

(1950) 01 KL CK 0009
In the High Court Of Kerala
Case No : S.A. No. 60 of 1124 (c)

Vasudevan Namboodiri

APPELLANT

Vs

Neelakantan Namboodiri and Others

RESPONDENT

Date of Decision : 04-01-1950

Acts Referred:

Cochin Limitation Act, 1908 — Article 166

Citation : AIR 1950 Ker 79

Hon'ble Judges : P. Habeeb Mohamed, J; Mathew P. Muricken, J

Bench : Division Bench

Advocate : K. Sankara Kurup, for the Appellant; P.K. Achan and G. Ramanan, for the Respondent

Final Decision : Dismissed

Judgement

1. This second appeal has been preferred by the judgment-debtor and the question raised is one of limitation.
2. The decree is for money and it was passed on 2-3-1114. The appellate Court confirmed this decree on 29-10-1115. When the decree holder applied for execution by Execution petition No. 3384 of 1118, the judgment debtors opposed the application on the grounds that the decree should be scaled down before execution and that the applicant was not competent to execute the decree. The execution Court overruled these objections. The judgment-debtors took the matter in appeal to the District Court. The District Judge remanded the case to the trial Court, with direction to scale down the decree, under the provisions of the Agricultural Relief Act. Accordingly the Munsiff scaled down the decree on 6-12-1119. But the execution petition was dismissed on 14-12-1119 for want of prosecution. The decree-holder again put in Execution petition NO. 8372 of 1119. Against this, Defendant 11 filed his objection on various grounds. The Munsiff overruled these objections. The Defendant filed an appeal before the District Court against this order and also a second appeal to the High Court. The High Court remanded the case to the Munsiff for disposing of the objections on the

merits. At this stage, all the decree-holder s jointly put in Execution petition No. 929 of 1122 after curing the defects in the previous execution petition. The Munsiff finding that execution was barred by limitation dismissed Execution petition No. 929 of 1122. The District Judge reversed this decision holding that there is no limitation. Hence this second appeal.

3. The decree was amended by the trial Court on 6-12-1119 and the present execution application is within three years of that date. This amendment was made by the Munsiff as directed by the appellate Court. u/s 24, Agricultural Relief Act of Cochin, scaling down of the debt covered by a decree is an amendment of the decree. The decree becomes executable only after such amendment as provided for in Section 24. The direction given by the District Judge to the Munsiff to scale down the decree does not amount to an amendment as contended by the learned advocate for the Appellant. The Judge only brought to the notice of the Munsiff that the decree debt is one coming under the Agricultural Relief Act and the prayer of the judgment-debtors to scale down the debt should be given effect to. The amendment of a decree gives a fresh starting point of limitation under Article 166 Clause 4, Cochin Limitation Act, corresponding to Art. 182, Indian Limitation Act. The ruling reported in *Sathi Parasa Reddi v. Satyanarayanamurthi* AIR 1945 Mad. 147 : 1945 M. L. J. 39, supports this position. It follows, therefore, that the execution petition (E. P. No. 929 of 1122) is within time.

4. We confirm the order of the lower appellate Court and dismiss this second appeal with costs.