Mantrala Rajagopalam Vs. Vemuri Venkata Subbba Rao

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Court : Andhra Pradesh

Decided On : Apr-11-1969

Reported in : AIR1970AP269

Judge : Gopalrao Ekbote and ;Kuppuswami, JJ.

Acts : Limitation Act, 1908 - Article 182 (1) and 182 (2)

Appeal No. : Letter Patent Appeal No. 54 of 1965

Appellant : Mantrala Rajagopalam

Respondent : Vemuri Venkata Subbba Rao

Advocate for Def. : Y.B. Tata Rao, Adv.

Advocate for Pet/Ap. : N. Rajeswara Rao, Adv.

Judgement :

Gopal Rao Ekbote, J.

1. The question which has to be answered in this Letters Patent Appeal, is, where tow distinct decrees are passed in a suit and an appeal is preferred against only one of them, can it be said that it is an appeal against a portion of the decree in a suit and the final decree in such appeal would save limitation for execution of the other decree from which no appeal was filed under Article 182 (2) of the Indian Limitation Act, 1908.

2. The facts which give rise to this problem may briefly be stated. The appellant filed O. S. No. 476 of 1944 for possession of about 1 acre and 60 cents of land and in the alternative for partition of the same into three equal shares and for separate possession of one such share. The 1st defendant in the suit is the plaintiff's father and the 2nd defendant is his only brother. The 3rd defendant obtained a sale deed D/- 14-6-1944 from the 1st defendant for a consideration of Rupees 1500/-. The plaintiff contended that the sale was not binding on him.

3. On 31-3-1947, a preliminary decree was passed by the trial Court declaring that the plaintiff is entitled to a one-third share in the suit property. it directed the appointment of a Commissioner to partition of the properties into three equal shares and for delivery of possession of one such share to the plaintiff. it further ordered that the plaintiff was entitled to mesne profits calculated at 3 bags on his share from defendants 1 to 3. It also direct that the future mesne profits would be determined on a separate application.

4. The 3rd defendant carried the matter in appeal to the Subordinate Judge's Court. Machilipatanm. The plaintiff filed a memorandum of cross-objections. The learned Subordinate Judge held that the property sold to the 3rd defendant was the self-acquired property of the father of the 1st defendant. He therefore allowed the appeal and dismissed the memorandum of cross-objections. The plaintiff then filed Second Appeal No. 1572 of 1949 in the High Court. The High Court allowed the Appeal on 1-7-1955 and restored the decree of the trial Court. The preliminary decree passed by the trial Court was thus finally upheld.

5. After the second appeal was disposed of the plaintiff filed tow applications in the trial Court I. A. No. 2532 of 1955 was filed to partition the property according to the preliminary decree and to allot two shares to the plaintiff on the ground that he became entitled to the 2nd defendant's share as the 2nd defendant, the plaintiff's mother as well as the 1st defendant, had died during the pendency of the second appeal.

6. The second application was I. A. No. 2320 of 1955 for the ascertainment of mesne profits of the two third share belonging to the plaintiff. Since the 3rd defendant was set ex parte, the decree for mesne profits was passed in favour of the plaintiff on 2-1-1956.

7. The 3rd defendant filed an application to set aside the said ex-parte decree passed for mesne profits. it was, however, dismissed. C. R. P. No. 1372 of 1956 filed against that order refusing to set asiee the ex-parte decree was also dismissed by the High Court on 26-9-1958.

8. In the meanwhile I. A. No. 2532 of 1955 was allowed and a final decree allotting two one-third shares to the plaintiff on 23-2-1956 was passed. The 3rd defendant filed. A. S. No. 65 of 1956 in the Subordinate Judge's Court. Machilf patnam challenging this final decree. The appeal was however dismissed on 21-3-1957. Second Appeal No. 992 of 1957 was then filed by the 3rd defendant in the High Court. manoher Pershad J. dismissed the said second appeal on 15-2-1961.

9. The decree-holder appellant filed E. a. No. 12424 of 1960 asking the Court to transmit the decree for mesne profits to the District Munisf's Court. Afanigadda for execution alleging that the judgment debtors properties which he intends to sell are situated within the jurisdiction of the Avanigaddda Court. On an objection regarding limitation raised by the judgment-debtor, the District Munsif dismissed the application as time barred and refused to transmit the decree. he thought that the case is governed by Article 182 (1) of the Limitation Act. As the decree was passed on 2-1-1956 and the E. A. was filed on 24-9-1960 after more than three years, the District Munsif found the E. A. to be statute-barred.

10. The decree-holder filed A. S. No. 65 of 1961 in the District Court. Krishna. It was subsequently transferred to the Subordinate Judge's Court. Machilipatnam where it was numbered as A. s. No. 12 of 1961.

11. The learned Subordinate Judge held that the case is governed by Article 182 (2) of the Limitation Act. The period of limitation would therefore commence form 15-2-1961 when the second appeal No. 992 of 1957 was dismissed by the High Court. he found therefore the E. A. within limitation and allowed the appeal.

12. C. M. S. S. No. 48 of 1963 was then filed by the 3rd Judgment debtor. Chandrasekahara Sastry, J. allowed the appeal by his judgment dated 20-11-1964. he held that the case comes under the first clause of columns 3 of Article 182. The E. S. therefore is barred by limitation. It is this judgment, form which the decree-holder has appealed.

13. Article 182 in so far as it is relevant reads as follows:

Description of Period of Time from which period beginsapplication. limitation to run182 -- For the execution of a Three years, or where a (1) The date of the decree or order, ordecree or order of any certified copy of the (2) Where there has been an appeal the date Civil Court not pro- decree or order has of the final decree or order of the Appe-vided for by S. 48 of been registered, six llate Court, or the withdrawal of thethe Code of Civil Proce- year appeal, ordure, 1908.

14. A reading of this Article would indicate that it deals with an application for the execution of a decree not provided for by Article 183 or by section 48, C. P. C. Column 3 gives different dates form which the period of limitation begins to run for execution petitions. The first clause refers to a date which is the date of the decree, the execution of which is sought. clauses 2, 3 and 4 provide for cases where there have been proceedings directly connected with the decree referred to in clause 1. The three contingencies provided are (a) where there has been an appeal (b) where there has been a review of judgment; and (c) where the decree has been amended. The three different proceedings contemplated obviously are proceedings taken after the passing of the decree. While it may be stated that clauses 3 and 4 refer to the decree mentioned in clauses 3 and 4 refer to the decree mentioned in clause 1, there has been some controversy as to whether the appellate decree mentioned in clause (2) refers to the decree for the execution of which the application is filed as mentioned in clause (1).

15. It has, however been held that 'when the review and amendment which result in postponing the starting point of limitation have a direct connection with the original decree or order, the appeal mentioned in clause (2) must likewise be directly connected with the original decree or order' Vide Sivaramachari v. Anjaneya, : AIR1951Mad962 (FB).

16. Reviewing certain authorities, Rajamannar, C. J. in the above said judgment observed at page 965 as follows:

'The preponderance of authority in the several Courts was therefore that the appeal referred to in Cl. (2) of column 3 of Art 182 must be confined to an appeal against the decree in the suit and not extended to an appeal from any interlocutory order in the suit or an appeal in any collateral proceedings.'

The learned Chief Justice at page 967 concluded thus:

'In my opinion that word (appeal) which is no doubt a general word must bear a meaning restricted by its context and the meaning that I would give to its is 'an appeal from a decree or order of the nature mentioned in cls. 1, 3 and 4 that is to say, an appeal from the original decree or order, an appeal from a decree following a review of judgment, and an appeal from an amended decree.' The true test is that the decree of the appellate Court in the appeal must be the decree which is sought to be

executed.'

17. In Nagendra Nath v. Suresh, AIR 1932 PC 165. A and B were co-mortgagees under a mortgage. A brought a suit on the mortgage claiming that B had assigned his interest in the mortgage to him. This claim was overruled and a decree for sale was passed in which it was provided that B was entitled to receive a certain amount from the sale proceeds of the mortgage property. A appealed against B in respect of this provision in the decree. The judgment debtor was not joined as a party to this appeal. The appeal was dismissed. Then B applied for execution of the mortgage decree. It was contended that limitation for the application ran not from the data of the dismissal of the appeal but from the date of the original decree. The contention was based inter alia on the following two grounds: (1) That an appeal in order to save limitation under clause (20 of Article 182 must be one to which the person affected, that is the judgment debtors were parties; and (2) that it must also be one in which the whole decree was imperilled. Their Lordships of the Privy Council in repelling these contentions observed that the questions raised had been the subject of much difference of opinion in India. After referring to certain decision to illustrate their statement, their Lordships proceeded as follows:

'Their Lordships think that nothing would be gained by discussing these varying authorities in detail. They think that the question must be decided upon the plain words of the article 'where there has been an appeal', time is to run from the date of the decree of the appellate Court. There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it, the words mean just what they say. The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is their Lordships think, the only safe guide. it is at least an intelligible rule that so long as their 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. Nor in such a case as this the judgment-debtors, and if he is virtuously inclined there is nothing to prevent his paying what he owes into Court. But whether there be or be not a theoretical justification for the provision in question, their Lordships think that the words of the article are plain, and that there having been in the present case an appeal from the mortgage decree of 24th June 1920, time only ran against the appellants from 24th August 1922, the date f the appellate Court's decree.'

18. In Chawanipore Banking Corporation v. Gouri Shankar, : [1950]1SCR25 the facts were that on 21-8-1940 a preliminary mortgage decree was passed ex parte. On 19th September 1940 the judgment-debtor made an application under O. IX R. 13, C. P. C. for setting aside the ex parte decree. But this application was rejected on 7th June, 1941. On 11th July, 1941 the judgment-debtor filed an application under Section 36 of the Bengal Money-lenders Act for re-opening the preliminary decree, but this application was dismissed for default on 20-12-1941. Thereafter a final decree was passed on 22-12-1941. The judgment-debtor then made an application under Order IX Rule 9, C. P. C. for the restoration of the proceedings under Section 36, Money-lenders Act. it was dismissed on 1-6-1942. The judgment-debtor then filed an appeal to the High Court which was dismissed in default on 3-7-1944. On 9-4-1945 an application for executing the decree against the original judgment-debtor who had died by then was filed. it was dismissed for default on 11-5-1945. On 2-6-1945,

another execution petition was filed which gave rise to the appeal before the Supreme Court.

19. Rejecting the contention that the case was covered by clause (3) of Article 182, their Lordships rejected the contention with regard to clause (2) also. The contention was that the case is covered by clause (2) on the ground that even though no appeal was preferred from the final mortgage decree, the words 'Where there has been an appeal' are comprehensive enough to include in that case the appeal from the order dismissing the application under Order IX Rule 9, C. P. C. made in connection with the proceedings under Section 36 of the Money-lenders Act. Their Lordships said:

'This argument also is a highly farfetched one, because the expression 'where there has been an appeal' must be read with the words in Col. 1 of Art. 182. viz. for the execution of a decree or order of any Civil Court.....and however broadly we may construe it, it cannot be held to cover an appeal from an order which is passed in a collateral proceeding or which has no direct or immediate connection with the decree under execution.'

20. From the above said three decision which constitute important landmarks of the interpretation of Ar ticle 182, clauses (1) and (2), the following conclusions emerge. (10 The word 'appeal' in clause (2), although a general word, must bear a meaning restricted by its context. It means an appeal from a decree of the nature mentioned in clauses (1), (3) and (4), (2) The true test is that the decree of the appellate court in the appeal must be the decree which is sought to be executed. (3) There is no warrant for reading into the words of clause (20 any qualification either as to the character of the appeal or as to the parties to it. The words mean just what they say. (4) However broadly the words of clause (2) are construed, they cannot cover an appeal from a decree or order which is passed in a collateral proceeding or is filed from any interlocutory order made in the suit 95) if the appeal has a direct or immediate connection with the decree under execution, such an appeal would come within the purview of clause (2).

21. Bearing in mind these conclusion, if we look at the present case, it would be evident that S. A. No. 992 of 1957 had not arisen out of any interlocutory order or out of an order made in a collateral proceeding. It arose out of a final decree for partition passed in the same suit in which suit the decree for mesne profits was also passed which now is sought to be executed. The question which then arises in whether the decree in execution is a decree which is referable to clauses 1, 3 and 4 of Article 182 and whether S. A. 9992 of 1957 has a direct or immediate connection with the decree under execution.

22. Before we give any answer to this question it seems to us quite relevant to mention that although appeal did not in several cases arise directly out of the decree sought to be executed nevertheless because of the combination of conclusion Nos. 1, 2 and 5 mentioned above, it has been repeatedly held that clause (2) of Article 182 would apply even to such cases. We propose to mention a few of such examples.

23. : AIR1951Mad962 (FB) itself provides a prominent instance. In that case it is agreed that in cases where there has been an appeal against the preliminary decree, for the execution of final decree time would be computed from the date of the disposal of the appeal filed against the preliminary decree. It is true that this view is based on the reasoning that a preliminary decree is a stage in working out the rights

of the parties which are finally determined by the final decree. nevertheless it cannot be doubted that a preliminary decree is a decree within the meaning of Section 2(2), C. P. C. and is appealable under Section 96, C. P. C. exactly the same way as the final decree is, Technically speaking therefore there are two decrees in such cases. Since they are passed in the same suit for the purpose of appeal, they are considered as one decree supplementing the other and are treated as a single decree for that purpose. And as the appeal against the preliminary decree directly or immediately affects the final decree, the appeal from the preliminary decree is held to save limitation for the execution of the final decree under clause (2) of Article 182. The view that where pending an appeal from a preliminary decree, a final decree is passed and though a decree is passed in the appeal against the preliminary decree, limitation for execution of the final decree will run only from the date of the decree passed in the appeal and not from the date of the final decree, is taken in the following cases. Sidheswar prasad v. Ram Saroop, : AIR1963Pat412 (FB) and Balkishan v. Dhanraj, Air 1956 Nag 200.

(2) It is also now fairly established that though an appeal is preferred in respect of only a part of a decree, limitation is saved as regards the entire decree, Under this head, there falls a variety of cases.

(a) A case where a suit against A and B is dismissed as against A and plaintiff unsuccessfully appealed against the dismissal of his suit against A, time for execution against B would run from the date of the dismissal of the appeal and not from the date of the original decree filed. Ashfaq Hussain v. Gauri Sahai, (1911) ILR 33 All 264 (PC) and Arumugam v. Kalyana Sundaram, : AIR1961Mad495 .

(b) If an appeal is preferred by only one of the defendants and it relates to the whole of the plaintiff's case, it is held that time for execution even against the non-appealing defendants would be enlarged under clause (2).

(c) Likewise, there where an appeal is against one defendant in respect of a part of a decree, the time will be enlarged under clause (2) irrespective of the question whether the appeal imperilled the whole decree or not as is held by the Privy Council case cited above.

(d) Similarly, where a first appeal and a second appeal are preferred by the plaintiff unsuccessfully in respect of a portion of the claim which was disallowed, time for execution of the part decreed runs from the decision of the second appeal.

24. From these examples taken from the decided cases, it will be clear that the word 'decree' has always been taken to mean not only an appeal against the whole of such decree but it would also include an appeal in respect of a part of such a decree. The reason is obvious. The intention of the Legislature is to treat the decree as a whole although the appeal is in respect of a part only. In such a case, the whole decree of the trial Court is superseded by or becomes merged in the appellate Court's decree. The appellate Court must be presumed to have confirmed the other part form which no direct appeal was preferred. Thus the trial Court's decree has to be taken along with the appellate Court's decree in such cases. Viewed thus it will be the appellate decree which would be treated as final. No part of the decree can be held in such cases to be in separate existence after the appeal in the suit has been decided. The words 'where there has been appeal' can only mean whenever there is an appeal time urns form the date of the decision in appeal, and there is no suggestion that it would

be material as to whether all or only some of the parties appealed or whether the whole or only a part of the decree is challenged. it is also not material whether the decree is joint or several. Though the decree may decide a number of matters in controversy in a suit, whether they are decided on one date by a single order or on different dates by several orders, there would be only one decree and not a number of decrees. Either a decree is formally drawn after the whole controversy is over or several decrees are drawn as and when different matters in controversy are decided, in the eye of law there would be one decree for the purpose of appeal in so far as clause (2) of Article 182 is concerned and not a umber of decrees. The appellate Court deals in all such cases with the decree as a while and after the appeal is disposed of the only decree that can be executed is the decree of the appellate court; whether it reverses, modifies or confirms the decree of the trial Court. Thus whatever the nature of the decree whether a decree proceeded upon a ground common to the defendants or not and whether one defendant appeals from such decree in so far as it affects his interest or whether all the defendants appeal from only a part of the decree or whether the parties against whom execution is sought were parties to the appeal or not, the period of limitation will run only form the date of the appellate decree. That is what the privy Council has stated in the case noted above.

25. It will thus be plain that when an appeal is filed the suit is continued in the appeal and is re-heard either in whole or in part. The final decree in the appeal will thus be the final decree in the suit. The mere fact that the matter is litigated both in the Court of first instance and again, though in part, in the Court of appeal, cannot convert or spilt the suit into two suits. There can only be one final decree in the suit and that would be the decree in the appeal. There cannot be two final decrees, one of the trial Court and the other of the appellate Court. if the appeal is from a part of the decree only and the appeal is dismissed, the decree will be confirmed. The decree of the trial Court will be confirmed as a while, both appealed and not-appealed. if such an appeal is allowed, then the appellate court varies or modifies the decree of the trial Court and confirms as to the rest. vide Kristnama Chariar v. Mangammal, (1930) ILR 26 Mad 91 (FB).

26. It thus becomes plain that in such cases it is considered not necessary that the appeal should be actually or even technically be filed against the decree or order sought to be executed. if it is shown that the appeal arose out of a suit in part or whole, by one or several parties, yet the appeal was one which was capable of affecting the decree or order sought to be executed; in other words, if the appeal has a direct or immediate connection with the decree under execution, then to such a case clause (2) will be attracted and time will be enlarged.

27. It is in this context that the observations of the Privy Council in Air 1932 PC 165 at p. 167 become very relevant:

'It is at least an intelligible rule that 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.'

28. This is borne out by the existence of Order XLI Rule 33, C. P. C. which relates to the appeals. That Rule, it must be noted, s wider than Order XLI Rule 4. Its object is to enable the appellate Court to do complete justice between the parties and to avoid contradictory or inconsistent decisions on the same questions in the same suit. for the

said purpose, the Rule confers wide discretionary powers on the appellate Court to pass such decree or order as ought to have been passed or as the nature of the case may require, notwithstanding that the appeal is as to part only of the decree or that the party in whose favour the power is proposed to be exercised has not filed nay appeal or cross objections. The basis of this Rule is that the whole suit is deemed to be brought in every case before the appellate Court although the appeal may relate to a part or is filed by only some of the parties and others are not represented in the appeal. it will thus be seen that Order XLI Rule 33 and Article 182 (2) are complementary to each other and both these provision read together irresistibly drive us to the conclusion that in all such cases time in intended to start only from the date when the appeal is finally disposed of by the appellate Court.

29. It is true that what we have so far discussed related largely to cases of composite decrees, that is to say, decrees in which more than one relief was granted or rejected or partly granted and partly rejected or granted in favour of or against one and granted or rejected against the others by and under one single decree. But the principles upon which appeal against in portion of the decree are held to save limitation in respect of the portion not appealed, in our view, must necessarily and logically apply to cases where more than one decrees are passed in one suit. it is not doubted that more than one preliminary or final decree or even simple decrees can be passed in one and the same suit. it is also not disputed that in such cases limitation for execution of such decrees shall start only from the date of the last decree. Vide (1911) ILR 33 All 264 (PC). Likewise and on the same analogy if there are more than one appeal filed against a decree, time for execution would run from the date of disposal of the last appeal, not in point of filing but in point of disposal. if that is so, then we final to see why on party of reasoning clause (2) would not apply to cases where more than one decree are passed on different dates but in the same suit. is there really any difference in cases where one or more decrees are passed and are combined in a composite decree and cases where more than one decrees are passed on different dates though in the same suit? We do not find any valid reason to make any distinction and apply different tests to such cases. Can it validly be contended that to such cases Order XLI Rule 33, C. P. C. would not apply? Can it be said that in an appeal against one decree, the whole case which includes the subject-matter of the other decree would not be before the appellate Court? Can it be disputed that the appeal late Court in the exercise of power under Order XLI Rule 33 C. P. C. would not be empowered to effect any change in the decree from which no appeal is actually filed in such a case? We have no shred of doubt that cases in which two or more decrees are passed on different dates in a single suit would for the purpose of clause (20 of article 182 be considered as a single decree passed by the trial Court. They are merely two or more stages where different reliefs are granted by the Court to the party. They supplement each other and ultimately culminate into a single decree disposing of the whole suit. Any appeal filed against anyone of such decrees would place the entire suit together with other decrees not appealed before the appellate Court where the suit shall be re-heard and suitable orders passed. Such an appeal would directly and immediately be connected with the decrees not appealed. Such an appeal therefore must be considered as having direct and immediate connection with the decree under execution. In view of the decision of the Privy Council mentioned above, the test whether the whole decree whether composite or passed separately is imperiled by appeal or not would be relevant. This conclusion is the necessary corollary of the other decisions taking the view in regard to appeals against a portion of a decree. When no difficulty can be found in cases of preliminary and final decrees or cases where tow decrees are passed on two different dates against tow different

defendants, in applying clause 920 of Article 182, we fail to see why the same principle cannot apply to cases where in a single suit two decrees are passed on two different dates as are passed in the present case. We are clear, in our view, that such a principle does apply and in such cases also, under clause 920 of Art. 182 limitation will run from the date of the final decree passed in appeal.

30. We are fortified in our view by the following decision. Narayana Thampi v. Lakshimi Narayana. Air 1953 Trav Co 220 (FB) and (1911) ILR 33 All 264 (PC).

31. We will notice here jacinto v. Ferandez. AIR 1939 Bom 454. The facts were in 1924, there was a suit for partition of immoveable property, part of it being house property and part of it being property subject to assessment to Government revenue. On 27-5-1925, an order made under Order XX Rule 18 C. P. C. partitioning the property between the plaintiff and the defendants in certain shares and directing that the plaintiff be put in possession of his share. it was then directed that the partition of the lands assessed to Government revenue be effected by the collector, and of the other property by a Commissioner to be appointed by the Court. On 2nd April, 1930 the Court made a final decree in respect of the house property based on the partition recommended by the Commissioner. From this final decree of 2nd April, 1930, there was an appeal which was disposed of on 16th January, 1931. it is then that the application was filed on 9-1-1934 to transmit the decree for execution to the Collector in so far as it related to agricultural lands. Both the Courts below took the view that the decree of 1925 as well as of 1930 were really parts of the same decree, and, although the appeal only related to the house property. Which alone was dealt with by the decree of 1930 nevertheless Article 182 applied. The learned Judges agreed with the view that it is not necessary in order to bring into operation the reference to an appeal in Article 182 that the appeal should be from the whole of the decree. But the learned Judges thought that there were two distinct decrees, one passed in 1925 and the other in 1930. It is in that context that they held:

'It is perfectly plaint on the language of Article 182 that the words 'where there has been an appeal', in the last column, mean an appeal from the decree sought to be executed, and not an appeal from another decree, though made in the suit.'

The decision undoubtedly takes a different view than what we are taking. But on a careful reading of this decision, it would e evident that the observation was obiter and was not made keeping in view some of the decisions to which we have made reference. The observation is obiter because at the very outset the learned Judges thought that the question raised is of practice in execution and not of Limitation. it is on the basis of the prevailing practice that essentially the answer was given in the case. The learned Judges after finding that the application filed by the decree-holder was not an execution petition but an ordinary application asking the Court to send the record to the Collector for partition, observed:

'All that the parties really want is a direction to be given by the Judge to his office to seen the necessary papers to the Collector, and, in may opinion, there is no Article of limitation relating to an application of that sort.'

32. Om Chand v. Lalman, Air 1955 Him Pra 35 is another case which we think we should consider. In that case, one L filed a suit against B., M and R. The suit was dismissed as against R under order I Rule 10 C. p. C. The suit then proceeded against B and M and a consent decree was passed against them. The plaintiff being aggrieved

by the order dismissing the suit as against R filed an appeal against that order, but it was dismissed. The plaintiff filed an application of execution against B and M. Ramabhadran, J. C. held;

'that the limitation as against B and M started on the date when the consent decree was passed against them and not on the date when the plaintiff's appeal against the order dismissing the suit as against R was rejected.'

With due respect to the learned Judge. we find ourselves unable to share that view. It is contrary to : AIR1961Mad495 and some other decided cases.

33. Let us then examine the instant case bearing in mind the principles enunciated above. It will be immediately evident that although on paper there are two decree, one final for partition and separate possession and the other for mesne profits relating to the property for which partition decree is passed, since they are passed in the same suit and are complimentary to each other, both these decrees would be considered as one for the purpose of clause (2) of article 182. It should be noted that the decree for mesne profits was passed much earlier than the final decree for partition and separate possession. One decree thus supplements the other and both complete the granting of reliefs to the plaintiff in regard to the same property in the same suit. Although thus they appear to be two decrees capable of being executed separately in effect as they arise out of one suit they are only one and consequently for the purpose of clause (2) of Article 182, the two decrees would be considered as forming part of a single decree. it is indisputable that if the second appeal had been allowed and if it was held that the plaintiff was not entitled to two-thirds share to the plaintiff had to be set aside although no appeal was preferred against it, under Order XLI Rule 33, C. P. C. to do complete justice between the parties and to avoid contradictory or inconsistent decision on the same question in the same suit.

34. It is really unfortunate that the plaintiff was advised to file two separate petitions one for a final decree for partition and separate possession and the other for mesne profits of the tow-thirds shares to which he was found entitled. That he could have filed even a single petition praying for both these reliefs is not doubted. In that event, there would have been two decrees passed simultaneously by a single order and consequently a composite decree would have been drawn. If appeal was carried only in regard to a part of it, the appeal would have extended the time for the execution of the decree relating to the other part form which no appeal was preferred. Once that is conceded, the situation, in our view, would be the same even if two decrees are separately passed on different dates but in the same suit. Any other construction would amount to attaching importance to form ignoring the substance of the article. Such a case therefore clearly falls in our view, within the purview of clause (2) of Article 182 and the starting point of limitation for E. A. No, 1424 of 1960 would be the date on which S. a. 992 of 1957 was finally disposed of by the High Court on 15-2-61. If it is computed from that date, then its is not doubted that E. A. 1424 of 1960 would be within limitation. we are therefore unable to agree with due respect with the view of the learned Judge that clause (1) of Article 182 covers the present case and not clause (2). We are clearly of the opinion that it is clause (2) which governs the case and not clause (1). we consequently allow the appeal, set aside the judgment and decree of the learned Judge and restore that of the Subordinate Judge's Court, Machilipatnanm, given in A. S. No. 12 of 1961 on 29-3-1963. The matter will have now go to the Executing Court. E. A. 1424 of 1960 will be entertained by the executing Court and disposed of in accordance with law. The appellant will get his

costs throughout.

35. Appeal allowed.