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SooperKanoon Citation : sooperkanoon.com/329123

Court : Mumbai

Decided On : Apr-13-1917

Reported in : AIR1917Bom210; (1917)19BOMLR638; 41Ind.Cas.238

Judge : Basil Scott, Kt., C.J. and ;Batchelor, J.

Appeal No. : First Appeal No. 72 of 1916

Appellant : Kurgodigauda Lingangauda

Respondent : Ningangauda Ningangauda

Disposition : Appeal dismissed

Judgement :

Basil Scott, Kt., C.J.

1. On the 4th of November 1901, a decree was passed by the trial Court at Dharwar for delivery to the plaintiff of certain lands. In execution of that decree the lands were delivered to the plaintiff. On an appeal preferred on behalf of the applicant, who was then a minor, the High Court amended the decree on the 17th of August 1903, by excepting from the decree for delivery two Survey Numbers. Those Survey Numbers, however, remained in the possession of the plaintiff and the applicant attained majority on the 1st of October 1912. On the 4th of August 1914, the present application was made for delivery to him of the two Survey Numbers excepted by the judgment of the High Court in appeal from the scope of

the decree of the trial Court. The application which is one which the applicant would be entitled to make under Section 144 of the Code of Civil Procedure is barred by time, unless it is an application for the execution of a decree within the meaning of Section 6 of the Indian Limitation Act.

2. It is clear, we think, that an application for the execution of a decree in Section 6 is not limited to applications under Article 182 of the Indian Limitation Act. It would apply also to applications under Article 183, in which the expression 'execution of a decree' is not used, but reference is made to the enforcement of a decree of any Court established by Royal Charter in the exercise of its Ordinary Original Civil Jurisdiction, or an Order of his Majesty in Council. There is reason for thinking that the words 'an application for the execution of a decree' are not to be construed so narrowly as to exclude an application for restitution in consequence of the decree, if such an application could fairly be treated as an application for execution, for Section 6 is an enabling section to enable persons under disability to exercise their legal rights within a certain time and it should be, we think, construed liberally rather than narrowly.

3. Now an application for restitution according to the provisions of Section 144 of the Code is to be made to the Court of first instance whose decree is varied or reversed and in that respect it differs from applications for execution under Part II of the Code, Section 38 of which provides that 'a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.' Nevertheless it appears to us that an order made under Section 144 is an order in execution of a decree of the appellate Court. The section provides that "the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits which are properly consequential on such variation or reversal' and it is made clear by the second clause of the section that the relief allowed, as in execution matters, can only be allowed by application under the Code and not by a separate suit. We are, therefore, of opinion that the lower Court was right in holding that the application was virtually an application for the execution of the High Court decree amending the decree of the Dharwar Court. We dismiss the appeal with costs.

