

(1945) 12 MAD CK 0025
In the Madras High Court

Nacharammal and Others

APPELLANT

Vs

Veerappa Chettiar and Others

RESPONDENT

Date of Decision : 17-12-1945

Acts Referred:

Citation : AIR 1945 Mad 485 : (1946) ILR (Mad) 817 : (1946) 59 LW 103 :
(1946) 1 MLJ 128

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The question in this appeal is one of limitation. On the 1st December, 1922, in O.S. No. 27 of 1920, in the Court of the Subordinate Judge of Dindigul, the plaintiff obtained a conditional decree for possession of property in suit. On the 28th September, 1926, that decree was confirmed subject to a modification with regard to the amount to be paid under the decree. Both sides appealed to this Court. On the 21st November, 1930, their appeals were dismissed. On the 13th August, 1942, the decree holder filed an application for execution. The alienees from the first defendant contended that the application was barred by reason of the provisions of Section 48 of the Code of Civil Procedure. The Subordinate Judge held that the petition was not barred and his decision was concurred in by the District Judge. On second appeal Kuppuswami Aiyar, J., agreed with the Courts below. This appeal is from his judgment.

2. The appellants say that Section 48 of the CPC prescribes a period of twelve years from the date of the decree of the trial Court and rely on the decision of a Bench of this Court (Burn and Mockett, JJ.) in K. Nagalinga Chetty Vs. O.K. Srinivasa Aiyangar and Another, . We shall refer to that decision presently.

3. It is a well-settled principle of law that the decree to be executed is that of the appellate Court where there has been an appeal. In Manavikrama v. Unniappan (1891) 2 M.L.J. 23 : ILR 15 Mad. 170 this Court (Muthuswami Aiyar and Parker, JJ.) held that when an appeal has been heard, the decree of the appellate Court

becomes the final decree in the suit and the only one capable of execution. The Privy Council have made similar pronouncements in three later cases, namely, in *Bhup Indar Bahadur Singh v. Bijai Bahadur Singh* (1900) 10 M.L.J. 290 : L.R. 27 IndAp 209 : ILR 23 All. 152 *Brij Narain v. Tejbai Bikram Bahadur* (1910) 20 M.L.J. 587 : L.R. 37 IndAp 70 : I.L.R.32 All. 295 and *Jowad Hussain v. Gendan Singh* (1926) 51 M.L.J. 781: L.R. 53 IndAp197 : ILR 6 Pat. 24 . These decisions, except the last one, had reference to the Code of 1882. Section 230 of that Code corresponds to Section 48 of the present Code but was rather differently worded. Section 230 of the old Code said inter alia that where an application had been made to execute a decree, no subsequent application to execute the same decree should be granted after the expiration of twelve years from the date of the decree sought to be enforced "or of the decree (if any) on appeal affirming the same." In Section 48 of the present Code, the starting point is the date of the decree sought to be executed. There is no reference to an appellate decree. Obviously the alteration in the wording was not intended to make the decree of the trial Court the starting point even if there was an appeal. The omission of the words " or of the decree (if any) on appeal " means merely the omission of unnecessary words. Where an appellate Court passes a decree it takes the place of the decree of the trial Court. In *Jawad Hussain v. Gendan Singh* (1926) 51 M.L.J. 781 : L.R. 53 IndAp 197 : ILR 6 Pat. 24 a decision under the present Code, the Judicial Committee approved of this statement:

If an appeal is preferred, the final decree is the decree of the appellate Court of final jurisdiction. When that decree is passed, it is that decree and only that which can be made final in the cause between the parties.

4. It is true that Burn and Mockett, JJ., in *K. Nagalinga Chetty Vs. O.K. Srinivasa Aiyangar and Another*, did express the opinion that the twelve years starts from the date of the trial Court's decree. The learned Judges had misunderstood the effect of the judgment of the Full Bench of this Court in *Paladugu Veera Ramachandra Rao Vs. Paladugu Parasuramayya and Another*, . It was there held that where a decree has been amended, the twelve years period does not commence from the date of the amendment but from the date on which the decree was passed. It was certainly not the intention of the Full Bench to hold that the period starts from the trial Court's decree when that decree has been replaced by an appellate decree. The judgments delivered in that case lend no support for the judgment in *K. Nagalinga Chetty Vs. O.K. Srinivasa Aiyangar and Another*, in this connection.

5. In the present case, the period of twelve years commenced on the 21st November, 1930, when this Court dismissed the second appeals. Therefore the application for execution was well within time.

6. The appeal is dismissed with costs.