

1868.
December 9.
R. C. No. 36
of 1868.

cess of execution. The omission to take some proceeding to enforce the decree or to keep alive its force for three years constitutes the bar, and that necessarily implies that a liability under the decree was capable of being enforced by execution during that period. The observation in the judgment of this Court, to which the District Munsif has referred, was made with reference to a decree admitting of an application to enforce the liability under it from its date.

Our answer therefore to the question submitted is that the period of three years under Section 20 must be reckoned from the time when the decree became enforceable by process of execution, and consequently that the application for execution was not barred.

Appellate Jurisdiction (a)

Referred Case No. 36 of 1868.

VELLAYA PADYACHY..... Plaintiff.

MOORTHY PADYACHY..... Defendant.

Where an instrument purports to create an interest in immoveable property only as a collateral security for the payment of money, and is also a simple contract or bond for the payment of a debt, and where effect is sought to be given to the instrument only as a simple contract, it is admissible in evidence in a suit to recover the debt, though it has not been registered. So far as it is a contract for the payment of money, it is an instrument the registration of which is made optional by Section 18 of Act XX of 1866.

1868.
December 11.
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of 1868.

THIS was a case referred for the opinion of the High Court by F. H. Woodroffe, the Acting Judge of the Court of Small Causes at Cuddalore, in Suit No. 450 of 1868.

The suit was brought to recover rupees 57-9-8, being the balance of principal and interest payable under the following written instrument:—

“Mortgage bond executed by Moorthy Padyachy to Vellaya Padyachy on the 19th June 1867 as follows:—

“On account of my necessity I have pledged to you the whole of the punjah lands for which a puttah stands in my name and received from you a bandy and two bullocks valued

“at rupees 100. As I have agreed to pay you this sum of 1868.
 “rupees 100 in ready cash, I shall pay you the same with December 11,
 “interest at 2 per cent. per mensem within 14th October R. C. No. 36
 “1867 in ready money. In default I agree to pay to you of 1868.
 “the principal and profit at 25 per cent. on demand.

“Thus I have executed this mortgage bond with my
 “free-will and consent.”

The defendant's wakil objected that the document, not having been registered, could not be received in evidence by virtue of Section 49 of the Indian Registration Act (XX of 1866), the document being one of the kind specified in Section 17 of the Act. The Judge held that the main intention of the parties was not the creation of a mortgage of defendant's land but to obtain payment of a sum of money, the land being considered as collateral security only, and the plaintiff in this suit sought to obtain a decree for money only. Treating the document as one of those specified in clause 7 of Section 18 of the Act, as to which registration was optional, the Judge received it in evidence.

The question put to the High Court was whether the document was admissible in evidence.

No Counsel were instructed.

The Court delivered the following

JUDGMENT:—The instrument sued on does undoubtedly purport to create an interest in immoveable property, but only as a collateral security. It is not thereby made the less available as a simple contract or bond for the payment of the principal debt, and, as such, it is one of those instruments the registration of which is made optional by Section 18 of Act XX of 1866. The provision in Section 49 relates only to Section 17, and was intended, we think, to prohibit any effect being given to an unregistered instrument for either of the purposes which make registration compulsory under Section 17. In this case the instrument is sought to be given effect to as a simple contract only. We are therefore of opinion that it has been rightly held to be admissible in evidence.