

(1923) 08 MAD CK 0089
In the Madras High Court

M. Sabapathy Chetty

APPELLANT

Vs

A. Shanmugappa Chetty and Others

RESPONDENT

Date of Decision : 30-08-1923

Acts Referred:

Citation : AIR 1924 Mad 638 : (1924) 19 LW 582 : (1924) 46 MLJ 453

Hon'ble Judges : Kumaraswami Sastri, J

Bench : Division Bench

Judgement

Kumaraswami Sastri, J.—This is an application to execute the decree in C.S. No. 188 of 1903 by the transferee-plaintiff, and the only question is whether the application is barred by limitation. The decree is dated 14th December, 1904. An appeal was filed against that decree which was also dismissed on 27th February, 1906. On the 9th May, 1908, execution was applied for and sale was ordered on 21st July, 1908. The property was sold on 1st May, 1909. The 1st defendant applied to set aside the sale and that application was dismissed on 29th September, 1909. An order was passed on the 6th October, 1909 giving leave to execute the decree as regards the balance. The plaintiff decree-holder died shortly afterwards and his estate vested in the Administrator-General of Madras. He applied for payment out of the net sale proceeds and an order was passed on 9th January, 1912 ordering payment to be made. The present application was filed on 1st February, 1923.

2. The order of the 6th October, 1909 as regards payment runs as follows: "That the Registrar of this Court do from and out of the sum of Rs 26,250 standing in his hands to the credit of this suit pay to Messrs Madras Sales and Agency Co., the auctioneers herein the sum of Rs 289-14-6 as and for their commission as auctioneers and expenses of sale; and he do pay to the plaintiff herein the sum of Rs. 24,710-1-6." The plaintiff died without receiving this money. An application was made by the Administrator-General of Madras, who was appointed administrator pendente lite in respect of the Testamentary Suit No. 1 of 1910 relating to the estate of the plaintiff, for the payment of the sum of Rs.

25,932-7-6 and an order was made on the 9th January 1912 directing the Registrar to pay this sum to the Administrator-General. The question is whether this order of the 9th January 1912 saves the period of limitation.

3. The article applicable to cases of this kind is Article 183 of the Limitation Act. It provides a period of 12 years to enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction the period to run from the date when a present right to enforce the judgment, decree or order accrue to some person capable of releasing the right. The proviso however provides that the period of twelve years should be computed from the date of payment or acknowledgment in cases where some part of the principal money secured thereby or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent." Article 182 of the Limitation Act refers to execution of decrees or orders of any Civil Court not provided for by Article 183. The period in three years and varying periods are given in the third column as the date from which the period is to run. The first question is whether when a payment has been ordered by a Court that Court can be said to be acting as the agent of the judgment-debtor. This question has been decided in *Thangi Shettithi Vs. Duja Shetti and Others*, and *Govinda Pillai v. Dasai Goundan* 41 MLJ 423. The ground of the decision is thus put by *Coutts Trotter, J.*, in his judgment, " If a debtor's assets are so placed either by his own act or by operation of law that if some one other than he alone can realise them for the purpose of making payment due from him, then the act of that other in operating upon the debtor's assets must be treated as the act of the debtor himself, the violation of the debtor in such a case being neither requisite nor relevant. If that be so, it appears to me that the words " his agent duly authorised in that behalf " in Section 20 of the Limitation Act are satisfied by the act of the Judge of the Court which authorises , the payment; and that his handwriting is rightly described as that of the person making the payment." The payment ordered can therefore save limitation as the payment made by an authorised agent of the defendant. Article 183 also refers to the actual fact of payment and not to any order directing payment.

4. The main contention of the defendant is that as the order of 6th October, 1909 directs payment to the decree-holder of this identical sum he could have obtained payment at once and the fact that he delayed to obtain payment could not operate to extend the period of limitation, that he should have executed the order of 6th October 1909 and that as that was the only order which could be enforced period began to run from the date of that order and not from the date of subsequent payment made in pursuance of it. There is a great deal of force in the contention that a person cannot by his own volition defer receiving payment and thus keep the decree alive for his benefit. But what I have to see is the actual language of the article and not any sequence that may arise on the application of that language. Art., 183 applies only to payment and where the

Court orders payment and the authorities are that the Court so acting is the agent of the defendant the requisites of Art., 183 are satisfied. As regards 182 the cases in Venkatroyalu v. Narasimha ILR (1880) M 174 , Kerala Varma Valiya Rajah v. Shangaram ILR (1892) M 452, Koomayya v. Krishnanna Naidu 3 MLT 96 Bapu Chand v. Mogat Rao ILR (1896) B 340 and Thangi Shettithi Vs. Duja Shetti and Others, take the view that payment out of a sum from Court is a step in aid of execution under Article 182 Clause 5. But Hem Chander Choudhry v. Brojo Sundree Debee ILR (1881) C 89 , Fazal Imam v. Metta Singh ILR (1884) C 549 and other cases take a contrary view. If the payment out of Court irrespective of the date of order on which payment is ordered is a step in aid of execution, I think that it can be held with equal force that the actual payment under Article 183 would be the starting point of limitation. I confess there is a great deal to be said in favour of the Calcutta view; but I am bound by the Madras decisions. I am therefore of opinion on the authorities of the Madras High Court that this application is not barred by limitation. I stay execution for one month to enable the defendant if so advised to appeal and get stay of execution.