

Under these circumstances I agree that the appeal must be dismissed with costs.

Attorneys for appellants Nos. 2, 3 and 6 : Messrs. *Crawford, Bayley & Co.*

Attorneys for respondents Nos. 1, 4 and 5 : Messrs. *Little & Co.*

Attorneys for appellants Nos. 4 and 5 transposed as respondents : Messrs. *Vakil, Dadabhoy & Bharucha.*

*Appeal dismissed.*

N. K. A.

APPELLATE CIVIL.

*Before Sir John Beaumont, Chief Justice, and Mr. Justice Wassoodew.*

GOPAL SATTU TIPPE (ORIGINAL DEFENDANT), APPELLANT v. DNYANU MARUTI KHADE (ORIGINAL PLAINTIFF), RESPONDENT.\*

1937  
November 26

*Civil Procedure Code (Act V of 1908), s. 47, sub-s. (2)—Decree—Execution—Transferee of defendant pendente lite—Suit against transferee—Transferee whether a representative of defendant—Remedy not by suit but in execution—Decree with condition—Conversion of suit into application—Indian Limitation Act (IX of 1908), Sch. I, Arts. 181 and 182.*

Under s. 47 of the Civil Procedure Code, 1908, the transferee from a defendant during the pendency of a suit is a representative of the defendant; and that being so, the decree passed against the defendant can only be enforced against the transferee in execution and not by a separate suit.

*Parneshari Din v. Ram Churan*,<sup>(1)</sup> followed.

*Basappa Budappa v. Bhimangowda Shiddangowda*,<sup>(2)</sup> treated as overruled.

One B, a widow, surrendered her husband's property to her daughter. The daughter died leaving a daughter who succeeded to the property. The latter died leaving her husband who became entitled to the property as her heir. The husband sold the property to the plaintiff. The plaintiff found that widow B was still in possession and he sued B for possession. On October 13, 1925, there was a compromise decree in the suit and under that decree the plaintiff was to pay to B

\* Second Appeal No. 281 of 1934.

<sup>(1)</sup> (1937) 39 Bom. L. R. 1019, p. c.

<sup>(2)</sup> (1927) 52 Bom. 208.

1938  
MENAHEM  
MESSA  
v.  
MOSES MESSA  
B. J. Wadia J.

1937

GOPAL  
SATTU  
v.  
DNYANU  
MARUTI

Rs. 350 by January 1926 and on payment of that sum the plaintiff was to get possession of suit property. Pending the suit, on March 10, 1924, B sold the property to defendant. On July 8, 1930, the plaintiff filed the suit against the defendant asking for possession. The suit was decreed by the lower appellate Court subject to the plaintiff paying the defendant the sum of Rs. 350. On appeal to the High Court :

*Held*, that the plaintiff's remedy lay in execution under s. 47 of the Civil Procedure Code, 1908, and not by a separate suit.

*Held*, further, that the suit could not be treated as an application in execution under sub-s. (2) of s. 47 of the Civil Procedure Code, 1908, since the application would be out of time as the decree could have been executed by the plaintiff at the latest in January 1926 and the suit was not filed until July 8, 1930.

The applicability of Arts. 181 and 182 of the Indian Limitation Act, 1908, considered.

SECOND APPEAL against the decision of A. S. R. Macklin, District Judge at Belgaum, reversing the decree passed by P. H. Gunjal, Subordinate Judge at Chikodi.

Suit to recover possession.

The facts material for the purposes of this report are sufficiently stated in the judgment of His Lordship the Chief Justice.

*K. G. Datar*, for the appellant.

*B. D. Belvi*, for the respondent.

BEAUMONT C. J. This is a second appeal from a decision of the District Judge of Belgaum. The material facts are that one Bayabai was the owner of the suit property as the widow of her husband, and she surrendered to her daughters, who were the reversioners, and the suit property came into the ownership of one of the daughters, who died leaving a daughter, who succeeded to the property. That daughter died leaving a husband named Govind, who became entitled to the property as her heir. Govind sold the suit property to the plaintiff. The plaintiff found that Bayabai was still in possession, and he sued Bayabai for possession, and on September 30, 1925, there was a compromise decree

in the suit. Under that decree the plaintiff was to pay to Bayabai Rs. 350 by January, 1926, and if not paid the amount was to carry interest at the rate of six per cent. per annum, and on payment of that sum the plaintiff was to get possession of the suit property. So that his right to possession was conditional on his paying the sum of Rs. 350 provided in the order. It appears that pending the suit, namely, on March 10, 1924, Bayabai sold the property to the present defendant. He being a purchaser *pendente lite*, acquired no rights in the property as against the plaintiff. That is clear from s. 52 of the Transfer of Property Act. On July 8, 1930, the plaintiff filed this suit against the defendant asking for possession. He does not, I gather, dispute that he is bound to pay the Rs. 350 and interest as a condition of obtaining possession.

The trial Court dismissed the plaintiff's suit on the ground that the suit did not lie against the defendant. The plaintiff was in effect suing to enforce the compromise decree, and he ought to have proceeded by way of execution of that decree and not in an independent suit. In other words the learned Judge held that the case fell within s. 47 of the Civil Procedure Code. In appeal the District Judge reversed the decision of the trial Court, and decreed the plaintiff's suit subject to the plaintiff paying the defendant the sum of Rs. 350. The learned District Judge relied on a decision of this Court, *Basappa Budappa v. Bhiman-gowda Shiddangowda*,<sup>(1)</sup> which undoubtedly is in point. The headnote in that case is,

“An alienee *pendente lite* is bound by the result of the suit although he is not a party to it. A separate suit can lie against such an alienee to recover possession of the property.”

Mr. Justice Fawcett in giving the judgment of the Court says this (p. 212):—

“To treat defendants Nos. 1 and 2 as ‘representatives’ of Basangowda under section 47, Civil Procedure Code, directly *affects* this right of suit, and in my opinion the transfer cannot be recognised by the Court as giving them any right to be

<sup>(1)</sup> (1927) 52 Bom. 208.

1937

GOPAL  
SATTU

v.  
DNYANU  
MARUTI

Beaumont C. J.

1937

GOPAL  
SATTU

v.

DNYANU  
MARUTI

Beaman C. J.

regarded as 'representatives' for the purpose of attacking plaintiff's right to sue. There is no authority cited for the proposition that transferees *pendente lite* are 'representatives' within the meaning of section 47 except *Madho Das v. Ramji Patak*<sup>(1)</sup> and *Sheo Narain v. Chunni Lal*.<sup>(2)</sup> The decision in the latter case explains the remarks in the former case, and the judgment limits the decision to regarding the transferee as a representative of the alienor only (p. 246) 'in the sense that, being bound by the decree afterwards passed, he is competent under section 244 (now section 47) of the Code, to raise in the execution of that decree any of the questions mentioned in that section. (See *Sheo Narain v. Chunni Lal*.) That is a very different thing to holding that in all cases a transferee *pendente lite* is a 'representative' of his transferor under section 47. It merely holds that the transferee can himself move the executing Court and may raise objections to the execution of the decree, if he thinks fit."

The learned District Judge was, no doubt, quite right in following that case, but Mr. Datar for the appellant has referred us to a recent decision of the Privy Council, *Parmeshari Din v. Ram Charan*.<sup>(3)</sup> Unfortunately that case was not argued on behalf of the respondent, and the Indian cases, of which *Basappa Budappa v. Bhimangowda Shiddangowda*<sup>(4)</sup> is one, were not cited to the Board, and therefore we have not the advantage of having their Lordships' opinion upon the correctness of those decisions.

The case with which the Board was dealing was one in which there was a decree in favour of the plaintiff, the suit property having been transferred *pendente lite*, and the Court held that the transferee must be treated as the representative in interest of the defendant, and as such was bound by the result of the decree, and the decree could be executed against him although he was not a party to it. Mr. Belvi for the respondent has argued that that decision must be limited to the facts with which the Board were dealing, as no doubt it must, and all that they decided was that the plaintiff was entitled to take advantage of the provisions of s. 47 of the Civil Procedure Code as against the transferee of the defendant *pendente lite*. But the decision did not hold that the transferee was entitled

<sup>(1)</sup> (1894) 16 All. 286.<sup>(2)</sup> (1900) 22 All. 243.<sup>(3)</sup> (1937) 39 Bom. L. R. 1019, p. c.<sup>(4)</sup> (1927) 52 Bom. 208.

to insist that the plaintiff should proceed against him in execution and not by an independent suit. Mr. Belvi contends that s. 47 was really passed for the benefit of the decree-holder, and that it is one thing to say that he may take advantage of the section for the purpose of enforcing the decree against the transferee *pendente lite*, and quite another to say that the transferee *pendente lite* may insist upon the plaintiff proceeding against him in execution. In my opinion, however, it is impossible to draw that distinction, having regard to the language of s. 47 of the Civil Procedure Code. Section 47, so far as material, provides that "All questions arising between the parties to the suit in which the decree was passed, or their representatives, shall be determined by the Court executing the decree and not by a separate suit". If it once be conceded, as, in my opinion, in view of the Privy Council decision it must be conceded, that for the purpose of enforcing the decree against him the transferee *pendente lite* from the defendant is the representative of the defendant, then it seems to me that the language of the Code makes it perfectly plain that the decree must be enforced against that representative in execution and not by a separate suit. There is no scope in the language of the section for saying that a person may be a representative of a party for one purpose and not for another purpose. In my judgment, therefore, having regard to the decision of the Privy Council we must hold that the transferee of the defendant *pendente lite* is a representative of the defendant, and that being so, that the decree must be enforced against him in execution and not by a separate suit.

The question then arises whether under sub-s. (2) of s. 47 we can treat this suit as an application in execution. That sub-section provides that the Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under the section as a suit or a suit as

1937

GOPAL  
SATTU  
v.  
DNYANU  
MARUTI

Beaumont C. J.

1937

GOPAL  
SATTU  
v.DNYANU  
MARUTI

Beaumont C. J.

a proceeding, and may, if necessary, order payment of any additional Court-fees. We should be very ready to treat this suit as an application if we have jurisdiction to do so. But the objection is taken that if we treat this suit as an application, the application is barred by limitation. Article 182 of the Indian Limitation Act provides that for the execution of a decree or order of any civil Court the time is to be three years from the date of the decree or order, and then various alternative dates are given in the case of different forms of decrees. None of those alternatives apply to the present case, which is a case of a decree upon a condition. Where you have, as here, a decree for possession on the payment of a sum on a future date, I do not think that the provisions of Art. 182 can have any application. It seems to me impossible to say that the date of the decree is the starting point of time, because the future date on which the decree is to become executable may be more than three years from the date of the decree. I, therefore, think that Art. 181 is the article applicable to such a case, and it was so held by the Allahabad High Court in *Shiam Lal v. Sohan Lal*.<sup>(1)</sup> Under Art. 181 limitation runs from the time when the right to apply accrues. It is argued here that the right to apply for execution of this decree did not arise until the sum of Rs. 350 with requisite interest was paid or tendered, and inasmuch as the sum has not been paid up to the present time or tendered, it is said that limitation has not yet begun to run. But, in my opinion, it is impossible to adopt that view, though I should have been glad to do so if I felt justified. It seems to me that the plaintiff's right to enforce the decree arose probably on the day of the decree, because there was nothing in the decree to prevent him paying the Rs. 350 at once. But at any rate it arose in January, 1926, when the sum was payable, and he had an absolute right to enforce the decree on payment of the amount. The execution of most

<sup>(1)</sup> (1927) 50 All. 290.

decrees necessitates the possession of a certain amount of money, and it is impossible to say that a decree is not executable because the plaintiff has not got the money necessary to enable him to execute it. I think we are bound to hold that this decree could have been executed by the plaintiff at the latest in January, 1926, and as the suit was not filed until July, 1930, an application in execution would have been out of time. That being so, we cannot treat this suit as an application. In my opinion, therefore, the appeal must be allowed with costs throughout.

WASSOODREW J. I agree.

*Appeal allowed.*

J. G. R.

1937

GOPAL  
SATRU

v.  
DNYANU  
MARUTI

Beaumont C. J.

## APPELLATE CIVIL.

### FULL BENCH.

*Before Sir John Beaumont, Chief Justice, Mr. Justice Broomfield and Mr. Justice Wassoodew.*

GANGADHAR GOPALRAO DESHPANDE AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS v. SHRIPAD ANNARAO DESHPANDE (ORIGINAL PLAINTIFF), RESPONDENT.\*

1937  
December 2

*Civil Procedure Code (Act V of 1908), s. 11, Expl. V—Suit for possession and mesne profits—Decree silent as to future mesne profits—Fresh suit to recover future mesne profits—Suit not barred—Statute, construction of.*

It is a well established principle to be applied in the construction of Acts of Parliament that where a certain construction has been placed by the Courts upon words in an Act, and that Act is subsequently re-enacted in a later Act which uses the same words, the Legislature must be taken to have known of the construction placed upon the old Act and to have intended to adopt it, unless there is something in the rest of the Act which negatives such a conclusion.

Where after a suit for partition and possession of lands and mesne profits, past and future, has been brought and decided and the decree fails to award the claim to

\* First Appeal No. 153 of 1934.