APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice K. S. Menon.

1936, August 7.

SRI SRI SRI NANDAMANI ANANGA BHIMA DEO KESARI GAJAPATHI (NIL), APPELLANT,

v.

SRI MADANO MOHONO DEO (DEFENDANT), RESPONDENT.*

Indian Limitation Act (IX of 1908), art. 182 (5)—Application in accordance with law—Vakil without vakalat—Execution application presented by—Application in accordance with law, if.

The presentation of an execution application by a Vakil who has no vakalat authorising him to present it is no presentation at all in the eye of the law and is a mere nullity. The application is in such a case not one made in accordance with law.

APPEALS under Clause 15 of the Letters Patent against the judgment and orders of KING J., dated 18th March 1935 and passed in Appeals Against Appellate Orders Nos. 12 to 14 of 1929 preferred to the High Court against the orders of the District Court of Ganjam in Appeal Suits Nos. 161, 163 and 162 of 1927 preferred respectively against the orders of the Court of the District Munsif of Aska, dated 11th November 1926, in Original Execution Petitions Nos. 1272, 1274 and 1273 of 1925 in Original Suits Nos. 174, 172 and 173 of 1916 on the file of the Court of the District Munsif of Berhampur.

B. Jagannadha Das for appellant.

B. V. Ramanarasu for respondent.

* Letters Patent Appeals Nos. 62 to 64 of 1935.

The JUDGMENT of the Court was delivered by BURN J.—These appeals are from the judgment of our learned brother, KING J., in Civil Miscellaneous Second Appeals Nos. 12 to 14 of 1929. The facts have been set out in the judgment of our learned brother and need not be repeated here. We do not find that there is any very great difficulty in this case. The only point that arises for decision is whether the decree-holder, the appellant herein, "applied in accordance with law" for execution when his petition, Execution Petition No. 1414 of 1923, and the connected petitions were presented to the District Munsif on 20th November 1923. The last execution petition before that had been presented in 1920 and the execution petition now under consideration was presented in 1925, and therefore it is clear that, unless the application of 1923 was one made in accordance with the law, article 179 (as it then was) of the Indian Limitation Act will bar execution. Now, to begin with, Execution Petition No. 1414 of 1923 and the connected execution petitions are not apparently in themselves defective in any way. They are signed by the decree-holder and no criticism of their contents has been offered. The objection on behalf of the judgment-debtors is that they were presented by the decree-holder's Vakil, Mr. A. Thumbanadham, who had no vakalat authorising him to present them. It is clear that there was no vakalat, and we must assume that as a point of fact. The learned District Munsif says that there is no doubt that Mr. A. Thumbanadham had authority to file the execution petitions. It is not known upon what evidence the learned District Munsif

ANANGA BHIMA DEO v. MADANO MOHONO DEO.

BURN J.

made this statement, but, if it is true, it must refer to some *oral* authority because no written authority has been produced, and there is in fact no allegation anywhere that vakalats had in fact been executed in favour of Mr. Thumbanadham by the decree-holder. The question then is whether the decree-holder in 1923 "applied in accordance with law to the proper Court for execution"; *vide* article 179, Limitation Act as it stood in 1923 and 1925. This question, we think, admits of a very simple answer. Under Order XXI, rule 10, Civil Procedure Code, the decree-holder "shall apply for execution . . ." By Order III, rule 1 (to quote the relevant portions):

> "Any . . . application . . . to any Court, required or authorised by law to be made . . . by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made . . . by the party in person, or by his recognised agent, or by a pleader appearing, applying or acting . . . on his behalf."

It is not alleged in this case that the party made these applications to the Court in person. It is not alleged that he made them by a recognised agent. The only case is that he made them by his pleader, Mr. Thumbanadham. Order III, rule 4, says:

> "No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorised by or under a power-of-attorney to make such appointment."

This means, according to the contentions of the judgment-debtor, that the act of the pleader in presenting these execution petitions was a mere nullity. According to the contentions of the learned Advocate for the appellants, Mr. Jagannadha Das, the want of a vakalat was a mere

irregularity which may be cured or condoned. We have had a very large number of cases cited but none of them is exactly applicable ; many, we think, are quite irrelevant. It is not to the point to discuss cases in which there have been defects, whether grave or trivial, in the applications, plaints or petitions, nor cases in which there have been defects or omissions in vakalats filed in Court. This is not a case of any defects in particulars in any document. It is a case simply of want of authority on the part of the pleader to act. Order III, rule 4, says that no pleader shall act unless he has been appointed by a document in writing. This means, in our opinion, that, if the pleader has not been appointed by a document in writing, he is wanting in capacity or competence to act. It is not a question of a defect in the pleader's authority ; it is not a question of an irregularity or even of an illegality in anything that he does ; it is simply a question of want of capacity to act. If a pleader purports to do something which he has no power or capacity to do, we think it must be clear that what he purports to do can have no legal effect.

Mr. Jagannadha Das has contended that, since upon the application of 1923 the executing Court took action, issuing notices to the judgment-debtors, posting the case for various dates of hearing, on some dates ordering costs to be paid and the like, therefore the execution petitions cannot, after all that has been done, be treated as mere waste paper or as if they had not been presented at all. This argument, we think, would have great force if anything had really been done upon those execution petitions, but the end of

ANANGA BHIMA DEO v. MADANO MOHONO DEO.

BURN J.

them was that they were withdrawn and were accordingly dismissed without any execution having really taken place. It is, we think, unfortunate perhaps that the decree-holder should be met with a plea of an apparently technical kind like this when he seeks to execute his decree. But there is no doubt that a technical point, if it is a good one, is the best of all points; and in the present case, as we are satisfied that the presentation of these execution petitions by the decree-holder's pleader was a mere nullity, we hold that our learned brother's judgment was correct and that these appeals must be dismissed. But, in view of the fact that the appellant was successful in both the Courts below, we make no order as to costs in these Letters Patent Appeals.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice K. S. Menon.

1936, August 5.

GOPISETTI SANYASI RAO DORA (PETITIONER, DEFENDANT-JUDGMENT-DEBTOR), APPELLANT,

v.

GOPISETTI SURYANARAYANAMMA (RESPONDENT, PLAINTIFF-DECREE-HOLDER), RESPONDENT.*

Maintenance—Decree for, imposing personal liabilty and creating charge on properties—Sale of charged properties in execution and purchase thereof by decree-holder subject to charge—Personal liability of judgment-debtor for subsequent arrears—Effect on.

In a suit for maintenance, a compromise decree was passed which imposed a personal liability on the judgment-debtor and

* Appeal Against Order No. 356 of 1934.