APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice Lakshmana Rao.

1937, August 6.

MUTHU RAMA REDDI (THIRD RESPONDENT), APPELLANT,

v.

MOTILAL DAGA TRADING UNDER THE NAME AND STYLE OF SAIT BALAKISANDAS MOTILAL AND TWO OTHERS (PETITIONER AND RESPONDENTS 1 AND 2), RESPONDENTS.*

Indian Limitation Act (IX of 1908), art. 182, expl. II—"Proper Court"—Transmission of decree to another Court for execution—Non-return of copy of decree by transferee Court—Application to Court which passed decree for transmission thereof to a third Court—Application to "proper Court", if—Code of Civil Procedure (Act V of 1908), O. XXI, r. 26, and ss. 42 and 46—Effect of—Art. 182, cl. 5, of Limitation Act—"Final order"—Order returning execution application for amendment, if an—Application not re-presented.

A decree passed by Sub-Court C was transmitted to the District Munsifs of K and R for simultaneous execution against some of the defendants. On 20th January 1930 an application was filed in Sub-Court C for transmission of the decree to Sub-Court V for execution against the same defendants. Though it was alleged in that application that the decree copies transmitted to the District Munsifs of K and R had been returned, in fact only the decree copy sent to the District Munsif of K had been returned. The application was defective in other respects as well and was returned for amendment on several occasions, the last of them being by an order dated 9th October 1930, and it was not re-presented thereafter. On an application filed on 27th September 1932 for transmission of the decree to the District Court of South Arcot for execution against the appellant, the other defendant in the suit,

held that the application of 20th January 1930 was made to the "proper Court" within the meaning of explanation II to article 182 of the Indian Limitation Act but that the order thereon dated 9th October 1930 was not a "final order"

* Appeal Against Order No. 325 of 1934.

within the meaning of article 182, clause 5, of the said Act, and that the application of 27th September 1932 was therefore barred by limitation as against the appellant.

Sub-Court C, the Court which passed the decree, retained control of the execution proceedings and was therefore competent to transfer the decree to Sub-Court V for execution.

Mahadum Beg Sahib v. *Md. Meera Sahib*(1) approved.

Chidambara Nadar v. *Rama Nadar*(2) followed as regards the meaning of the expression "final order".

APPEAL against the order of the Court of the Subordinate Judge of Cocanada dated 5th July 1934 and made in Execution Application No. 958 of 1932 in Original Suit No. 72 of 1922.

When the appeal originally came on for hearing the Court made the following Order :—

Mr. Bhashyam points out that in his counter dated 22nd September 1933 he raised the objection in paragraph 5 that the execution application dated 20th January 1930 was not made to a "proper Court". The basis of this is that in 1927 two applications were made to the Subordinate Judge's Court for transmission of the decree for execution to the District Munsif's Court, Kovvur, and simultaneously to the District Munsif's Court, Rajahmundry. The appellant's contention is that the decrees sent to those Courts on 20th January 1927 had not been returned to the Subordinate Judge's Court, Cocanada, when the application dated 20th January 1930 was made. This question, Mr. Bhashyam says, was in fact argued before the learned Subordinate Judge but there is no finding on it and no reference to it in the learned Subordinate Judge's order. Without a finding on the point of fact we cannot discuss the question of law which arises. We think it necessary that

(1) A.I.R. 1928 Mad. 493. (2) I.L.R. [1937] Mad. 616 (F.B.).

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this point should be decided by the lower Court. We therefore call on the learned Subordinate Judge to submit within six weeks from the date of receipt of this order a finding on the question whether the decrees transmitted to the Courts of the District Munsif of Kovvur and the District Munsif of Rajahmundry had been returned to the Subordinate Judge's Court of Cocanada on 20th January 1930.

The learned Subordinate Judge may take any evidence that is available. Seven days' time is allowed for the parties to file their objections to the said finding after notice of receipt of the same shall have been posted upon the notice board of the High Court.

[In pursuance of the above order, the Subordinate Judge of Cocanada submitted a finding to the effect that the decree copy transmitted to the District Munsif's Court, Kovvur, was received back in the Court of the Subordinate Judge of Cocanada on 29th July 1927 and that the decree copy transmitted to the District Munsif's Court, Rajahmundry, was received back in the said Subordinate Judge's Court on 8th November 1930.]

The appeal came on for final hearing after the return of the above finding.

K. Bhashyam Ayyangar for the *Advocate-General* (*Sir A. Krishnaswami Ayyar*) and *A. Satyanarayana* for appellant.

V. V. Srinivasa Ayyangar for *K. Subrahmanyam* for first respondent.

Respondents two and three were unrepresented.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by LAKSHMANA RAO J.—This appeal arises out of an application for transmission of the decree in Original Suit No. 72 of 1922 on the file of the Subordinate Judge of Cocanada for execution to the District Court of South Arcot, and the questions for determination are: (i) whether the application is barred by limitation against the appellant (third defendant) and (ii) whether the decree is executable against him.

The first respondent is the decree-holder and the suit was for recovery of Rs. 28,374-11-9 due under two promissory notes executed by the appellant and respondents 2 and 3. The appellant pleaded that he was a surety and the suit was decreed on 19th February 1923 as follows:

> "It is ordered and decreed that the plaintiff (first respondent) do proceed against defendants 1 and 2 (respondents 2 and 3) in the first instance and against the third defendant (appellant) in case the amount cannot be realised from defendants 1 and 2 and do recover Rs. 25,777-4-9 with further interest and proportionate costs."

A sum of Rs. 3,652-4-1 was realised by 1926 by executing the decree against respondents 2 and 3, and two applications were filed by the decree-holder on 18th January 1927 for transmission of the decree to the District Munsifs of Kovvur and Rajahmundry for simultaneous execution against respondents 2 and 3. The applications were ordered on 20th January 1927 and decree copies were transmitted to the District Munsifs of Kovvur and Rajahmundry. No steps were however taken at Kovvur or Rajahmundry and an application for transmission of the decree to the Sub-Court of Vizagapatam for execution

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against respondents 2 and 3 was filed in the Sub-Court of Cocanada on 20th January 1930 (18th and 19th January being holidays). It was alleged in the petition that the decree copies transmitted to the District Munsifs of Kovvur and Rajahmundry had been returned, though in fact only the decree copy sent to the District Munsif of Kovvur had been returned, and the application was defective in other respects as well. So it was returned on 23rd January 1930 for amendment, and the decree-holder applied for and obtained time for that purpose on several occasions. The application was returned for the last time on 9th October 1930 and it was not re-presented thereafter. The application out of which this appeal arises was filed on 27th September 1932 for transmission of the decree to the District Court of South Arcot for execution against the appellant and respondents 2 and 3, and the latter did not appear. It was not alleged in the application that the decree amount cannot be realised from respondents 2 and 3, and the appellant pleaded that the decree cannot be executed against him until then. Even otherwise he contended that the application of 20th January 1930 was not made to the proper Court and cannot save limitation, but the Subordinate Judge overruled the plea of limitation on the ground that the present application was filed within three years of the prior application. The contention that the prior application was not made to the proper Court and cannot save limitation was not considered, and, though evidence was not led and there is nothing on record to show that the decree amount cannot be realised from respondents 2 and 3, the Subordinate Judge

negatived the other plea on the ground that the decree does not say that the decree-holder should exhaust the properties of respondents 2 and 3 before proceeding against the appellant, and that the time for executing the decree against the appellant had arisen in 1932 when the decree-holder was obliged to take out execution against him.

Hence this appeal ; and it was argued first, that assuming the decree to be executable against the appellant, the application of 20th January 1930 cannot prevent time from running and the present application was barred by limitation against him. Article 182, clause 5, of the Limitation Act, which was relied upon by the decree-holder, allows three years from the date of the final order on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree, and it was contended on behalf of the appellant that the application of 20th January 1930 was not even made to the proper Court within the meaning of that clause. "Proper Court", according to explanation II to article 182, means the Court whose duty it is to execute the decree, and it was urged that, once the decree is transmitted to another Court for execution, that Court alone can execute it and the Court which passed the decree is not competent to entertain an application for transmission or execution until the decree is returned to it with a certificate of non-satisfaction. This contention was not dealt with by the Subordinate Judge though it was pressed before him and a finding had to be called for as to whether the decree copies transmitted to the District Munsifs

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of Kovvur and Rajahmundry had been returned to the Subordinate Judge of Cocanada by 20th January 1930. It is now agreed that, as found by the Subordinate Judge, only the decree copy sent to the District Munsif of Kovvur had been returned, and the question is whether by reason of the non-return of the decree copy by the other Court, the Sub-Court of Cocanada was not competent to entertain an application for transmission of the decree to the District Court of South Arcot. This question was decided in *Mahadum Beg Sahib* v. *Md. Meera Saheb*(1), in which all the previous decisions were considered and we see no reason to dissent from the view taken therein that in such cases the Court which passed the decree is competent to transfer the decree to a third Court for execution. To the same effect are the decisions in *K. K. Deb* v. *N. L. Chowdhury*(2) and *Kanti Narain* v. *Madan Gopal*(3) and an examination of the relevant provisions of the Code of Civil Procedure leads to the same result. There is nothing in the Code to prevent simultaneous execution of a decree in more than one Court, though it is a matter for the discretion of the Court to permit or refuse concurrent execution; and it is clear from the provisions of Order XXI, rule 26, which requires the transferee Court to stay execution to enable the judgment-debtor to apply to the Court which passed the decree for an order to stay execution or for any other order relating to the decree or execution which might have been made by such Court if execution had

(1) A.I.R. 1928 Mad. 493. (2) (1927) I.L.R. 5 Ran. 397.
(3) A.I.R. 1935 Lah. 465 (F.B.).

been issued thereby or if an application for execution had been made thereto, that the Court which passed the decree retains control of the execution proceedings. Section 46 which relates to precepts points to the same conclusion and the power to order simultaneous execution or send the decree to another Court for execution is vested in the Court which passed the decree. Section 42 does not empower the transferee Court to order simultaneous execution or send the decree to another Court for execution and, as pointed out in *Mahadum Beg Sahib* v. *Md. Meera Saheb*(1) and *Subba Rao* v. *Ankamma*(2), the decision of the Privy Council in *Maharajah of Bobbili* v. *Narasaraju Bahadur* (3) does not touch this question. The question there was whether an application would lie to the District Court of Vizagapatam for sale of property attached by the District Munsif of Parvathipur, and, as observed already, it is for the Court which passed the decree to decide whether in the circumstances of any case simultaneous execution against different properties in different Courts should be ordered or the proceedings should be withdrawn from one Court and transferred to another Court. An application for either relief would therefore lie only to the Court which passed the decree and it would be the proper Court within the meaning of explanation II to article 182. The Sub-Court of Cocanada was thus the proper Court and the application of 20th January 1930 was an application to take some step in aid of execution. But what is material under the amended article 182, clause 5, is the date of

(1) A.I.R. 1928 Mad. 493. (2) (1932) 63 M.L.J. 788.
(3) (1916) I.L.R. 39 Mad. 640 (P.C.).

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the final order on the application and not the date of the application, and it remains to consider whether the order of 9th October 1930 granting further time for remedying the defects is such an order. The order need not in our opinion be an order on the merits or a judicial determination of the matter involved in the application but, as pointed out in *Chidambara Nadar* v. *Rama Nadar*(1) in which the previous decisions were considered, the words "final order" imply that the proceeding has terminated so far as the Court passing it is concerned. It cannot mean the "last order" in point of time, irrespective of whether it terminates the proceeding so far as the Court is concerned, and the order of 9th October 1930 merely granted further time for remedying the defects. It did not terminate the proceeding and the application was not re-presented. There was thus no final order within the meaning of article 182, clause 5, and it follows that the application is barred by limitation as against the appellant.

As regards the second question, the decree provides that the appellant should be proceeded against only in case the amount cannot be realised from respondents 2 and 3 and it was not alleged in the application for transmission that the amount cannot be realised from respondents 2 and 3. No evidence was led about it nor is there anything on record to show that the amount cannot be realised from respondents 2 and 3. The assumption of the Subordinate Judge that the decree-holder must have been obliged to apply for execution against the appellant in 1932 is unwarranted,

(1) I.L.R. [1937] Mad. 616 (F.B.).

and it follows that the appellant cannot be proceeded against. RAMA REDDI v. MOTILAL DAGA

In the result the appeal is allowed and the application will stand dismissed against the appellant with costs throughout. The Advocate's fee is in the circumstances of the case fixed at Rs. 250.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice Lakshmana Rao.

MINOR S. VENKATASUBRAMANIA SARMA *alias* RATNAM BY GUARDIAN SUBRAMANIA SARMA (RESPONDENT—JUDGMENT-DEBTOR), APPELLANT,

1937, September 23.

v.

THE UNITED PLANTERS' ASSOCIATION OF SOUTH INDIA INCORPORATED HAVING ITS REGISTERED OFFICE AT GLENVIEW, COONOOR, THE NILGIRIS (PETITIONER—DECREE-HOLDER), RESPONDENT.*

Married Women's Property Act (III of 1874), sec. 6—"Policy of insurance" in—Meaning of—Trust to arise under that section—Condition.

The expression "policy of insurance" in section 6 of the Married Women's Property Act must be taken in the ordinary meaning of those words and cannot be taken as including the proposal filled in by the insurer and the prospectus issued by the company.

For a trust to arise under section 6 of the Married Women's Property Act it must appear on the face of the policy that the policy was effected for the benefit of the insurer's wife, or wife and children, or any of them.

Where the only words which were found in the column of the policy "To whom payable" were: "The proposer's

* Appeals Against Orders Nos. 16 and 56 of 1936.