

Veeramuthu Vs. Puttalayee

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SooperKanoon Citation : sooperkanoon.com/825181

Court : Chennai

Decided On : Jul-05-1996

Reported in : 1997(2)CTC245

Judge : D. Raju, J.

Acts : [Limitation Act, 1963](#) - Sections 15 - Schedule - Article 65

Appeal No. : S.A. No. 844 of 1983

Appellant : Veeramuthu

Respondent : Puttalayee

Advocate for Pet/Ap. : V. Raghavachari, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

D. Raju, J.

1. The above second appeal has been filed by the defendant in O.S.No. 704 of 1981, on the file of the Court of Principal District, Munsif, Pondicherry, who was unsuccessful before both the Courts below.

2. The respondent/plaintiff filed the suit for directing the defendant to hand over the vacant possession of the suit property to the plaintiff and for payment of Rs. 2,250 being the mesne profits for three years. The suit came to be filed before the Trial Court on 24.9.1981. The case of the plaintiff was that originally, the schedule mentioned property belonged to one Sadaiyan and the said Sadaiyan died leaving behind his son, Maayan, who left behind him a daughter by name Kuppu and the plaintiff claims to be the only son, and heir of Kuppu. During the lifetime of the father of the plaintiff, it appears that he had been in possession and enjoyment and after the death of his father, the mother Kuppu appears to have leased out the property to Seenan and the said Seenan claiming to be the owner, has sold the property in favour of the defendant as per the sale deed dated 2.7.1969 and the defendant on the strength of the said sale deed has filed a suit against the plaintiff in this suit for declaration of his title over the suit property and for permanent injunction. The suit, ultimately, ended in favour of the plaintiff in O.S.No. 151 of 1970, who is the present defendant.

3. The learned Trial Judge decreed the suit on 21.4.1973 and as claimed by the plaintiff, the present plaintiff was, thus, prevented from enjoying the property. Thereupon, the plaintiff in the present suit, the defendant in the other proceedings, challenged the judgment and decree of the learned Trial Judge in A.S.No. 66 of 1973 on the file of the District Court and the learned District Judge by his judgment and decree, reversed the judgment and decree of the Trial Court and dismissed the suit. The present defendant who was the plaintiff in the other proceedings, pursued the matter on appeal before this Court in S.A.No. 2441 of 1974. A learned single judge of this Court before whom the second appeal came up for hearing, by his judgment and decree dated 26.8.1975 dismissed the appeal. The finding recorded in those proceedings by the learned Judge can be usefully set out, which is as follows:-

'The only point that arises for consideration is whether by reason of his long possession for nearly more than 40 years as evidenced by the payment of kist under Ex.A.2 series, whether Seenan and his son Gopal could be said to have acquired proscriptive title. On the showing of the plaintiff himself 'the property was allowed to be enjoyed' by Seenan in which event no question of adverse

possession would arise. There is no evidence to show that to the knowledge of the rightful owner, the plaintiff's predecessor was in open and hostile possession. Further more, under law, after the death of Mayan, Kuppu would be entitled to the property in which case there must be evidence to show that the property was enjoyed adverse to that of Kuppu. Even in this regard, the evidence is lacking. By mere payment of kist, certainly adverse possession cannot be inferred in favour of the plaintiff's predecessor. I find that certain kist receipts do stand in the name of Mayan himself. Therefore, no value could be attached to Ex.A.2 series. Consequently I am unable to see any error of law in the judgment of the lower appellate court; nor could I say that the appreciation of the evidence is in any way improper. Thus, there are no merits in the second appeal and the same will stand dismissed. There will be no order as to costs. No leave.'

Since inspite of the above, the defendant herein who was the plaintiff in the earlier proceedings, continued to squat on the property without surrendering possession, the respondent herein filed the present suit for the reliefs as set out supra.

4. The appellant herein, the defendant in the present suit filed a written statement contending that the claims made in the plaint regarding genealogy and other particulars are incorrect, that the suit property was in continuous, open and peaceful possession of one Seenan for over 60 years and after the death of Seenan, his only son Gopal was in possession from whom the defendant came to purchase the same under a sale deed dated 2.7.1969 and the defendant is a bona fide purchaser for value, without knowledge of any alleged vitiating circumstances, that it was Gopal who was paying the tax due to the property in the year 1969 and from that time onwards, the defendant had been in possession raising short term dry crops. The further plea on behalf of the defendant was though no doubt, he filed a suit in O.S.No. 151 of 1970, which was decreed by the Trial Court, but, on appeal before the First Appellate Judge, the suit came to be dismissed and that he failed in the second appeal before this Court, he contends that the earlier suit was one for bare injunction and the question of title was not germane and that in any event, the defendant perfected title by adverse possession and he and his predecessors in title have been in possession and enjoyment continuously for more than 60 years and the defendant, therefore, has possessory title to the

property. The claim for mesne profits was also denied and disputed and the defendant prayed that the suit may be dismissed.

5. On the above claims and counter claims, the parties adduced oral and documentary evidence. The respective parties on either side alone gave evidence in support of their case. On the defendant's side, no documents were marked. On the plaintiff's side, the certified copy of the judgment in S.A.No. 2441 of 1974 was marked as Ex.A.1 and the tax receipts issued by the Revenue Department, Pondicherry, came to be marked as Ex.A.2. On a consideration of the materials placed during trial, the learned Trial Judge by his judgment and decree dated 5.10.1982 decreed the suit as prayed for, over-ruling the objections of the appellant/defendant holding that the defendant has not produced any evidence to fortify his claim that his vendor and his father as well as the defendant have perfected title to the property by continuous possession. Reliance was also placed by the learned Judge on the earlier proceedings to sustain the relief claimed by the plaintiff/respondent herein.

6. Aggrieved, the defendant/appellant pursued the matter on appeal before the District Court and the learned Principal District Judge by his judgment and decree dated 23.3.1983 in A.S.No. 223 of 1982 confirmed the conclusions and findings of the learned Trial Judge and while affirming the judgment and decree of the court below, on merits, partly allowed the appeal on the question of the rate of mesne profits claimed and fixed the net yield at Rs. 300 per annum as against Rs. 750 fixed by the learned Trial Judge. But for the modification as above, the judgment came to be confirmed in other respects and the appeal came to be dismissed. Hence, the above second appeal.

7. At the time of considering the appeal for admission, the learned Admission Judge thought fit to formulate the substantial question of law for consideration as follows:-

'Whether the suit is barred by time'?

8. Mr. V. Raghavachari, learned counsel appearing for the appellant, while elaborating the substantial question of law formulated in this case, contended that

the fact that the earlier suit filed by him ended in favour of the plaintiff/respondent herein or that the appellant has lost the earlier suit, is no ground to arrest or break the continuous operation of the period of limitation on the basis of adverse possession against the plaintiff in the present proceedings and that the character of possession in the hands of the appellant which was adverse to the plaintiff in the present proceedings, would constitute adverse possession sufficient in law to prescribe title in himself and the Courts below have miserably failed to consider this aspect and therefore, the judgments of the Courts below are liable to be set aside. In support of the above, the learned counsel relied on some of the decisions of this Court, the Privy Council and that of the Supreme Court, to which a reference may be made hereinafter.

9. In *Veerasami Mudali v. Palaniyappan and Ors.* : (1924)46MLJ515 , the court was concerned more with the principle of *res judicata* than an issue of the nature under consideration. In *Subbayya Pandaram v. Muhammad Mustapha Maracayar and Ors.*, 1923 (45) MLJ 588, the Privy Council while dealing with an appeal from this court, observed that when the decree dated 31.12.1900 was passed, the possession of the purchaser was adverse and the declaration that the property had been properly made subject to a trust disposition and therefore ought not have been seized, did not have the effect of disturbing or affecting the quality of possession and on the other hand, it merely emphasized the fact that it was adverse and since no further step was taken in consequence of that declaration, until the proceedings which resulted in the appeal before the Privy Council, it became too late and barred by limitation. In *Mahboob Pasha v. Syed Zabeeruddin*, AIR 1988 Kar. 93, it was held that when the limitation commenced on the expiry of the period of 6 months under the agreement of sale dated 10.8.1974 and the suit came to be filed only on 3.12.1980, it was hopelessly barred by time and the plaintiffs in the suit for specific performance cannot take advantage of the filing of an earlier suit by a tenant of the property against the vendor and the interim order of injunction obtained restraining the vendor from alienating the property in favour of the vendee or any other person. The Division Bench of the Karnataka High Court was of the view, relying upon the decisions reported in *Narayan Jivagouda v. Puttabai* and *Siraj Ul-Haq Khan v. Sunni Central Board of Waqf U.P.*, : [1959]1SCR1287 held that the agreement holder, the plaintiff in the subsequent

suit was not prevented by the pendency of the earlier suit or by reason of such an order of temporary injunction from filing a suit for specific performance of agreement of sale well in time. In *Subbaiya v. MD.Mustafa*, A.I.R. 1923 P.C.175, where pending a suit for declaration that a certain property which was subject to a trust, came to be sold in execution of a decree and the auction purchaser entered into possession, the Privy Council held that the adverse nature of possession of the auction purchaser is not affected by the subsequent declaration of the trust made in the suit and where a trust property was being adversely possessed, a suit to follow such property in the hands of adverse possessor will be barred after 12 years. In *Soni Lalji Jetha v. Soni Kalidas Devchand*, : [1967]1SCR873, the Apex Court held that in spite of the existence of a previous agreement of sale, the sale to a subsequent purchaser even with notice is not void, but, voidable at the instance of the party agreeing to purchase under the previous contract and except for the obligation arising from Section 91 of the Trust Act and paragraph 2 of Section 40 of the Transfer of Property Act, the title to the property would pass from the vendor to the subsequent transferee. In *Sirajul Haq Khan and Ors. v. The Sunni Central Board of Waqf, U.P. and Ors.*, : [1959]1SCR1287, the Court held that as long as in the earlier suit, there was neither an injunction, nor an order of the nature contemplated by Section 15 of the Limitation Act, 1908 was said to have been passed, the period of limitation cannot be arrested or the time spent on an earlier litigation be excluded by relying upon Section 15 of the Limitation Act. The Supreme Court ultimately held as hereunder:-

'The next question which calls for our decision is whether the appellants' suit is saved by virtue of the provisions of Section 15 of the Limitation Act. That is the only provision on which reliance was placed before us by Mr. Dar on behalf of the appellants. Section 15 provides for 'the exclusion of time during which proceedings are suspended' and it lays down that 'in computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by an injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded.' It is plain that, for excluding the time under this section, it must be shown that the institution of the suit in question had been stayed by an injunction or order; in other words, the

section requires an order or an injunction which stays the institution of the suit. And so in cases falling Under Section 15, the party instituting the suit would by such institution be in contempt of court. If an express order or injunction is produced by party that clearly meets the requirements of Section 15. Whether the requirements of Section 15 would be satisfied by the production of an order or injunction which by necessary implication stays the institution of the suit is open to argument. We are, however, prepared to assume in the present case that Section 15 would apply even to cases where the institution of a suit is stayed by necessary implication of the order passed or injunction issued to the previous litigation. But, in our opinion, there would be no justification for extending the application of Section 15 on the ground that the institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the previous litigation. It is true that rules of limitation are to some extent arbitrary and may frequently lead to hardship; but there can be no doubt that, in construing provisions of limitation, equitable considerations are immaterial and irrelevant, and in applying them effect must be given to the strict grammatical meaning of the words used by them: *Nagendra Nath Dey v. Suresh Chandra Dey*, 1932 (34) Bom.L.R. 1965.

In considering the effect of the provisions contained in Section 15, it would be useful to refer to the decision of the Privy Council in *Narayan Jivangouda v. Puttabai*, 1944 (47) Bom.L.R. 1. This case was an offshoot of the well-known case of *Bhimabai v. Gurunathgouda*, 1932 (35) Bom.L.R. 200 (P.C.). It is apparent that the dispute between Narayan and Gurunathgouda ran through a long and protracted course and it reached the Privy Council twice. The decision of the Privy Council in *Bhimabal's* case, 1932 (35) Bom.L.R. 200 (P.C.) upholding the validity of Narayan's adoption no doubt led to a radical change in the accepted and current view about the Hindu widow's power to adopt in the State of Bombay, but this decision was of poor consolation to Narayan because the judgment of the Privy Council in *Narayan Jivangowda's* case 1944 (47) Bom.L.R.1 shows that Narayan's subsequent suit to recover possession of the properties in his adoptive family was dismissed as barred by time. The dispute was between Narayan and his adoptive mother *Bhimabai* on the one hand and *Gurunathgouda* on the other. On November 25, 1920, *Gurunathgouda* had sued *Bhimbai* and *Narayan* for a

declaration that he was in possession of the lands and for a permanent injunction restraining the defendants from interfering with his possession. On the same day when the suit was filed, an interim injunction was issued against the defendants and it was confirmed when the suit was decreed in favour of Gurunathgouda. By this injunction the defendants were ordered 'not to take the crops from the fields in suit, not to interfere with the plaintiff's wahi wat to the suit lands, not to take rent notes from the tenants and not to obstruct the plaintiff from taking the crops raised by him or from taking monies from his tenants.' Two important issues which arose for decision in the suit were whether Narayan had been duly adopted by Bhimabai in fact and whether Bhimabai was competent to make the adoption. These issues were answered against Narayan by the trial Court. Bhimabai and Narayan appealed to the Bombay High Court, but their appeal failed and was dismissed; *Bhimabai v. Gurunathgouda* : AIR1928 Bom367 . There was a further appeal by the said parties to the Privy Council. The Privy Council held that the adoption of Narayatt was valid and so the appeal was allowed and Gurunathgouda's suit was dismissed with costs throughout. In the result the injunction granted by the courts below was dissolved on November 4, 1932. On November 25, 1932, Narayan and Bhimabai filed their suit to recover possession of the properties from Gurunathgouda. They sought to bring the suit within time inter alia on the ground that the time taken up in litigating the former suit or at least the period commencing from the grant of temporary injunction on February 25, 1920 to November 4, 1932, when the injunction was dissolved by the Privy Council, should be excluded Under Section 15 of the Limitation Act. This plea was rejected by the trial court and on appeal the same view was taken by the Bombay High Court. Rangnekar, J. who delivered the principal judgment exhaustively considered the relevant judicial decisions bearing on the question about the construction of Section 15 and held that the injunction issued against Narayan and Bhimabai in Gurunathgouda's suit did not help to attract Section 15 to the suit filed by them in 1932: *Narayan v. Gugunathgouda* : AIR1939 Bom1 . The matter was then taken to the Privy Council by the plaintiffs: but the Privy Council confirmed the view taken by the High Court of Bombay and dismissed the appeal: *Narayan v. Puttabai*, 1944 (47) Bom.L.R. 1.

In dealing with the appellants' argument that the injunction in the prior suit had been issued in wide terms and in substance it precluded the plaintiffs from filing their suit, their Lordships observed that there was nothing in the injunction or in the decree to support their case that they were prevented from instituting a suit for possession in 1920 or at any time before the expiry of the period of limitation. It appears from the judgment that Sir Thomas Strangman strongly contended before the Privy Council that since the title of the contending parties was involved in the suit, it would have been quite futile to institute a suit for possession. This argument was repelled by the Privy Council with the observation that 'we are unable to appreciate this point, for the institution of a suit can never be said to be futile if it would thereby prevent the running of limitation.' There can be little doubt that, if, on considerations of equity the application of Section 15 could be extended, this was prominently a case for such extended application of the said provision; and yet the Privy Council construed the material words used in Section 15 in their strict grammatical meaning and held that no order or injunction as required by Section 15 had been issued in the earlier litigation. We would like to add that, in dealing with this point, their Lordships did not think it necessary to consider whether the prohibition required by Section 15 must be express or can even be implied.

There is another decision of the Privy Council to which reference may be made. In *Beti Maharani v. The Collector of Etawah*, ILR 1894 All. 198, their Lordships were dealing with a case where attachment before judgment Under Section 485 of the Code of Civil Procedure had been in should by the court at the instance of a third party prohibiting the creditor from recovering and the debtor from paying the debt in question. This order of attachment was held not to be an order staying the institution of a subsequent suit by the creditor Under Section 15 of Limitation Act of 1877. 'There would be no violation of it' (said order), observed Lord Hobhouse, 'until the restrained creditor came to receive his debt from the restrained debtor. And the institution of a suit might for more than one reason by a very proper proceedings on the part of the restrained creditor, as for example in this case, to avoid the bar by time, though it might also be prudent to let the court which had issued the order know what he was about. 'In *Sundaramma v. Abdul Khader*, 1932 ILR 56 Mad. 490 the Madras High Court, while dealing with Section 15 of the Limitation Act, has held that no equitable grounds for the suspension of the cause

of action can be added to the provisions of the Indian Limitation Act.

It is true that in *Musammat Basso Kaur v. Lala Dhua Singh*, 1888 (15) L.A.211 their Lordships of the Privy Council have observed that it would be an inconvenient state of the law if it were found necessary for a man to institute a perfectly vain litigation under peril of losing his property if he does not; but this observation must be read in the context of facts with which the Privy Council was dealing in this case. The respondent who was a debtor of the appellant had agreed to convey certain property to him setting off the debt against part of the price. No money was paid by the respondent and disputes arose as to the other terms of the agreement. The respondent sued to enforce the terms of the said agreement but did not succeed. Afterwards when he sued for the debt he was met with the plea of limitation. The Privy Council held that the decree dismissing the respondent's suit was the starting point of limitation. The said decree imposed on the respondent a fresh obligation to pay his debts Under Section 65 of the Indian Contract Act. It was also held alternatively that the said decree imported within the meaning of Article 97 of Limitation Act of 1877 a failure of the consideration which entitled him to retain it. Thus it is clear that the Privy Council was dealing with the appellants' rights to sue which had accrued to him on the dismissal of his action to enforce the terms of the agreement. It is interference to this right that the Privy Council made the observations to which we have already referred. These observations are clearly obiter and they cannot, in our opinion, be of any assistance in interpreting the words in Section 15.

It is in the light of this legal position that we must examine the appellants' case that the institution of the present suit had been stayed by an injunction or order issued against them in the earlier litigation of 1940. We have already noticed that Civil Suit No 1 of 1940 had been instituted against the appellants with the sanction of the Advocate-General for their removal and for the settlement of a fresh scheme. The appellants were ordered to be removed by the learned trial judge on October 16, 1941; but on appeal the decree of the trial court was set aside on March 7, 1946. It is the period between October 16, 1941 and March 7, 1946, that is sought to be excluded by the appellants Under Section 15 of the Limitation Act. Mr. Dar contends that the order passed by the trial Judge on October 16, 1941 made it

impossible for the appellants to file the present suit until the final decision of the appeal. By this order the appellants were told that they should not in any way interfere with the affairs of the Darga Sharif as members of the committee and should comply with the decree of the court by which they were removed from the office. It is obvious that this order cannot be construed as an order or an injunction staying the institution of the present suit. In fact the present suit is the result of the notification issued by respondent 1 on February 26, 1944 and the subsequent steps taken by it in the purported exercise of its authority under the Act. The cause of action for the suit has thus arisen subsequent to the making of the order on which Mr. Dar relies; and on the plain construction of the order it is impossible to hold that the relevant words used in Section 15 must be strictly construed without any consideration of equity, and so construed, we have no doubt that the order on which Mr. Dar has placed reliance before us is wholly outside Section 15 of the Limitation Act. We would, however, like to add that this order did not even in substance create any difficulty against the institution of the present suit. The claim made by the appellants in the present suit that the properties in suit do not constitute a waqf and the declaration and injunction for which they have prayed do not infringe the earlier order even indirectly or remotely. We must accordingly hold that the High Court was right in taking the view that Section 15 did not apply to the present suit and that it was therefore filed beyond the period of one year prescribed by Section 5(2) of the Act.'

In *Narayan Jivaji v. Gurunathgouda*, : AIR1939 Bom1 , the Division Bench of the Bombay High Court has also considered the scope of Section 15 in the context of a claim of adverse possession made by a defendant in the proceedings. The Division Bench was of the view that a judgment of a Court declaring that a party in possession of immovable property, has no title to it, has not the effect of interrupting the continuity of his adverse possession as against the real owner. In dealing with this aspect, it was also observed as follows:-

'I have set out the decree made by the Court, and, in my opinion, it would be difficult to hold that the decree operated as a stay of a suit for possession, or as an injunction restraining the defendant (Narayan) from filing a suit for possession of immovable property. The pleadings in Suit No. 588 make it clear that the plaintiff in

that suit, i.e., Gurunathgouda, never sought an injunction or an order restraining Narayan from going to a court of law and asserting his rights to possession of the property to which he may have been entitled. I have referred to the plaint and that is supported also by what is stated in the application for temporary injunction made by the present defendant in Suit No. 588. His contention merely was that Bhimabai and Narayan should not be allowed to obstruct him in the enjoyment of the property in his possession except by obtaining a decree of a court. The prayers in the plaint in that suit are clear. There was no prayer for restraining Bhimabai and Narayan from filing any suit. This is supported by the decree and the judgment in that suit. Mr.Desai relies on the words 'deprive him of possession' and on the words 'to recover or receive the rents of the properties' in the decree. But the answer to that is that a mere institution of a suit cannot amount to a deprivation of the property. It may be that if the plaintiff had filed a suit and obtained a decree and the decree was sought to be executed the question may arise as to whether he was not guilty of contempt of the Court. In my opinion there is nothing in the pleadings in the judgment or in the decree in that suit or in the decree in that suit to support the contention that the plaintiff Narayan was restrained from instituting a suit for possession in 1920 or at any time before the the expiry of the period of limitation. There is no direct authority on the point and indeed there can be none, the question whether in a particular case the plaintiff has been restrained by an injunction, or whether there has been an order against his instituting any proceedings, must be a question which must depend upon the actual order or decree made in the case. I am not prepared to accept the contention on behalf the respondent that an order or a decree restraining a person from instituting a suit must be express. I think that the injunction or order which prevents a party from instituting a suit may be either express or implied. In this case there is no express order and the only question is whether on the construction of the decree in the light of the judgment and pleadings, there was an injunction or a stay order. I am quite clear in my mind that there is none. In this connection, the case in *Beti Maharani v. The Collector of Etawah*, I.L.R. (1894) All 198 may be usefully referred to. In that case an attachment before judgment Under Section 485, Civil P.C. issued by a court at the instance of a third party, prohibited the creditor from recovering and the debtor from paying the debt. Their Lordships of the Privy Council

approved of the decision in *Shib Singh v. Sita Ram*, 13 All 76 and held that the order was not an order staying the institution of a suit within the meaning of Section 15, Limitation Act. Their Lordships observed as follows (page 210):

'An order in those terms is not an order staying the institution of a suit. There would be no violation of it until the restrained creditor came to receive his debt from the restrained debtor. And the institution of a suit might for more than one reason be a very proper proceeding on the part of the restrained creditor, as for example in this case to avoid the bar by time though it might also be prudent to let the court which had issued the order to know what he was about.'

In my opinion, those observations are applicable to the present case. As sued observed in *Shib Singh v. Sita Ram*, 13 All 76 merely putting a claim and asserting a right as distinct from the receipt of rents or moneys, is not a violation of an order restraining a party from recovering the rents or receiving rents or recovering or receiving debts. I may also in this connection refer to the case in *Rangaswami Chetti v. Thangavelu Chetti*, 42 Mad. 637. In that case, a decree-holder attached a book-debt in 1913, which was due in 1911, to a manor judgment-debtor, sold it in execution and purchased in himself in February 1915, sued in March 1915, to recover it from the defendant who pleaded the bar of limitation and the plaintiff relied upon Section 15. It was held by Seshagiri Ayyar, J. after referring to the two cases to which I have referred that the contention was not sound. It is conceded that the plaintiff could have filed a suit before the issue of the temporary injunction. In my opinion he would have equally been entitled to file a suit even after the decree. The test would be whether if he had instituted a suit for possession, he would have been in contempt of the court. I venture to think not. All that was enjoined on him by the decree was that he should not himself take the law in his own hands, but, there is no order or direction in the decree that he should not resort to a court of law for the purpose of asserting his rights. It is true that if he had instituted a suit of this nature along with the institution of, or shortly after the institution of Suit No. 588 of 1920, the suit would have been decided against him and would have been dismissed. Or it may be that the suit might have been stayed. But it was open to him to take the matter further by an appeal to the superior court, and if that course had been followed by him, the difficulty in which

he finds himself at the present moment, would not have arisen. It is contended by Mr. Desai by reference to O.7 Rule 11 and Section 10, Civil P.X., that if the plaintiff had filed the present suit after the decree in the previous suit it would not have been entertained by the court. In my opinion, there is nothing in those provisions which would have justified the rejection of a plaint for possession even after the passing of the decree in Suit No. 588 of 1920, and if the court had wrongly refused to entertain it, he had the remedy of appealing to the higher court. The contention therefore fails.'.....

'The point really to note is that the true owner, the plaintiff in the present suit, was kept out of the property and out of the enjoyment thereof for more than twelve years, and if the possession was adverse before the suit, in my opinion, it did not cease to be adverse because of the decree of the first court in the old suit. The question as to the effect of a decree made in such cases was considered by their Lordships of the Privy Council in *Subbaiya Pandaram v. Mohammed Mustapha Marcayar*, 48 Mad.751. The facts there were that the appellant was a trustee under a registered deed executed by his grandfather in 1890 endowing a chatram with immovable property. In 1898 respondent 1 purchased part of the property at a sale in execution of a decree against the appellant's father, the then trustee, for the debts incurred by him; the purchaser and the other respondents who claimed under him, had been in possession since that date. In 1904, in a suit in which respondent 1 was a defendant, the appellant obtained a decree declaring the validity of the trust. In 1913, the appellant sued the respondents for possession of the purchased property. It was held that the suit was barred under either Article 134 or Article 144, Limitation Act, 1908, Sch.I; the decree merely emphasized the fact the purchaser's possession was adverse. This is what their Lordships say (page 756):

It follows therefore that possession during his life is not adverse, and that upon his death the succeeding trustee would be at liberty to institute proceedings to recover the estate and the statute would only run against him as from the time when he assumed the office. Such an argument has no relation to the case where, as here, property has been acquired under an execution sale and possession retained throughout. Their Lordships are therefore of opinion that this suit is barred either

under Article 134 or Article 144, Sch.I Limitation Act.'

In the same volume there is a decision of the Madras High Court, Singaravelu Mudaliar v. Chokkalinga Mudaliar, 46 Mad. 525 where it was held that a judgment of a Court declaring that a party in possession of immovable property has no title to it has not the effect of interrupting the continuity of his adverse possession as against the real owner. In my opinion this seems to me to be applicable to the facts of this case. I may also refer to the case in Maharaja of Faridkot v. Shiv Ram, 18 Lah. 255 in this connection. This seems to me to be a stronger case and shows that even if in the old suit Narayan had been declared to be the owner of the property and entitled to possession, but the possession of Gurunathgouda was adverse before the suit and if no steps were taken by Narayan to assert his right to possession of the property, the adverse possession of Gurunathgouda, would not have ceased to be adverse and time would begin to him when Gurunathgouda went into possession of the property initially. One other point remains to be noticed. Mr. Desai says that but for the interference of the defendant in bringing the Suit No. 588 his client would have succeeded in obtaining possession from the tenants and that the pleadings in that case support this contention. I do not think that this last contention is correct. All that the plaintiff alleged in his plaint was that he apprehend that Bhimabai and Narayan would obstruct him in the enjoyment of his property and may obtain possession of it. Nor does the evidence in the case show that Bhimabai and Narayan would have succeeded in obtaining possession of the property if Gurunathgouda has not brought the suit. Narayan undoubtedly attempted to prove this case in the present suit and relied upon a number of rent notes for that purpose. These rent notes were not proved and not a single tenant was examined. The learned Judge was right in treating them as nothing more than mere paper transactions.'

In Chidambaram Chettiar v. Meyyappa Chettiar, 1943 (II) MLJ 510, a Division Bench of this Court also had an occasion to deal with a claim for exclusion in computation of the period of limitation fixed for executing a decree on account of certain pending proceedings. It will be useful to extract the headnote in the law report, which capstulates the relevant facts as well as the principles laid down effectively:-

' Several creditors had obtained decrees against a debtor. A suit for the administration of the estate of the debtor was filed by another creditor on 20th October, 1932, and the decree- holder creditors were also added as defendants. Though the latter contended that the suit was not maintainable, it was decreed by the District Munsif. But, ultimately, in the High Court in an appeal under Clause 15 of the Letters Patent, the contention of the defendants was accepted and the suit was dismissed on 10th April, 1939. The assets of the debtor had, in the meanwhile been realised by the receiver who had been appointed in the administration suit. One of the creditors alone had managed to keep his decree alive while the others had allowed their decrees to become barred. All the decree- holder creditors applied to attach the assets in Court and the decree-holders whose decrees had become barred claimed to be entitled to ratable distribution of the amount with the creditor whose decree was not barred. The Subordinate Judge held that they were so entitled in as much as the period between the institution of the administration suit and its disposal should be excluded in calculating whether their applications were in time. Thereupon the creditor whose decree alone had been kept alive, filed a suit Under Section 73(2), Civil Procedure Code. The suit was dismissed by the Subordinate Judge who adhered to the opinion expressed in the attachment proceedings. On appeal to the High Court it was contended that Sections 14 and 15 of the Limitation Act had no application and that as the administration suit had been dismissed as incompetent, the time taken up by it must be ignored by the Court.

Held, that Section 14 of the Limitation Act had in the circumstances of the case no application and as there was no injunction or order of stay in the administration suit or in the suits of the defendants against the estate of the debtor, Section 15 of the Limitation Act could not help them. The provisions of the Limitation Act must be construed strictly and hardship is no consideration. The injunction or order contemplated by Section 15(1), Limitation Act, is an injunction or order which specifically stays the execution of the decree and the preliminary decree in an administration suit could not be regarded as amounting to an injunction or order within the meaning of the section. There was nothing in such a decree to prevent the defendants taking steps to keep their respective decrees alive. Time did not run against the defendant in this case in the administration suit but as that suit had

been dismissed and the creditors were seeking to enforce payment outside the suit, the law of limitation applied.'

In *Sundaramma v. Abdul Khadar* : AIR1933 Mad418 , a Full Bench of this Court has held that a decree in a collateral litigation cannot be considered as an implied order of staying the execution application, so as to bring a case within the exception carved out in Section 15 of the Limitation Act, unless it is shown that the filing of a suit or application for execution of a decree has been stayed by an induction or order of a Court.

10. I have carefully considered the submission of the learned counsel appearing on either side. When the matter was heard, there was no representation for the respondent. Mr. Raghavachari, learned counsel appearing for the petitioner, has really made a commendable research to bring to the notice of this Court and place for my consideration several decisions, to which a reference has been made already. On going through the decisions and the relevant principles laid down therein, as noticed supra, it could be seen that the fact that a person in adverse possession of a property asserting title in himself, has been held to be not possessed of the title to the property or entitled to continue in possession in any judgment or decree of a court, is by itself not sufficient to interrupt the continuity of adverse possession and deprive him of his claim to perfect title on the basis of such continuous adverse possession. There can be no serious controversy over this basic principle, which came to be laid down and reiterated in more than one decision of the various courts. The question now for consideration in this appeal is as to whether the claim projected by the learned counsel on behalf of the appellant can be sustained on some or any of the decisions relied upon by the counsel and which were rendered in the context of the peculiar nature of relief sought for in the earlier proceedings and the one claimed in the subsequent proceedings which were the subject matter of the reported decisions or the principles enunciated on the scope of exceptions carved out in Section 15 in the matter of computing the period of limitation for instituting any proceeding could help the appellant in this case to sustain his claim that the present suit is barred by limitation.

11. The relevant facts and circumstances of the present case have been adverted to in detail in the preliminary portion of this judgment. It will go to show that the defendant herein as plaintiff in the earlier suit, sought for the relief of declaration of his title and for permanent injunction against the present plaintiff, who was arrayed as defendant in the earlier suit. Though in the written statement filed by the respondent/appellant in the present proceedings, it was stated that the earlier suit was filed for injunction, the said claim is contrary to the statement contained in the certified copy of the judgment of this Court in the earlier round of second appeal marked as Ex.A-1. To verify whether there is any mistake in the statement contained in the said judgment, I called for the entire bundle pertaining to the earlier S.A.No. 2441 of 1974 from the records of this Court. I have verified from the certified copies of the decree of the trial court as well as the appellate court in the earlier proceedings, which in unmistakable terms show that the suit was for declaration of title and also for injunction. Therefore, the statement contained in the certified copy of the judgment of the second appeal, marked as Ex.A.1, must be taken to be the correct one. If that be the position, the appellant herein as plaintiff in the earlier suit has not only claimed title by virtue of his purchase and perfection of title by adverse possession, but was able to succeed in having a declaration of his title and also secure for permanent injunction against the plaintiff/respondent in the present proceedings before the trial court. The defendant also must have had the benefit of interim orders protecting his possession. The said decree, in my view, constituted sufficient break in the so called quality of adverse possession and snapped or disturbed the continuity of the adverse character of possession, which he seeks to assert in the present proceedings also. The conclusions and findings recorded in the earlier Second Appeal filed by the appellant, set out above, would go to show that the appellant's claim of perfection of title by adverse possession as on date of the earlier suit came to be rejected on merits and it was held to be not adverse possession at all. If that be so, any claim of perfection of title can be projected only by proving such adverse possession for the stipulated period of time, commencing afresh and on and after the date of the earlier decision which ended in a second appeal before this court.

12. The question of adverse possession is, indisputably, a mixed question of law and fact and, therefore, often held to be merely a matter for the Court to decide, whether on the peculiar facts of a particular case possession of the claimant is such as would constitute, in law, adverse possession so as to ripen into title on account of such possession being actual and uninterrupted, open and notorious, exclusive, adequate in continuity, publicity and extent and under a claim of right for the statutory period. It is also an axiomatic principle that possession to constitute must have a competitor capable of swing and exercising due diligence to take steps to oust the adverse possessor. The possession of a party by virtue of an injunction obtained by him against his opponent cannot be held to be adverse to and against the real title holder against whom such injunction has been obtained by the person asserting competing title and claiming adverse possession. In *Friends Bureau v. Corporation of Calcutta*, : AIR1980 Cal57 , a Division Bench of the Calcutta High Court observed as follows:-

'30. In the facts and circumstances of the case, we are also of view that the plea of adverse possession cannot be taken against a party which was kept out of possession by the process of law or had no right of entry in consequence of the order of the Court. In this case, the decree holder could not take the writ of delivery of possession earlier because the execution case itself was stayed by the order of the court. It is well established principle that prescription does not run against a party which is unable to act.'

13. In the teeth of a judgment and decree of the trial court in the earlier proceedings and the nature of the relief sought for and obtained, it could not have been possible for the present plaintiff to have instituted any proceedings to recover possession and that constituted, even assuming that the appellant has been asserting adverse possession, sufficient case or material to arrest or break the continuity of such possession and snap of the link in the continues chain of adverse possession, which is very much relevant and necessary for upholding his claim of perfection of title by such adverse possession. That apart, it can also be mentioned that in the teeth of a finding ultimately given in the earlier suit that the possession of the present appellant who was the plaintiff in the earlier suit and his predecessor in title did not constitute any adverse possession, there is absolutely

no scope for tagging on the possession of his predecessors-in-title or relying upon his own possession for the period covered by the earlier litigation and upto the conclusion of those proceedings culminating in the judgment of this Court in the earlier second appeal. Therefore, the claim of the appellant has to be considered only in the context of his possession and that too relating to the period subsequent to the disposal of the second appeal and having regard to the fact that not only he filed a suit for declaration of his title and for injunction against the respondent, plaintiff in the suit, but has obtained a decree at least before the trial court and thereby, the said judgment and decree operated as an impediment for the present plaintiff from filing a suit, thereby inevitably breaking the chain of continuity, with the consequence that such possession of the plaintiff could not be claimed to have been proved satisfactorily for a continuous period of twelve years.

14. Consequently, I am unable to see any error in the judgments and decrees of the Courts below, which have concurrently chosen to decree the suit filed by the respondent herein. The plea that the present suit filed by the respondent for recovery of possession is barred by limitation, has, therefore, to be rejected. The second appeal, therefore, fails and shall stand dismissed, but, without costs.