

## APPELLATE CIVIL.

*Before Mr. Justice Cornish.*

ABDUL RAZACK SAHIB (SECOND DEFENDANT—  
SECOND RESPONDENT), APPELLANT,

1935,  
August 8.

---

v.

KILPATTI CO-OPERATIVE SOCIETY, by PRESIDENT,  
KRISHNA REDDI, AND ANOTHER (PLAINTIFFS AND FIRST  
DEFENDANT—PETITIONER AND FIRST RESPONDENT),  
RESPONDENTS.\*

*Madras Co-operative Societies Act (VI of 1932), sec. 43 (1)—  
“ Decision ” under—Enforcement of, in civil Court—Civil  
Procedure Code (Act V of 1908), O. XXI, r. 16—Change  
of presidents of Society after “ decision ” and before its  
enforcement—Whether amounts to transfer by operation of  
law, necessitating separate application to Court passing the  
“ decision ”—Indian Limitation Act (IX of 1908), art.  
182 (5) (b)—Prior application to Tahsildar to enforce  
“ decision ”—Tahsildar not “ the proper Court for execu-  
tion ”.*

An application to enforce a “ decision ” obtained by a Co-operative Society in the Court of the Assistant Registrar of Co-operative Societies was made to the civil Court having jurisdiction over the subject-matter of the decision. The proceedings in which the decision was passed were brought by the Society and in its name, acting through its president, and there was a change of presidents of the Society between the date of the obtaining of the decision and the filing of the application.

*Held* that Order XXI, rule 16, Civil Procedure Code, was inapplicable to the case, because (i) the Statutory Rules gave no power to the Registrar to enforce the decision ; and

(ii) the change of presidents did not involve a transfer by operation of law.

*Held further*, that a prior application to enforce the “ decision ” made to the Tahsildar, authorized in that behalf

---

\* Appeal Against Appellate Order No. 184 of 1932.

ABDUL RAZACK <sup>v.</sup> KILPATTI Co-OPERATIVE SOCIETY. by the Collector, did not, under article 182 (5) of the Limitation Act, save the application to the civil Court from the bar of limitation, as, neither the Collector acting under Rule XIV (5) (a) of the Rules framed by Government under section 43 (1) of the Co-operative Societies Act, nor the Tahsildar, was a Court.

*Bhagwan Das Marwari v. Suraj Prasad Singh*, (1924) I.L.R. 47 All. 217, referred to.

APPEAL against the appellate order of the Court of the Subordinate Judge of Vellore, dated 21st April 1932 and made in Appeal Suit No. 83 of 1932 (Appeal Suit No. 177 of 1931 on the file of the District Court, North Arcot), preferred against the order of the Court of the District Munsif of Tirupattur, dated 22nd June 1931 and made in Regular Execution Petition No. 152 of 1931 [Kilpatti Co-operative Claim No. 268 of 1926 (a)].

*K. Rajah Ayyar* and *K. S. Rajagopalachari* for appellant.

*V. N. Chockalinga Mudaliar* for respondents.

### JUDGMENT.

The appellant is a member of the Kilpatti Co-operative Society. The Society obtained a "decision" against him in the Court of the Assistant Registrar of Co-operative Societies. This procedure took place by virtue of the rules made by Government under powers of section 43 (1) of the Co-operative Societies Act. The decision was sent to the Tahsildar for enforcement. This was in accordance with Rule XIV (5) of the Statutory Rules, which says :—

"The decision shall be enforced in either of these ways :—

(a) on a requisition to the Collector of the District or to any person authorized by him in this behalf made by the

Registrar of Co-operative Societies, all sums recoverable under the decision shall be recovered in the same manner as arrears of land revenue.

ABDUL RAZACK  
v  
KILPATTI  
CO-OPERATIVE  
SOCIETY.

(b) On application to the Civil Court having jurisdiction over the subject-matter of the decision, that Court shall enforce the decision as if it were a decree of the Court."

Admittedly, the Tahsildar was the officer deputed to act in this behalf by the Collector. The decision of the Registrar was given on 19th July 1926. The requisition was sent to the Tahsildar in June 1927, and kept by him till May 1929, when he returned it. There was then another long interval until 23rd December 1930, when application was made to the Court, that is to say the Munsif's Court, to enforce the decision. Two points were taken in the lower Courts, and they were the principal subject of argument in this appeal. First, it was contended that the second application was misconceived, having regard to Order XXI, rule 16, Civil Procedure Code. Apparently, between the date of the obtaining of the decision and the date of the filing of the second application, there had been a change of presidents of the Society, the first president having died and been succeeded in that office by another. The argument was that there had consequently been a transfer by operation of law, and that, therefore, application to execute should have been made to the Court which passed the decision, i.e., the Registrar's Court. But I think that there is no substance in this point; firstly, because the Statutory Rules give no power to the Registrar to enforce a decision and secondly, because the proceedings were brought by the Society and in the name of the Society, acting through its president, and consequently,

ABDUL RAZACK  
 v.  
 KILPATTI  
 CO-OPERATIVE  
 SOCIETY.

there was no question of the second president, whose name was transposed for that of the first president, being his legal representative.

A more substantial question raised in the appeal is whether the second application was out of time. It certainly was, unless article 182 (5) (b) of the Limitation Act saves it. Both the lower Courts held that the bar was saved on the ground that the Tahsildar was within that provision "the proper Court for execution".

In my opinion neither the Tahsildar, nor the Collector by whom he was authorized to act, was a Court. Reference may be made to the analogous provisions of sections 68 and 71 of the Civil Procedure Code, which enable decrees to be transmitted to a Collector for execution. Section 71 says that in such matters the Collector shall be deemed to act judicially. But it has been held in *Bhagwan Das Marwari v. Suraj Prasad Singh*(1) that this does not mean that the Collector is a Court. I follow this authority ; and, there being nothing in the Co-operative Societies Act Rules to indicate that the Collector is to be deemed to be a Court, I hold that he is not a Court when he acts under Rule XIV (5) (a). It follows that the Tahsildar is equally not a Court.

The application was therefore barred, and this appeal must be allowed with costs throughout.

K.W.R.

---

(1) (1924) I.L.R. 47 All. 217.

---