

Appellate Jurisdiction. (a)*Referred Case No. 35 of 1868.*GOPALA SETTY.....*Plaintiff.*DAMODARA SETTY.....*Defendant.*

Section 20 of the Limitation Act (XIV of 1859) is not applicable to a decree until the liability under it has become enforceable by process of execution.

THIS was a case referred for the opinion of the High Court by R. Vasudeva Row, the District Munsif of Manargudy, in Suit No. 298 of 1865. 1868.
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From the case stated it appeared that an application was made on behalf of the plaintiff to the District Munsif's Court on the 12th October 1868 for execution of the decree made in Suit No. 298 of 1865 on the 17th of August 1865 on the Small Cause Court side of the District Munsif's Court. The suit was brought to recover the amount mentioned in a bond. A settlement was come to by the parties, and at their request, the District Munsif, sitting as a Small Cause Court Judge, gave judgment for the plaintiff, with a direction that the amount of the decree should be paid into Court on or before the 17th of October 1865. The application was made more than three years after the date of the decree, but within three years before the period at which it was obligatory upon the defendant to pay the amount into Court according to the terms of the decree.

The District Munsif, referring to the decisions of the High Court in Miscellaneous Special Appeal Nos. 8 and 70 of 1868, thought the claim of the plaintiff was barred by Section 20 of Act XIV of 1859, but reserved the question for the opinion of the High Court.

No Counsel were instructed.

This case coming on for hearing, the Court delivered the following

JUDGMENT :—We are of opinion that Section 20 of the Limitation Act (XIV of 1859) is not applicable to a decree until the liability under it has become enforceable by pro-

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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.

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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