

(1920) 09 MAD CK 0024
In the Madras High Court

Chinna Vellayan alias Chinna Karuppan Chetty (Deceased)
and Another

APPELLANT

Vs

Muthayya Chetty and Others

RESPONDENT

Date of Decision : 14-09-1920

Acts Referred:

Limitation Act, 1963 — Article 182(1), 15

Citation : AIR 1921 Mad 116 : 61 Ind. Cas. 901 : (1921) 13 LW 59

Hon'ble Judges : Odgers, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. There were several judgment-debtors in this case. The lower Court has held that the application for execution, dated 30th August 1913, was not barred against the first defendant, because the decree against him was suspended between the 23rd August 1910 and 10th September 1910 and if the period between these two dates be deducted, then the application of the 30th August 1913 was within three years of the prior application, that is, of the 16th August 1910. But the Subordinate Judge has held that, so far as the other judgment-debtors are concerned, the application of the 30th August 1913 was out of time and, therefore, the present application dated the 26th February 1916 was barred.

2. It is contended on the strength of Section 15, and Article 182, Explanation (1), of the Limitation Act that, as the application for execution of 1913 was in time as against the first defendant, it must be held to be effective as against all the judgment-debtors. Section 15 says: In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded." And the last part of Explanation 1 to Article 182 says: "But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in

favour of them all." As regards Section 15 it is contended that any stay of the execution of the decree as against one of the judgment-debtors amounts to a stay of the execution of the entire decree, because the decree is jointly against all the defendants and the decree holder, therefore, is entitled to realise his decree from any of them, if he so chooses. The language of Section 15 is very general, but the language of Article 182, Explanation (1), is more clear and explicit. In applying the Explanation to the facts of this case, we have to see whether the previous application was in accordance with the law as laid down in *Harendra Lal Roy Chowdhry v. Sham Lal Sen* 27 C. 210 . It is contended that it was in accordance with law, inasmuch as it was in time at least as against the first defendant. That being so, it has been ruled in this Court in *Subramanay Chettiar Alagappa Chettiar v.* 30 M. 268 , a case the facts of which were similar to the facts of this case, that the effect of the application against some of the joint decree-holders would be to keep alive the right to execute the decree against all of them. It was held in that case that where a decree awards mesne profits against A and B jointly and costs jointly against A, B and C, an application to execute the decree for mesne profits against A and B keeps alive the right to execute the decree for costs against under part 2 of paragraph 2, Explanation to Article 179 of Schedule II to the Limitation Act, corresponding to the latter part of the First Explanation to Article 182 of the present Act. This decision appears to have been followed in the High Court of Calcutta in a case reported as *Barada Kinkar Chowdhury v. Nabin Chandra Datta* 4 Ind. Cas. 408. We, therefore, hold that the application was not barred.

3. The order of the Subordinate Judge is set aside and the application will be remanded to him for disposal according to law. Costs will be costs in the cause.

4. It is unfortunate that in this case we had not the advantage of hearing any argument on behalf of the respondents who did not appear before us.