proceedings. It is impossible in these circumstances to say with reason that the substance of the information received by the Magistrate has not been set out and it is also impossible to say with reason that there is no case shown for inquiry under section 107. We regard this notice as complying with the requirements of the section, and therefore there is no foundation for the application to this Court to exercise its revisional powers. It follows that the petition must be dismissed and the Magistrate will proceed with the inquiry in accordance with law.

V.V.C.

APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Krishnaswami Ayyangar and Mr. Justice Somayya.

1939, November 3.

PALADUGU VEERA RAMACHANDRA RAO (THIRD DEFENDANT), APPELLANT,

v.

PALADUGU PARASURAMAYYA AND ANOTHER (PLAINTIFF AND SECOND DEFENDANT), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 48—Amendment of decree under sec. 152—Application for execution after twelve years from date of decree but within twelve years of amendment—If barred under sec. 48—Art. 182, Limitation Act (IX of 1908)—Effect of.

On 9th March 1922 the first respondent obtained in the Court of the Subordinate Judge of Bezwada a money decree against the appellant, the appellant's uncle and a cousin, who were members of an undivided family. The amount for which judgment was obtained was Rs. 3,735 but a mistake was made in drawing up the decree and the figure inserted

*Appeal Against Appellate Order No. 135 of 1935.

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was Rs. 2,200. On 16th July 1928 the mistake was corrected under section 152, Civil Procedure Code. On 6th December 1933 the respondent caused the decree to be transferred to the Court of the Subordinate Judge of Guntur for execution and on 5th March 1934 he applied for the attachment of certain immovable property. On the appellant's objection that the property was his personal property and the decree had only made him liable to the extent of his interest in the family property, the attachment was raised. On 12th November 1935, the respondent filed another application for execution and asked for the attachment of two decrees, one obtained by the appellant alone and the other in conjunction with his cousin. The Subordinate Judge dismissed it on the ground that it was barred by the law of limitation. On appeal, the District Judge of Guntur held that the decree was barred so far as it related to the sum of Rs. 2,200 but that it was enforceable to the extent of Rs. 1,535, the difference between the Rs. 2,200 and Rs. 3,735, the figure which was inserted in the decree as the result of the amendment. On appeal to the High Court against the above order,

held that section 48 of the Civil Procedure Code applied to the case and that the decree had become time-barred. Inasmuch as article 182 of the Limitation Act clearly leaves the provisions of section 48 of the Civil Procedure Code untouched, there can be no execution of a decree governed by section 48 when twelve years have passed from the date of the decree, amendment or no amendment. An amendment of a decree to bring it in accordance with the judgment does not have the effect of starting a fresh period of limitation.

The decision in Civil Miscellaneous Appeal No. 264 of 1931 overruled.

Faqir Chand v. *Kundan Singh*(1) approved.

Narsingrao Konher Inamdar v. *Bando Krishna*(2), *Ganesh Das* v. *Vishan Das*(3) and *Musammat Dulhin* v. *Mahanth Harihar Gir*(4) referred to.

APPEAL against the order of the District Court of Guntur, dated 9th February 1936, and made in Appeal No. 33 of 1936 preferred against the order of the

(1) (1932) I.L.R. 54 All. 622.
(2) (1918) I.L.R. 42 Bom. 309.
(3) A.I.R. 1935 Lah. 292.
(4) (1939) I.L.R. 18 Pat. 395.

Court of the Subordinate Judge of Guntur in Execution Petition No. 443 of 1935 in Original Suit No. 17 of 1921.

V. Parthasarathi (*P. Satyanarayana Rao*) for appellant.—The decree in this case was passed on 9th March 1922. Amendment was granted on 16th July 1928. The present execution petition was filed on 12th November 1935. It is therefore clearly barred under the provisions of section 48 of the Civil Procedure Code. The "decree sought to be executed" is the decree that was passed on 9th March 1922. The decree should bear the date of the judgment under Order XX, rule 7.

[LEACH C.J.—The amendment is to bring the decree in conformity with the judgment according to section 152 of the Civil Procedure Code. That will not have the effect of changing the date of the decree.]

[KRISHNASWAMI AYYANGAR J.—What is the date of a decree in cases of review ?]

When a review application is granted there will be a new decree in conformity with the judgment that is reviewed. Though under the Limitation Act of 1908 as amended a new clause was inserted, making the date of amendment, the starting point for limitation under article 182, still no such amendment was made in section 48 of the Civil Procedure Code (Act V of 1908).

The High Courts of Bombay, Allahabad, Lahore and Patna hold that the amendment of the decree cannot have the effect of enlarging the period of twelve years mentioned in section 48, Civil Procedure Code, which is final. Article 182 of the Limitation Act leaves untouched section 48 of the Civil Procedure Code. [*Narsingrao Konher Inamdar* v. *Bando Krishna*(1), *Faqir Chand* v. *Kundan Singh*(2), *Musammat Dulhin* v. *Mahanath Harihar Gir*(3), *Ganesh Das* v. *Vishan Das*(4) and *Babu Narendra Bahadur Singh* v. *Oudh Commercial Bank, Limited, Fyzabad*(5) were referred to.] The decision in the unreported case (Civil Miscellaneous Appeal No. 264 of 1931) relied on by the lower appellate Court is wrongly decided.

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(1) (1918) I.L.R. 42 Bom. 309. (2) (1932) I.L.R. 54 All. 622.
(3) (1939) I.L.R. 18 Pat. 395. (4) A.I.R. 1935 Lah. 292.
(5) (1934) I.L.R. 10 Luck. 208.

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[LEACH C.J.—That case does not discuss the sections, nor does it refer to the authorities.]

A. Lakshmayya for respondents.—The period of twelve years mentioned in section 48 is a period of limitation which can be extended. This has been recognized in *Rameshvar Singh* v. *Homeshvar Singh*(1) where, for instance, a decree-holder is prevented by the operation of an injunction from proceeding with the execution of the decree. The time so lost can be exempted and twelve years may be exceeded. [Section 15 of the Limitation Act and *Drigpal Singh* v. *Pancham Singh*(2) were referred to.]

Under section 152, Civil Procedure Code, an amendment of the judgment or decree may be made by the Court at any time. It may be done even twelve years after the decree or judgment. In such cases, the amendment would be useless if the period of twelve years mentioned in section 48 of the Code is not capable of extension. It would introduce an anomaly into the Code. The period of twelve years is a period of limitation prescribed and can be extended.

The second point is that the present application is merely a continuation of the former application. By asking for a different relief, though after twelve years, it does not become a new application. In some cases it was not treated as a fresh application. [*Jhorama Patrani* v. *Latchanna Dora*(3) was referred to.]

JUDGMENT.

LEACH C.J.

LEACH C.J.—This appeal raises a question of limitation. On 9th March 1922 the first respondent obtained in the Court of the Subordinate Judge of Bezwada a money decree against the appellant, the appellant's uncle and a cousin, who were the members of an undivided family. The amount for which judgment was obtained was Rs. 3,735, but a mistake was made in drawing up the decree and the figure inserted was Rs. 2,200. It was not until 16th July

(1) (1920) 40 M.L.J. 1 (P.C.). (2) I.L.R. [1939] All. 647.
(3) 1939 M.W.N. 988.

1928 that the mistake was corrected under the provisions of section 152 of the Code of Civil Procedure. On 6th December 1933 the respondent caused the decree to be transferred to the Court of the Subordinate Judge of Guntur for execution and on 5th March 1934 he applied for attachment of certain immovable property. The appellant objected to the attachment on the ground that the property was his personal property and the decree had only made him liable to the extent of his interest in the family property. This objection was well founded and the attachment was raised. On 12th November 1935 the respondent filed another application for execution. Here he asked for the attachment of two decrees, one obtained by the appellant alone and the other in conjunction with his cousin. It was contended that the application was barred by the law of limitation and the contention was upheld by the Subordinate Judge. An appeal followed to the District Judge of Guntur who held that the decree was barred so far as it related to the sum of Rs. 2,200 but it was enforceable to the extent of Rs. 1,535, the difference between the Rs. 2,200 and Rs. 3,735, the figure which was inserted in the decree as the result of the amendment.

It is obvious that the District Judge's decision was wrong in allowing execution of part of the decree. The respondent must be entitled to the full amount, if entitled to anything. When the provisions of section 48 of the Code of Civil Procedure and article 182 of the Limitation Act are considered it however becomes manifest that the Subordinate Judge was right in holding that the decree was time-barred.

Section 48 (1) of the Code of Civil Procedure reads as follows :

"Where an application to execute a decree not being a decree granting an injunction has been made, no order for

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the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from

(*a*) the date of the decree sought to be executed, or

(*b*) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree."

Therefore a decree which has been passed for more than twelve years cannot be executed, but where the decree or an order passed subsequent to the decree directs payment of money or the delivery of property to be made at a certain date or at recurring periods the date of the default in such a case shall be the starting point for the period of twelve years. Order XX, rule 7, provides that the decree shall bear the date of the judgment.

Sub-section 2 of section 48 says :

"Nothing in this section shall be deemed—

(*a*) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application ; or

(*b*) to limit or otherwise affect the operation of article 180 of the second schedule to the Indian Limitation Act, 1877."

The corresponding article in the present Limitation Act is article 182. Now, turning to clause 4 of that article we find that the period of limitation where a decree has been amended is three years from the date of the amendment, but the article is expressly limited to applications for execution not provided for by article 183 or by section 48 of the Code of Civil Procedure. Article 183 refers to applications to enforce judgments of High Courts and it has no bearing here.

Inasmuch as article 182 clearly leaves the provisions of section 48 untouched there can be no execution of a decree governed by section 48 when twelve years have passed from the date of the decree, amendment or no amendment. It is true that there is no period of limitation for an amendment of a decree to correct an accidental slip or omission under section 152 of the Code. But because the Code gives the Court power to correct slips or omissions at any time it does not mean that the law of limitation is affected. A correction made in a time-barred decree leaves the decree still time-barred.

The question under consideration has been the subject of decisions by the Bombay, Allahabad, Lahore, and Patna High Courts and they have all agreed that an amendment of a decree to bring it in accordance with the judgment does not have the effect of starting a fresh period of limitation; see *Narsingrao Konher Inamdar* v. *Bando Krishna*(1), *Faqir Chand* v. *Kundan Singh*(2), *Ganesh Das* v. *Vishan Das*(3) and *Musammat Dulhin* v. *Mahanath Harihar Gir*(4). In *Faqir Chand* v. *Kundan Singh*(2) the Allahabad High Court observed:

"Now no change was made in section 48 of the Code of Civil Procedure providing for the extension of the period of twelve years in that section from the date of the amendment of a decree. We consider that the Legislature advisedly omitted that provision for extension from section 48, and that the omission was not accidental. In our opinion the effect of the omission is that an amendment of a decree does not give a new date for starting a period of limitation, if the application for execution is beyond the period of twelve years allowed by section 48; that is the period of twelve years

(1) (1918) I.L.R. 42 Bom. 309.
(2) (1932) I.L.R. 54 All. 622.
(3) A.I.R. 1935 Lah. 292.
(4) (1939) I.L.R. 18 Pat. 395.

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under section 48 is final and cannot be extended by any amendment of the decree, whether that amendment is made before the expiry of the period of twelve years or whether that amendment is made after the expiry of the period of twelve years. The reason why no amendment was made in section 48 is that probably the greater period of twelve years is allowed by that section, and it is probably the intention of the Legislature that that period of twelve years should be final, and that within that period a decree-holder should amend his decree and obtain all consequent remedies. If a decree-holder neglects to amend his decree within a sufficient period before the expiry of twelve years to allow him to obtain his remedy by execution, then he has only himself to blame."

I agree entirely with what is said here.

In an unreported case of this Court (Civil Miscellaneous Appeal No. 264 of 1931) MADHAVAN NAIR and CORNISH JJ., without giving any reasons, held that the period of limitation should be calculated from the date of the amendment of the decree. As their decision runs contrary to the plain wording of section 48 of the Code of Civil Procedure and article 182 of the Limitation Act it cannot be allowed to stand.

The learned Advocate for the respondent has argued that section 48 of the Code of Civil Procedure is not in all cases final and has drawn attention to the provisions of section 15 of the Limitation Act, but all that need be said is that section 48 is final unless there is some statutory provision which governs it in a particular case, and that is not the position here. Section 48 applies in the present case and as more than twelve years had elapsed before the last application for execution was made the decree had become time-barred.

The appeal will be allowed and the judgment of the Subordinate Judge restored. The appellant is entitled to his costs in this Court and in the District Court.

A memorandum of cross-objections filed by the respondent does not call for consideration and will be dismissed without costs.

KRISHNASWAMI AYYANGAR J.—I am of the same opinion. Indeed there is no escape from it when the language of section 48 of the Code of Civil Procedure is read in the light of the provisions of article 182 of the Indian Limitation Act. The words used in the first column of that article make it clear that the Legislature did not intend to interfere in any way with the limit of time fixed by section 48. The Code of Civil Procedure and the Limitation Act were enacted at the same time and a comparison of the provisions of the two statutes makes it abundantly clear that there is an intimate relationship between the two. In the Limitation Act of 1908 a new provision was inserted to fix the point of time from which the period of limitation under article 182 has to be calculated where the decree is amended; clause (4) was added to the article, so as to make it clear in such a case that it is the date of the amendment from which limitation will run. While the case of an amendment is thus met and provided for by article 182 of the Limitation Act it is significant that the language of section 48 of the Code of Civil Procedure has been left unaltered. It is therefore a fair inference that the period of twelve years should be counted from the date of the decree irrespective of any amendment that it might have undergone since. The date of the amendment does not therefore furnish a fresh starting point under section 48, Civil Procedure Code, and must accordingly be ignored in making the calculation.

KRISHNASWAMI AYYANGAR J.

It was suggested on behalf of the respondent that the fact that there is no period of time limited for an application for an amendment under section 152

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introduces an anomaly. It was said that a Court may grant and may be obliged to grant an amendment even after the period of twelve years fixed by section 48 of the Code of Civil Procedure and where an amendment is so granted the order would be rendered futile and barren unless section 48 is understood as permitting the twelve years' period to be calculated from the date of the amendment. This may be an anomaly but the remedy is in the hands of the Legislature. When the language of the statute is clear we cannot refuse to give effect to it on considerations of this kind.

SOMAYYA J.—I agree with my Lord the CHIEF JUSTICE.

V.V.C.

APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Mockett and Mr. Justice Krishnaswami Ayyangar.

1939, October 2.

KARINAGISETTI CHENNAPPA (PLAINTIFF), APPELLANT,

v.

KARINAGISETTI ONKARAPPA (DEFENDANT), RESPONDENT.*

Limitation Act (IX of 1908), sec. 21 (1)—Hindu law—Minor—Paternal grandmother, nearest living relation—If "lawful guardian" under the section.

Held by the Full Bench.—The paternal grandmother of a Hindu minor is not, even when she happens to be his nearest living relation, the lawful guardian of the minor, within the meaning of section 21 of the Indian Limitation Act, 1908.

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* Second Appeal No. 318 of 1935.