

(1940) 04 MAD CK 0046
In the Madras High Court

Oorakkarai Seetharama Chettiar

APPELLANT

Vs

Sheik Abdul Rahiman Sahib and Others

RESPONDENT

Date of Decision : 12-04-1940

Acts Referred:

Citation : (1940) 52 LW 277 : (1940) 2 MLJ 371

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This appeal arises out of an application filed on 21st August, 1935, to execute a decree passed on 9th November, 1929, and the

question is whether it is barred by limitation. Prima facie it is so barred, but the appellant claims that by reason of certain proceedings taken by the

respondent he is entitled to count time as beginning to run at a much later date. f In November, 1931, respondent applied to the executing Court to

record satisfaction of the decree. The Court dismissed his application. He appealed. His appeal was dismissed on 20th March, 1933. Appellant

contends that under Article 182(2) of the Limitation Act time began to run only from that date.

2. The point for determination is whether the appeal by the respondent is an appeal within the meaning of that article. 1 have been referred by

appellant's learned Advocate to a judgment of a Bench of which I was myself a member, reported in Nanduri Sriramachandra Rao Vs.

Chintamanibhatla Venkateswara Rao and Others, and have been asked to extend the principles of that judgment to the facts of this case. To some

degree that is a very plausible argument. In the judgment prominence is given to the rule formulated by the Privy Council in Nagendranath De v.

Sureshchandra De (1932) 63 M.L.J. 329 : L.R. 59 IndAp 283 : ILR 60 Cal. 1

So long as there is any question sub judice between any of the parties, those affected shall not be compelled to pursue the so often thorny path of

execution, which, if the final result is against them, may lead to no advantage.

3. That rule certainly applies to the facts in this case; for, if respondent's appeal had been allowed appellant would have had no right to execute his

decree. And, from a practical point of view, there is no difference, between a decree-holder whose decree may be set aside, and a decree-holder

who may be told by the Court that his decree has already been satisfied. But I cannot think that the rule so formulated by the Privy Council is

intended to be the sole guide for the interpretation of the article. On p. 255 of Nanduri Sriramachandra Rao Vs. Chintamanibhatla Venkateswara

Rao and Others, , the meaning of the word "appeal" is discussed; and it is held that an appeal in this context means any appeal which "affects" the

decree sought to be executed. It cannot be successfully argued that respondent's appeal in the present case "affects" the decree in any way.

However it may have been decided the decree remains valid and without modification. There is here in the word of their Lordships of, the Privy

Council in Nagendranath De v. Sureshchandra De (1932) 63 M.L.J. 329 : L.R. 59 IndAp 283 : ILR 60 Cal. 1 , no application ""to set aside or

revise the decision of a Subordinate Court"" which is embodied in the decree; and on page 7 of the same judgment their Lordships emphasise the

principle that in construing the provisions of the Limitation Act ""equitable considerations are out of place, and the strict grammatical meaning of the

words is the only safe guide."" To accept the contention of the appellant's learned advocate that "appeal" in Article 182 means any appeal the result

of which may affect not the decree itself, but only the decree-holder's right to execute it at a particular time and in particular circumstances is to

apply just one of those equitable considerations against which the warning of the Privy Council is directed.

4. I am accordingly of opinion that the present case does not fall within the principles of Nanduri Sriramachandra Rao Vs. Chintamanibhatla

Venkateswara Rao and Others, and that if I am bound by that decision I am bound by it to dismiss and not to allow this appeal. The appeal is

dismissed with costs.

5. Leave granted.