

Appellate Jurisdiction. (a)*Civil Miscellaneous Regular Appeal No. 41 of 1869.*LAKSHMI AMMAL.....*Petitioner.*SASHADRY AIYANGAR and 5 others...*Counter Petitioners.*

Process of execution cannot always be issued for three years' arrears under a decree directing annual payments of money for a series of years.

The petitioner, who had obtained a decree for an annual sum for maintenance during her life, alleged satisfaction of the decree up to a period less than three years from the date of the application for execution of the decree. The Judge was not satisfied of the alleged satisfaction and dismissed the application for execution.

Held, that the petitioner was entitled to execution of the decree at any time from the date at which the first instalment became due, but that she was not entitled to have process of execution issued within three years from the date at which the second instalment or subsequent instalments became due.

Case remitted for inquiry as to the allegation of the petitioner of the receipt of maintenance in satisfaction of the decree within three years from the date of the application for execution.

THIS was a petition against the order of E. F. Elliott, the Acting Civil Judge of Chittoor, dated 14th October 1868.

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The petition, dated the 5th October 1868, set forth that the plaintiff obtained a decree on the 6th February 1850 against the execution-debtors allowing petitioner rupees 24 for life for maintenance; that maintenance due up to the end of October 1865 was made good by the defendants and praying for process of execution to recover maintenance for three years from November 1865 to the end of October 1868.

The order of the Civil Judge, dated the 14th October 1868, stated that beyond the bare statement of the applicant that she received the maintenance up to the end of October 1865, there was nothing on the records of the Court to show that the applicant kept alive the decree within three years preceding the application. The application was therefore rejected.

The petitioner appealed to the High Court for the following reasons:—

(a) Present: Bittleston and Innes, J. J.

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1. The Civil Judge ought to have allowed the petitioner an opportunity to prove her statement of payment of maintenance up to November 1865.

2. The decree being a decree for maintenance for life, the petitioner could execute it whenever maintenance was withheld from her.

Srinivassa Chariyar, for the petitioner, the counter petitioners not appearing in person or by Counsel.

The Court delivered the following

JUDGMENT :—In 1850 the petitioner obtained a decree for payment to her of 24 rupees annually for her maintenance during her life. She alleges that she has been paid or satisfied to the end of October 1865; and on the 5th October 1868 she applies for execution, but the Civil Judge has rejected that application on the ground that it is barred by the 20th Section of Act XIV of 1859.

In Referred Case 35 of 1868, it was held by this Court that the period of three years mentioned in Section 20 must be reckoned from the time when the decree became enforceable by process of execution, and, concurring entirely in that decision, we have only to consider how far it is applicable to the present case. Now this decree became enforceable when the first annual instalment fell due, so far as that instalment was concerned, and at any time within three years from that date process of execution might be issued to enforce the payment. But supposing no step to be taken at that time to enforce the decree or keep it alive, could the judgment-creditor obtain process of execution to enforce payment of the second instalment only within three years from the date when the second instalment fell due?

In other words can process of execution always be issued for three years' arrears under a decree directing annual payments of money for a series of years? Upon the whole we consider that that question must be answered in the negative. The principle on which enactments of this kind rests is that if a person sleeps upon his rights for a length of time, a presumption arises that the claim has been in

some way satisfied; and if a person entitled to receive a sum of money annually for life neglects to enforce the decree for many years the presumption arises as strongly as if the decree had been for payment of one single sum at one time, and the ground for the interposition of a law of limitation is the same. The words of Section 20 would clearly include such a case, and we think the spirit of the provision, as explained in the decision above referred to, as well as the letter, applies.

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The petitioner, however, alleges satisfaction of the decree down to the end of October 1865, and that allegation is, we think, sufficient to get rid of any difficulty under Section 206 of Act VIII of 1859; and if the decree was satisfied to the end of October 1865, then it was not enforceable by execution until after that day, and the present application is not barred by lapse of time.

We must therefore reverse the decision of the Civil Judge, and direct him to hear the application after notice to the defendants; for it seems to us that the defendants ought to have the opportunity of answering the allegation that the decree has been satisfied to the end of October 1865, and of showing any other cause why the decree ought not now to be executed as regards three years' arrears.

Appellate Jurisdiction (a)

Civil Miscellaneous Regular Appeal No. 178 of 1868.

MAHOMED ABDUL VAKAB SAHIB..... *Appellant.*

COMANDUR RAMASAMY AIYANGAR..... *Respondent.*

The stipend of a Carnatic Stipendiary is not liable to attachment in execution of a decree obtained against the Stipendiary, it being one of the description of personal grants expressly protected from attachment in satisfaction of any decree or order of a Court by Section 3, Regulation IV of 1831, extended by Act XXIII of 1838.

These enactments are not impliedly repealed by Sections 205 and 237 of the Code of Civil Procedure.

A PPEAL against the orders of W. S. Whiteside, the Acting Civil Judge of Chingleput, dated 15th February and 13th March 1868.

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1868.

(a) Present: Scotland, C. J., and Collett, J.