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ference for that boy, and in the absence of any objection raised by the appellants to the plaintiff's adoption on this ground, and having regard to the vagueness of the language used by Tanu and the other circumstances stated by the Subordinate Judge, A. P., we cannot say that his inference from the language used is incorrect. It is found as a fact, independently of the objection that the indicated boy was the sister's son of Bhau, that the mother of Bala refused to give him in adoption. Decree confirmed with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy,

1897. *December* 13.

JEDDI SUBRAYA VENKATESH SHANBHOG (ORIGINAL OPPONENT AND PLAINTIFF), APPELLANT, *v.* RAMRAO RAMCHANDRA MURDESHVAR (ORIGINAL PETITIONER AND DEFENDANT), RESPONDENT.*

Limitation Act (*XV of* 1877), *Sch. II, Art.* 179—*Decree partly in favour of plaintiff and partly in favour of defendant—Application for execution by one party does not prevent limitation running against the other—Civil Procedure Code* (*Act XIV of* 1882), *Sec.* 583.

A. obtained a decree against B. for possession and for Rs. 27 mesne profits. In execution he got possession. On appeal, however, the decree was reversed so far as it ordered possession to be given to him, and the amount of mesne profits awarded to him was reduced to Rs. 13-8-0. The appellate decree was passed on the 6th June, 1889.

On the 18th December, 1891, the defendant B applied to be restored to possession. That application was dropped, and on the 24th September, 1895, he made a second application. There had been nothing done in the interval except that in 1892 and again in 1894 the plaintiff had applied for execution in respect of the Rs. 13-8-0 awarded to him. The lower Courts were of opinion that the application in 1895 by the defendant was not barred by limitation by reason of the plaintiff's applications in 1892 and 1894, which they held to be an acknowledgment by the plaintiff of the defendant's right to execute his part of the decree.

Held (reversing the order of the lower Court) that the defendant's application was barred by limitation. The plaintiff's application in 1892 and 1894 did not operate as an acknowledgment so as to prevent limitation.

* Second Appeal, No. 988 of 1897.

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JEDDI SUBRAYA v. RAMRAO.

SECOND appeal from the decision of E. H. Moscardi, District Judge of Kánara, confirming the order of Ráo Sáheb T. V. Kalsulkar, Subordinate Judge of Kumta, in an execution proceeding.

The plaintiff obtained a decree No. 89 of 1887 against defendant, awarding him possession of certain land and Rs. 27 as mesne profits, and in execution obtained possession.

Subsequently, in appeal, the decree was reversed so far as it ordered possession to be given to plaintiff, but was affirmed as to payment of mesne profits, the amount of which, however, was reduced to Rs. 13-8-0.

The appellate decree was passed on the 6th June, 1889.

On the 18th December, 1891, the defendant applied to be restored to possession, but the application was dropped.

In 1892 and again on 24th September, 1894, the plaintiff applied for the recovery of the Rs. 13-8-0 awarded to him by the appellate decree, but both applications were disposed of for want of prosecution.

On 24th September, 1895, the defendant filed the present darkhást applying to be restored to possession.

The plaintiff contended that the application was barred by limitation, and that the defendant had no right to claim mesne profits.

The Subordinate Judge held that the darkhást was in time, and adjourned the case to determine the amount of mesne profits.

On appeal by plaintiff, the Judge confirmed the order. The following is an extract from his judgment :—

"On the point raised I find that the application is in time. The darkhásts of the plaintiff were requests for the execution of the District Court's decree, and were accompanied by copies of that decree, thereby implying, as it appears to me, that the decree was still in force, not only as regards the rights of the plaintiff thereunder, but also as regards those of the defendant. Now under section 19 of the Limitation Act, if before the expiration of the period prescribed for an application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing, signed by the party against whom such property or right is claimed, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed. Consequently I think that the darkhásts of 1892 and 1894 kept the defendant's claim alive, and that the lower Court was right in its conclusion that the present darkhást was in time."

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The plaintiff preferred a second appeal.

Ganpatrao S. Mulgaumkar, for the appellant (plaintiff).

Dattatraya A. Idgunji, for the respondent (defendant).

FARRAN, C.J.:—The original decree in this case awarded possession of the land claimed in the plaint to the plaintiff and Rs. 27 as mesne profits. An appeal was filed by defendant, but before it was heard, possession of the land was in execution made over to the plaintiff. The decree of the appellate Court was passed on 6th June, 1889. It reversed the original decree in so far as that decree awarded possession to the plaintiff, and reduced the amount of mesne profits to Rs. 13-8-0. The final decree was thus a decree for the plaintiff for Rs. 13-8-0, and the defendant under section 583 of the Civil Procedure Code was entitled in virtue of it to have possession of the land restored to him. In that sense it may be said to be a decree in favour of each party, though strictly speaking there was no part of the decree of which the defendant could demand execution. It is an express provision of the Code which gave the defendant the right to be reinstated in possession upon the reversal of the decree of the lower Court. If that decree had not been executed before the decree in appeal was passed, the defendant could not have invoked the aid of the Court in execution at all.

On the 18th December, 1891, the defendant applied to be reinstated in possession. The application dropped. The defendant again on the 24th September, 1895, presented a darkhást to be reinstated.

The defendant's application is *primâ facie* time-barred. The lower Courts have held that it is in time, because the plaintiff in 1892 and again in 1894 applied for execution of the decree in respect of the Rs. 13-8-0 awarded to him. They have done so on the ground that the plaintiff by applying for execution of the decree in his favour acknowledged the defendant's right to execute his portion of the decree. We are unable to concur in that view. Admitting that an acknowledgment in writing is sufficient to give a fresh starting point in the case of the execution of a decree, as to which see *Trimbak* v. *Kashinath* [1], we think that

(1) P. J., 1897, p. 101; *ante* p. 722.

here there is certainly in terms no acknowledgment by the plaintiff of the defendant's right, nor do we think that there is such an acknowledgment by necessary implication. If the defendant had bound himself not to redemand possession from the plaintiff, the plaintiff's application for execution of his money decree would have been couched in precisely the same language. The case of *Dharma* v. *Govind*[1] shows what are the essentials of an acknowledgment relied upon to give a fresh starting point in limitation. In the cases referred to by Mr. Idgunji—*Janki Prasad* v. *Ghulam Ali*[2], *Fateh Muhammad* v. *Gopal Das*[3], and *Hingan Lal* v. *Mansa Ram*[4]—there were actual acknowledgments of liability under the decree. In this case, as we have said, there is none.

It is, however, contended that the plaintiff's application for execution satisfies the requirements of article 179. We think that there is no force in that contention. The decree here is not like a partition decree, which, though not in terms joint, enures equally for the benefit of the defendant and of the plaintiff—*Narayan* v. *Vithal*[5], *Mohun Chunder* v. *Mohesh Chunder*[6], but is a several decree awarding Rs. 13-8-0 to the plaintiff and giving the defendant the right to be restored to possession of the lands in suit. The decree and application fall, we think, both within the letter and spirit of the first explanation to the article. See *Vennbai* v. *The Collector Násik*[7].

The order of the lower Court is reversed and the application is rejected with costs throughout on applicant.

Order reversed.

Note.—On the 12th March, 1898, this order was reversed on review. It appeared that in the darkhást of 24th September, 1894, the defendant had applied for restitution under section 583 of the Civil Procedure Code (Act XIV of 1882). The lower Courts had omitted to notice this fact, and it was not, therefore, brought to the notice of the High Court in hearing the above second appeal. The defendant applied for a review and the High Court reversed the above order, holding that by reason of defendant's application of 24th September, 1894, the present application was not barred.

(1) I. L. R., 8 Bom., 99.
(2) I. L. R., 5 All., 201.
(3) I. L. R., 7 All., 424.
(4) I. L. R., 18 All., 384.
(5) P. J., 1886, p. 287.
(6) I. L. R., 9 Calc., 568.
(7) I. L. R., 7 Bom., 552, in notes.

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