defendant will pay the plaintiff's costs here and in the second appeal.

G.R.

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(1) (1930) 59 M.L.J. 881.