
(1924) 11 MAD CK 0043
In the Madras High Court

Arjee Prabappa Chetti

APPELLANT

Vs

Koneti Desikachari

RESPONDENT

Date of Decision : 12-11-1924

Acts Referred:

Limitation Act, 1963 — Section 20

Citation : AIR 1925 Mad 1131 : 90 Ind. Cas. 1028 : (1925) 22 LW 78 : (1925) 49 MLJ 101

Hon'ble Judges : Victory Murray Coutts Trotter, C.J; Srinivasa Aiyangar, J

Bench : Full Bench

Judgement

Srinivasa Aiyangar, J.—This is an appeal from an order of Kumaraswami Sastri, J., ordering execution on an execution application made by

the assignee of a decree. Objection was taken to the execution application on the ground that it was barred by limitation. The article applicable to

the application in question for execution is Article 183, because it was in respect of a decree passed on the Original Side of this Court. Under that

Article the decree-holder has twelve! years not only from the date on which he becomes entitled to enforce the decree but also twelve years from

the date on which some part of the principal money secured thereby or some interest on such money has been paid. In this case, we find that M.

Sabapathy Chetti, the original decree-holder, died without drawing from the Court the sum of Rs. 24,000 odd ordered to be paid to him by order,

dated the 6th October, 1909. Subsequently, the Administrator-General of Madras, I believe, as Administrator-General pendente lite in the

administration suit relating to Sabapathy's estate! applied to the Court for the payment to him of the entire sum of Rs. 25,932 standing on that date

to the credit of the suit, and Wallis, J. passed an order directing such payment on

the 9th January, 1912. The present application for execution is within twelve years from that date and a fortiori is within twelve years from the date on which the payment out was made from the Court.

2. It has been sought to be argued by the learned Vakil for the appellant that it was not a proper application by the Administrator-General,

because, previous to that application, he had not brought himself on the record in the place of the deceased decree-holder. No such process is

contemplated by the procedure laid down either in the Procedure Code or in the rules on the Original Side and all that is necessary is that the

person who becomes by operation of law entitled to have execution is required only to make an application for execution.

3. It has next been argued that the payment referred to in Article 183 must have been a payment either by the judgment-debtor himself or by some

duly constituted agent or some person acting on his behalf: In Section 20 of the Limitation Act, where a part payment is referred to as giving rise to

a further starting of limitation, it is significant that it is prescribed that, for the purpose of saving limitation, the part of the principal of a debt should

be paid by the debtor or by his agent duly authorised in that behalf, but, in Article 183, however, there are no such words to be found after the

words "" some part of the principal money secured thereby or some interest on such money has been paid."" The payment is not therefore required

to be made either by the debtor or by some person acting on his behalf. The difference in the wording is significant, and, I cannot help thinking,

fully intended. It therefore follows that, even if payment is for the judgment-debtor or on his account it would be a payment that will save limitation

giving rise to a fresh starting point.

4. In this view it is unnecessary to consider the decision in the case of Govinda Pillai Vs. Dasai Goundan and Another, . That was under Article

182 of the Limitation Act and had reference to the special terms of Section 20 of the Limitation Act. It is, therefore, unnecessary to consider

whether a Court of Law can be deemed to be an agent duly authorised on behalf of a debtor to make any such payment as would save limitation.

5. The execution application is therefore not barred by the Law of Limitation, and the learned Judge was right in ordering execution. The appeal

therefore fails and is dismissed with costs.

Victory Murray Coutts Trotter, C.J.

6. I am of the same opinion. No doubt if the matter has to be considered one might find that it was necessary to put some qualification on the

latitude of the language of Article 183 to obviate the contingency referred to by Lord Westbury in *Chinnery v. Evans* (1964) 11 HLC 115 and by

the learned Judges in the Irish case *Brew v. Brew* (1899) 2 IR 163. That contingency is the possibility of a payment made by a mere volunteer

being sought in aid to affect adversely the rights of third parties. But we need not consider that here, because it cannot be suggested that either the

Court or the Administrator-General were not persons who were dealing with the estate of the deceased not as volunteers but clothed in the definite

functions in regard to it.

7. I agree that the appeal fails and must be dismissed with costs.