
(1940) 12 MAD CK 0042
In the Madras High Court

Chinnasami Pillai

APPELLANT

Vs

Annamalai Chetty, minor by guardian, the Head Clerk,
District Munsif's Court and Another

RESPONDENT

Date of Decision : 06-12-1940

Acts Referred:

Citation : AIR 1941 Mad 309 : (1941) ILR (Mad) 574 : (1941) 53 LW 145 :
(1941) 1 MLJ 242

Hon'ble Judges : Alfred Henry Lionel Leach, C.J.; Venkataramana Rao,
J.; Krishnaswami Aiyangar, J.; Horwill, J.; Abdur Rahman, J

Bench : Full Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This appeal has been placed before a Full Bench of five Judges because it involves the consideration of the question whether. Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi, was rightly decided. In that case it was held by a Full Bench of three Judges of this Court that an application to a Court in British India to send a decree passed by it to a Court in a Native State for execution was not a step in aid of execution within the meaning of Article 182, Clause 5 of the Limitation Act and therefore did not give a fresh starting point for the period of limitation. The facts were these. On the 21st August, 1911 a decree for money was passed by a British Court in Cochin. On the 7th October, 1912 the decree-holder applied for an order transferring the decree to a District Court in the State of Travancore for execution. The application was granted and on the 13th November, 1912 the decree was transmitted to the District Court named in the application. ? As the execution proceedings there proved to be infructuous, the decree-holder filed an application for execution in the Court which had passed the decree. This application was filed on the 5th January, 1915 and the Full Bench held that it was out of time because the application of the 7th October, 1912 for the transfer of the decree to the Travancore Court could not be taken into consideration.

2. The position in the present case is exactly the same. On the 26th October,

1931 the appellant obtained a money decree against the respondents in the Court of the District Munsif of Dindigul. On the 21st January, 1932 the appellant applied to the District Munsif of Dindigul for an order transferring his decree to the Chief Court of the State of Pudukottah for the purpose of execution, and on the 25th January, 1932, his application was granted. The execution proceedings in Pudukottah led to nothing and the decree-holder caused the decree to be re-transferred to the Court of the District Munsif of Dindigul. On the 10th October, 1936, the decree-holder filed an application for execution in that Court and was met by the plea that the application was time-barred. As the case clearly fell within the decision of *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, the District Munsif upheld the objection and on appeal the Subordinate Judge of Dindigul concurred. The decree-holder has now appealed to this Court. It is conceded on behalf of the respondents that if the application which the appellant filed on the 21st January, 1932, in the Court of the District Munsif of Dindigul for the transfer of the decree to the Chief Court of Pudukottah is a step in aid of execution the application of the 10th October, 1936, was within time.

3. The appeal in *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, came before Oldfield and Bakewell, JJ., who referred to a Full Bench the following questions:

1. Whether the Courts in British India have power to send their decrees to the Courts of the State of Travancore for execution:

2. If they have this power, whether proceedings thereunder fall within Article 182 of the Limitation Act, so as to give a fresh period of limitation for further proceedings in execution.

4. Section 39 of the CPC permits a Court which has passed a decree to send it for execution to "another Court." Bakewell, J., considered that there was no ground for limiting the expression "another Court" to a Court situate in British India, and construed it as meaning "a Court in which the decree is executable". In this opinion Oldfield J., concurred.

5. The Full Bench was composed of Wallis, C. J., and Oldfield and Kumaraswami Sastri, JJ. The learned Chief Justice answered the first question by saying that Courts in British India had no power to send their decrees for execution to the Travancore Courts, but might and should send to those Courts the documents they required to enable them to execute decrees passed in British India under the powers conferred upon them by the legislative authority in Travancore. There was no provision in the CPC which permitted of this being done, but it was a case in which the Court could exercise its inherent powers. The second question was answered in the negative. The reasons given were that the Indian Limitation Act extends only to British India; that it prescribes periods of limitation with regard to the filing of suits and the execution of decrees in British India; that when the Limitation Act makes an application in accordance with law to a proper Court a fresh starting point, it must be taken to mean an application in accordance with

the provisions of law in British India to be found in the CPC to which the Article refers or elsewhere; and that it could not have been the intention of the legislature to make an application for execution to a Court in a foreign State under the law of that State and governed by the law of Limitation there in force a fresh starting point under the Indian Limitation Act for the execution of the decrees of Courts in British India. Oldfield and Kumaraswami Sastri, JJ., agreed.

6. The decision in *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, was given in 1917. In the following year the same question arose in the Bombay High Court in *Janardhan Govind v. Narayan Krishnaji* I.L.R.(1918)Bom. 420, and *Beaman and Heaton, JJ.*, had no hesitation in holding that an application made to a British Indian Court to transfer its decree for execution to a Court of a Native State between which and the British Government there existed an agreement to execute each other's decrees, was a step in aid of execution within the meaning of Article 182 of the Indian Limitation Act. The decision in *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, , was rejected in a very forcible judgment by *Beaman, J.*, who considered that it was contrary to commonsense to say that an application to a Court to transfer its decree elsewhere for execution was not a step in aid of execution, and proceeded to give reasons why it was contrary to law. While I am not prepared to express my dissent in the same words I am bound to say, with the greatest respect to the opinions expressed by the learned Chief Justice in *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, , and concurred in by *Oldfield and Kumaraswami Sastri, JJ.*, that I agree entirely with the reasons given by *Beaman, J.*, for refusing to follow that decision.

7. Now let us examine (5) of Article 182 of the Indian Limitation Act. It says that for an application for the execution of a decree or order of a Civil Court not provided for by Article 183 or by Section 48 of the Code of Civil Procedure, 1908, the period of limitation shall be three years (unless a certified copy of the decree or order has been registered in which case the period is six years) and that time shall begin to run from the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution. Therefore, an order on an application to take a step in aid of execution comes within this clause when the application is made in accordance with law and presented to the proper Court. There exists and at all material times has existed, an arrangement between the State of Pudukottah and the Government of India whereby the decrees of the State shall be executed by Courts in British India and the decree of British Indian Courts shall be executed by the Courts in the State and it is admitted that the CPC in force in the State of Pudukottah contains a section corresponding to Section 43 of our Code. Consequently, the appellant was in order in applying to the District Munsif's Court of Dindigul to transfer his decree to the Chief Court of Pudukottah and, as was recognised in *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, , the District Munsif had full power to grant the application. The requirements of Clause (5) of Article 182 were fully complied with. In my judgment it is going to a length altogether unwarranted to say that because there is no express

provision in the CPC for such an application a Court in British India is precluded from giving to Clause (5) of Article 182 of the Limitation Act its plain meaning. If the application which the appellant made to the District Munsif's Court of Dindigul on the 21st January, 1932, is not a step in aid of execution I fail to see what else it can be. The judgment in *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, , goes to the extreme lengths of the technicality, but even on technical grounds I consider that it cannot be supported and should be overruled.

8. In *P.R. Srinivasa Aiyangar Vs. S.L. Narayana Rao*, , a Bench of this Court (Schwabe, C. J. and Wallace, J.,) had to consider whether an application filed in a Court of the State of Mysore for the transmission of a decree to this Court for purposes of execution was a step in aid of execution. That question does not arise in the present appeal and therefore does not call for discussion, but Schwabe, C. J., in deciding *P.R. Srinivasa Aiyangar Vs. S.L. Narayana Rao*, , indicated his disapproval of the decision in *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, , and said that if the same point arose again he would wish to have it re-considered. That opportunity has arisen in the present case. While it is not necessary to decide whether an application made to a Court in a Native State for the transfer of a decree to a Court in British India is a step in aid of execution within the meaning of Article 182 it may be mentioned that in *Fatechand Rampratap v. Jitmal Rupchand* I.L.R.(1929)Bom. 844, it was held that an application made by a decree-holder for the return of his decree from a Court in a Native State to a Court in British India was a step in aid of execution under that Article.

9. Neither is it necessary to decide whether the opinion expressed by Bakewell, J., in *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, , that the words "another Court" in Section 39 of the CPC apply to a Court outside British India is well founded, but if this was the only argument open to the appellant it is obvious that there would be great difficulty in his way. The word "Court" throughout the Code of Civil Procedure, unless it is preceded by the adjective "foreign"--"foreign Court" is defined in Section 2(5)--means prima facie a Court in British India because the CPC can only govern procedure in British India. But the appellant's case does not rest on this argument. It rests on much firmer ground, as I have indicated, and I hold that his application of the 21st January, 1932, to the District Munsif of Dindigul for the transfer of his decree to the Chief Court of Puddukottah was a step in aid of execution and therefore the order on the application started a fresh period of limitation, which means that his application for execution presented to the District Munsif of Dindigul on the 10th October, 1936, was within time.

10. For the reasons indicated I would allow the appeal with costs and remand the case to the District Munsif to hear and determine in the light of this judgment the application which the appellant has filed for the execution of his decree.

Venkataramana Rao, J.

11. I agree

Abdur Rahman, J.

12. I concur.

Krishnaswami Aiyangar, J.

13. I agree.

Horwill, J.

14. Despite the trenchant criticism of the decision in *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, , by Beaman, J., in *Janardhan Govind v. Narayan Krishnaji* I.L.R.(1918)Bom. 420, I am unable to find any flaw in the reasoning of Sir John Wallis, C. J., in the former case which leads him and the learned Judges who sat with him to the conclusion that Courts in British India have no power to send their decrees for execution to a foreign Court, that an application to a foreign Court to execute the decree of a British Court under powers conferred upon it by the legislative authority of a foreign State would not be an application in accordance with law to the proper Court for execution, and that an application to a British Court to take a step in aid of the execution by a foreign Court of the decree would not be a step in aid of execution within the meaning of the fifth clause of Article 182 of the Limitation Act. The reasons for this decision may be highly technical; but the decision has been the law of this province for 33 years, and yet the legislature has not seen fit to enact a section complementary to Section 45 of the Code of Civil Procedure.

15. Section 38 of the CPC permits execution only by the Court that passed the decree and by the Court to which it is sent for execution. If the word "Court, in the CPC means only a British Court, then it would follow from this section that a foreign Court cannot execute a British decree and that what is termed "execution" by a foreign Court is not recognised as such by the CPC as far as British decrees are concerned. With regard to foreign decrees the position is different, because Section 45 permits the execution of foreign decrees in British Courts as if they were British decrees. When a foreign decree is so recognised and can be executed in British Courts, it may seem unreasonable, and not in consonance with the spirit of Section 45, if it were held that British Courts could not give recognition to the execution by foreign Courts of their own decrees. However, that point does not arise for decision here. It is fully discussed in *P.R. Srinivasa Aiyangar Vs. S.L. Narayana Rao*, , to which my Lord the Chief Justice has made reference.

16. I do not however think that from those findings of the Full Bench in *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, , set out above it necessarily follows that an application in a British Court to transfer the decree to a foreign Court for execution is not a step in aid of execution made according to law. In due course, after proceedings have been conducted in a foreign Court, the decree will be returned to the British Court; and to the extent that the

decree-holder has been paid out of the assets of the judgment-debtor as a result of those "proceedings satisfaction will be recorded in the British Court. The application to transfer the decree to the foreign Court may therefore be regarded not merely as a step in aid of the proceedings in the foreign Court, but as a step in aid of the execution in the British Court after the decree is returned.

17. It would follow from what I have said above that the application of the 21st January, 1932, to transfer the decree to the Chief Court of Pudukottah was a step in aid of execution. This however would not help the appellant because, in my view, the next application for execution was not until 10th October, 1936, more than three years after the final order of the 25th January, 1932, passed on the application of the 21st January, 1932. It cannot now be denied that there was an application in the Pudukottah Court to execute the decree within three years of the 25th January, "1932; but that application was not, in my opinion, one that can be recognised by British Courts as made in accordance with law. This means that I have reluctantly to disagree with my Lord the Chief Justice and my learned brothers and to express the opinion that this appeal should be dismissed with costs.