

Judge in holding the application was barred by limitation as having been made more than three years after the last preceding application under the same decree. For this decision the Courts rely on the cases *Sabhanatha Dikshitar v. Subba Lakshmi Ammal* (1), *Yusufkhan v. Sirdarkhan* (2); but it is to be observed that the former of these cases turned rather on the circumstance that the decree sought to be executed was declaratory only as to the future right, not a command to satisfy it by specified payments. The distinction is important as indicated by the cases *Lakshman Ramchandra Joshi v. Satyabhamabai* (3); *Vishu Shambhog v. Manjamma* (4). A Court in executing a decree cannot itself make a new decree. It can only give effect to a positive command, and dispose of such questions as arise incidentally in giving effect to it. In the present case there was a positive alternative command by the Court, that the defendant should pay the plaintiff Rs. 36 a year, and such a decree would, we think, be subject to the principle laid down in *Sakharam Dikshit v. Ganesh Sathe* (5). There is no precise date specified for payment of the annuity, and this, according to one of the Madras cases, would be an important circumstance against the judgment-creditor; but construing the decree, as it ought to be construed, most favourably to him on whom it bore, we must say that he became liable to pay Rs. 36 on the day year from its date, and thenceforward on the corresponding date year after year. The decree was, as to each year's annuity, to be regarded as speaking on the day upon which for that year it became operative, and separately for each year. If this were not so, the judgment-debtor, by paying regularly for three years, and so intercepting an application to the Court, could escape payment for ever afterwards. The right to execute accruing on a particular day, limitation is, we think, to be computed from that day, should the judgment-debtor fail to obey the order of the Court. Should he omit to pay, he may, [68] as to the particular sum, have the benefit of limitation where that comes in to protect him.

We reverse the decrees below, with costs throughout on the respondents, who are to pay the annuity claimed for each time of payment falling within three years of the application.

Decree reversed.

12 B. 68.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

PARVATIBAI BY HER AGENT SADASHIV B. SATHE (*Original Plaintiff*), *Appellant v. VINAYEK PANDURANG AND OTHERS* (*Original Defendants*), *Respondents*.* [29th March, 1887.]

Recognized agent—Civil Procedure Code (Act XIV of 1882), s. 37—Agent's right to execute decree obtained by him as agent—Waiver—Execution of decree.

P. filed a suit in the Second Class Subordinate Judge's Court at Mahad. As P. resided at Thana, outside the jurisdiction of the Court of Mahad, she authorized her agent, under a general power of attorney, to conduct the suit on her behalf. The agent carried on the litigation up to the final decree passed by the

* Second Appeal, No. 358 of 1886.

(1) 7 M. 80.
(4) 9 B. 108.

(2) 7 M. 83.

(3) 2 B. 494.
(5) 3 B. 193.

1887
 MARCH 29,
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 APPEL-
 LATE
 CIVIL.
 ———
 12 B. 68.

High Court on appeal in P.'s favour. The agent then sought to execute the decree. The Court at Mahad passed an order upon his *darkhast* granting only partial execution. Against this order the agent filed an appeal in the District Court at Thana. Then, for the first time, the judgment-debtors challenged the agent's right to represent P., who was residing within the District Court's jurisdiction. This objection prevailed, and the appeal was dismissed.

Held, that the agent could not be prevented from executing the decree which he had obtained as agent. No objection had been taken to the agent's right to represent P. at any stage of the litigation prior to the final decree. That objection must, therefore, be deemed to have been virtually waived, and could not be raised after the defendants had had their chance of success in the litigation.

[F., 4 L.B.R. 284 ; R., U.B.R. (1892—1898) 282.]

THIS was a second appeal from the decree of Rav Bahadur Chunilal Maneklal, First Class Subordinate Judge of Thana with appellate powers, in appeal No. 445 of 1885.

One Parvatibai brought a suit in the Court of the Second Class Subordinate Judge at Mahad to recover certain property. Parvatibai was a resident of Thana, outside the territorial jurisdiction [69] of the Court at Mahad. She, therefore, authorized her agent, Sadashiv Balvant Sathe, under a general power of attorney to conduct the suit on her behalf. The suit was dismissed by the Court of first instance. Thereupon the agent preferred an appeal to the District Court at Thana. No objection was taken to the agent's representing Parvatibai in appeal, though she was residing within the local limits of the District Court's jurisdiction. The District Court reversed the decree of the Subordinate Judge, and awarded Parvatibai's claim. Against this decision there was a second appeal to the High Court. In this Court also Parvatibai was represented by her agent, Sathe. The High Court dismissed the appeal, and the decree in favour of Parvatibai was confirmed.

Thereupon the agent applied for execution of the decree. The Subordinate Judge at Mahad ordered delivery of possession of only a portion of the land adjudged to Parvatibai. The agent then appealed against that order to the District Court, and the District Judge sent the appeal for trial to the Court of the First Class Subordinate Judge with appellate powers at Thana. In that Court the judgment-debtors objected to the agent's right to represent Parvatibai, on the ground that Parvatibai was living within the Court's jurisdiction. This objection was allowed, and the appeal was dismissed. The Subordinate Judge recorded the following reasons:—

"Parvatibai has been residing within the limits of the District Court at Thana, and that being so, her agent has no *locus standi* in that Court. The agent cannot appear for her, and cannot prefer an appeal on her behalf. So far as the Subordinate Judge's Court at Mahad was concerned, the agent has a *locus standi*. The appellant's pleader has not denied these propositions of law, but he maintained that the defendants having allowed the agent to prefer an appeal against the decree in suit No. 1035 of 1880, the defendants had no right to question the agent's authority to conduct proceedings relating to the execution of the decree passed in that appeal. He urged that the present attempt of the respondents was to make nugatory the decree of the appellate Court. The contention, however, is, in [70] my opinion, untenable. The decree of the appellate Court stands good, and it can well be maintained that the defendants are estopped from raising a question as to the validity of that decree on the ground of jurisdiction. But I do not see how the doctrine of estoppel can be carried further than that. The contention of the defendants is—"let the decree

stand good, but the execution proceedings should be conducted by the right person." It is no answer to say that because the suit was conducted in appeal by a wrong and unauthorized party, the execution proceedings in appeal should also be allowed to be conducted by an unauthorized person. If Parvatibai thought that the order of lower Court was wrong, she ought to have preferred this appeal in her own name.

Against this decision a second appeal was preferred to the High Court.

Manekshah Jehangirshah, for the appellant.—The agent conducted the whole litigation under a general power of attorney. Such a power having been acted on up to the final decree in the suit, entitles the agent to go on with execution. He had power to do everything in connection with the suit, though the principal resided within the jurisdiction of the appellate Court. *Mungul Pershad's Case* (1) shows that an application for execution is one made in the suit.

Shamruv Vithal, for the respondents.—Section 37 of the Code of Civil Procedure allows a recognised agent to appear for his principal, when the latter is not within the Court's jurisdiction. In the present case the agent had authority to represent his principal in the Subordinate Judge's Court at Mahad, but not at Thana, as the principal was a resident of Thana. The principal should have applied for execution in person.

JUDGMENT.

WEST, J.—In the present case the Subordinate Judge has in appeal held that Sadashiv, who, as agent under a general power, properly conducted a suit for Parvatibai in the Court of the Subordinate Judge at Mahad, cannot represent her in the District Court in questions arising on appeal in the execution proceedings. Parvatibai, it appears, resides within the District of [71] Thana, though not within the sub-division under the Court at Mahad, and the Subordinate Judge in appeal thought that the representation by agent could not operate when the lady herself was within the jurisdiction. But it is to be observed that she was thus represented, and apparently with the assent of the defendants themselves, throughout the litigation which led to the decree now in question. Sadashiv, as appellant, acting for Parvatibai, obtained a decree against the defendants in the District Court. In the appeal thence to this Court, Sadashiv was made a respondent. Under these circumstances, we think that he cannot now, at the instance of the defendants, be prevented from executing, as agent, the decree which he has obtained as agent. His right to represent Parvatibai might have been challenged in the appeals, and possibly the same reasons would apply to representation in an appeal as in an original suit, but the objection having been virtually waived, cannot be taken after the defendants have had their chance of success in the litigation. Compare *Bisandas v. Lakhimchand* (2). It is only Parvatibai herself who can now supersede Sadashiv.

We, therefore, reverse the decree of the Subordinate Judge, and remand the case for disposal on the merits. Costs to abide the event.

1887
MARCH 29.
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APPEL-
LATE
CIVIL.
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12 B. 68.

(1) 8 I.A. 123.

(2) 6 B. H.C.R. A.C.J. 159.