

**Ramasami Vs. Anda Pillai**

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**SooperKanoon Citation :** [sooperkanoon.com/780118](http://sooperkanoon.com/780118)

**Court :** Chennai

**Decided On :** Nov-07-1890

**Reported in :** (1891)ILR14Mad252

**Judge :** Muttusami Ayyar and ;Handley, JJ.

**Appellant :** Ramasami

**Respondent :** Anda Pillai

**Judgement :**

1. At the hearing of the appeal, our attention was not drawn to the facts that the son applied for execution of the whole decree, stating that his father would not join him in such application, and that notice was given to the father.
2. These facts alter the position considerably.
3. The effect of the decree in the partition suit was to make the son, by operation of law, an assignee of one-fifth of the judgment-debt in the suit brought by his father.
4. Such an assignee has a right, if the original decree-holder and other assignees, if any, do not consent to join him in applying for execution, to apply himself for execution of the whole decree making them counter-petitioners by giving them notice. Otherwise, he would have no means of obtaining his right under his assignment, but by a separate suit, and there seems no reason why he should be

driven to such a circuitous course, when, by applying for execution, the right of all parties can be properly determined by the Court.

5. In this view, no question arises as to the effect of explanation I to article of schedule 2 of the Limitation Act. The decree was passed, not in favour of more persons than one, whether jointly or severally, but in favour of one person, viz., the father, and the explanation has, therefore, no application to the case; and the application for execution by the son as transferee of part of the decree having been an application in accordance with law, is sufficient to keep the decree alive under Article 179, clause 4 of schedule 2 to the Limitation Act.

6. We allow the review and set aside our former order and the order of Mr. Justice Wilkinson, and restore the order of the District Court. Counter-petitioner will pay the costs of petitioner of the appeal before Mr. Justice Wilkinson. There will be no costs of the appeal under the Letters Patent or of this application for review.

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