

1875.
 October 1.
 C. M. S. A.
 No. 175
 of 1875.

The plaintiff contended that he presented this application within three years from the date of the appeal decree, dated 20th October 1874, and from the date (7th February 1872) on which the last application was struck off the file.

The Lower Court dismissed the application for execution as barred. At the hearing of the appeal from the order of dismissal it was conceded that the order of dismissal was correct, unless the time during which petitioner was prosecuting another suit could be deducted.

The Acting District Judge of Coimbatore dismissed the appeal with costs on the ground that the claim was barred by the Law of Limitation.

From this order the plaintiff appealed.

Mr. P. Shaw, for the appellant.

T. Rama Row, for the 1st respondent.

The Court delivered the following

JUDGMENT:—The application as made is barred, for the appointed time has expired and we are not authorized by the Act to apply to proceedings in execution, provisions enacted for extending the period in certain cases where the limitation of suits is in question.

The appeal is dismissed but without costs.

Appeal dismissed.

NOTE.—See preceding case *Naranappa Aiyar v. Nanna Annal*, ante p. 97, and the cases in the note thereto.

Appellate Jurisdiction.(a)

Special Appeal No. 365 of 1875.

NARAYANA PILLAY.....(*Plaintiff*) *Special Appellant.*

RAMASAWMY THAVUTHARAN } (*4th Defendant*) *Special*
 { *Respondent.*

A bond whereby "the superstructure of a house exclusive of the land beneath" is hypothecated creates an interest in immoveable property within the terms of the Limitation Act, the apparent intention being to mortgage the existing house and not merely the materials

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THIS was a Special Appeal against the decree of Mr. A. C. Buraell, the Acting District Judge of South Tanjore, in Regular Appeal No. 460 of 1874, reversing the decree of the Court of the District Munsif of Combacoium in Original Suit No. 365 of 1873.

(a) Present:—Sir W. Morgan, C.J. and Kindersley, J

The suit was brought to recover Rupees 100, being principal and interest due upon the following hypothecation bond.

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“Hypothecation deed granted on the 14th December 1867 *i. e.*, the 1st of Margali of the year Prabhava, to Narraina Pillay, son of Appu Pillay, living in the Eastern street of the village of Swami Malai by Panchanada Charry, son of Sakschiacharyar. I have hypothecated to you the superstructure (building and roof) inclusive of the tiled roofing now built, standing on my own house-site situated in the northern row of Kuchipollum, Swami Malai village, Combaconum Taluq, to the east of Muthusawmi Davudroyer’s house, to the west of the house-site occupied by Chinna Chetty and included in the site belonging to the pagoda, to the south of Subramania Achary’s house-site and to the north of the path; and the amount I have borrowed on the security of that (the superstructure) from you is silver Rupees 50 in the currency of the country; as I have received from you the said 50 Rupees given by you I will pay the said sum of Rupees 50 with interest thereon at $1\frac{1}{2}$ per cent. per mensem from this day whenever the holder hereof may demand it and redeem the superstructure. Should any payments be made on account of this bond they are to be endorsed hereon alone. No other payments shall be accepted by you. In this manner has Panchanada Charry granted this hypothecation bond to Narrain Pillai hypothecating the superstructure exclusive of the land beneath.(a)

(Signed) PUNCHANADA CHARRY.

The District Munsif of Combaconum held that the mortgage bond was genuine, but did not include the site upon which the house was built and gave judgment for plaintiff.

The 4th defendant, who was in possession, appealed, and the Acting District Judge of South Tanjore reversed the decree and dismissed the suit on the ground that the plaintiff’s remedy was barred by the Limitation Act as the bond was

(a) சீழ் நிலம் நீங்கலாக - lit. removed, apart, distinct from the land beneath

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executed on the 14th December 1867, and the suit was not brought until the 11th September 1873, whereas the period of limitation was three years "as in this case only moveable property (the structure of a house) was hypothecated."

From this decision the plaintiff appealed.

Bhashyam Iyengar, for the special appellant, the plaintiff, contended that the Lower Court had given too narrow a meaning to the term "immoveable property." That term would include the house as well as the house-site. The narrow view here taken is opposed to the spirit of the decision in *Muttusamy Mudaly v. Sadagopa Gramany* (1) and the signification given to immoveable property by the Registration Act.

Nallathumby Moodaliar, for *Dorasawmy Iyer*, for the special respondent, the 4th defendant, contended that as the house-site was specially excluded, all that the plaintiff took as security was the house, which was not immoveable property, and therefore the suit is barred by the Law of Limitation.

The Court delivered the following

JUDGMENT:—We have not now to determine the rights of the several parties but merely the question of limitation.

The hypothecated property is a house standing on a site, which belonged to Puchanada Charry, who gave the instrument of hypothecation in 1867. It existed at that time as immoveable property in the sense that it was attached to the ground on which it had been built; and it has ever since so continued to exist.

The terms of the deed show clearly that the existing building and not merely the materials of the building, as held by the Lower Appellate Court, has been hypothecated, and, notwithstanding the words excluding the land from the security, the language used is amply sufficient to show that an interest in immoveable property is thereby created. In this view the suit was not barred by limitation. The decree of the Lower Appellate Court must be reversed and the case remanded to that Court for decision. The costs will abide the result.

Appeal allowed and case remanded.

(1) 4 Madras H. C. Rep., p. 398.