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doctrine of propinquity is again enforced, it should be assumed, merely because a reference is made to a certain text of Yajnavalkya, that Nilkantha abandons the principle of propinquity and reverts quite unnecessarily, since he is discussing woman's property, to the doctrine of religious efficacy. It appears to me that the argument on behalf of the respondent is well-founded, and no sufficient reason has been shown for holding that there is any different principle at the base of the rule of inheritance according to the Mayukha with regard to non-technical *stridhana* from the principle which clearly obtains under the three writers above referred to with regard to technical *stridhana*. I would, therefore, confirm the decree and dismiss the appeal with costs.

HEATON, J:—I concur.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Batchelor.

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KURGODIGOUDA BIN LINGANGOUDA (ORIGINAL PLAINTIFF), APPELLANT *v.* NINGANGOUDA BIN NINGANGOUDA (ORIGINAL DEFENDANT), RESPONDENT.*

Civil Procedure Code (Act V of 1908), section 144—Decree—Execution—Application for restitution, whether an application for execution—Minority of the applicant—Indian Limitation Act (IX of 1908), section 6, Schedule I, Articles 182, 183.

On November 4, 1901, a decree was passed by the trial Court for delivery of certain lands in favour of the plaintiff. In execution of that decree the lands were delivered to the plaintiff. On an appeal preferred by the defendant who was then a minor the High Court amended the decree on August 17, 1903, by excepting from the decree for delivery two survey numbers. The

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defendant attained majority in October 1912, and on August 4, 1914, he made an application under section 144 of the Civil Procedure Code, 1908, for delivery to him of the two survey numbers. It was contended that the minority of the defendant would not save limitation under section 6 of the Indian Limitation Act, 1908, unless the application be treated as one for execution of the decree within the meaning of that section.

Held, that the application was not barred as it was virtually an application for execution of the High Court decree amending the decree of the trial Court.

FIRST Appeal No. 72 of 1916 from the decision of T. V. Kalsulkar, First Class Subordinate Judge at Dharwar in Darkhast No. 375 of 1914.

Proceedings in execution of decree.

On November 4, 1901, one Kurgodigouda and another obtained a decree against one Ningangouda a minor and others in the First Class Subordinate Judge's Court at Dharwar for the delivery of possession of ten survey numbers of land. In execution of that decree the lands were delivered to the plaintiff.

On an appeal to the High Court on behalf of Ningangouda the minor, that Court varied the decree of the Subordinate Judge on August 17, 1903, by excepting from the decree for delivery two survey numbers. These survey numbers, however, remained in possession of the plaintiff Kurgodigouda.

On October 1, 1912, Ningangouda attained majority and on August 4, 1914, he made an application to the Subordinate Judge under section 144 of the Civil Procedure Code, 1908, for delivery to him of the two survey numbers.

The plaintiff contended that the application was not an application for execution of the decree within the meaning of section 6 of the Limitation Act, 1908, and therefore, it was barred by limitation.

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The Subordinate Judge held that the application was an application for execution of the High Court decree under Article 182 of the Limitation Act and that the minority of the defendant saved limitation under section 6 of the Act.

The plaintiff appealed to the High Court.

Nilkant Atmaram for the appellant.—The present application is an application under section 144 of the Civil Procedure Code, 1908, and falls under Article 181 of the Limitation Act, 1908. It is an error to say it is an application for execution of the decree of the High Court. The decree does not give to the defendant anything, it merely says that the plaintiff is not entitled to the two lands which the first Court gave him and excepts these two lands from the decree of that Court. Since the decree of the first Court was executed and since the plaintiff got more than he was entitled to, application under section 144 could be made to get back from the plaintiff what he was not entitled to. The application cannot be said to be an application for execution of the High Court decree. The High Court decree merely said that the first Court's decree so far as it awarded the two survey numbers was wrong. In consequence of this the defendant became entitled to get back from the plaintiff what the latter had obtained under the first Court's decree and the defendant had to proceed by an application under section 144 of the Civil Procedure Code, 1908, and the limitation applicable to the case is one of three years prescribed by Article 181. It is not an application for execution falling under Article 182. *Kurupam Zamindar* v. *Sadasiva*[1]; *Harish Chandra Shaha* v. *Chandra Mohan Dass*[2].

Moreover an application under section 144 has to be made to the Court of first instance and an application

(1) (1886) 10 Mad. 66. (2) (1900) 28 Cal. 113.

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for execution has to be made to the Court which passed the decree or to the Court to which the decree may be transferred for execution : sections 38 and 39, Civil Procedure Code, 1908.

Unless the application be one for execution of decree, the minority of the defendant does not save limitation under section 6 of the Limitation Act as held by the lower Court.

A. G. Desai for the respondent :—An application under section 144 is not an application in suit. It is made after the decree in the lower Court is set aside by the High Court. The party applying for this relief is to that extent a judgment-creditor and as such he is entitled to enforce the order passed in his favour. This relief, therefore, relates in substance "to the execution discharge or satisfaction of the decree" within the meaning of section 47 of the Code. The grouping of these two sections together in section 2 of the Code is also significant.

The order which is enforced under section 144 is the order of the appellate Court and though the application is to be made to the first Court, the order is none the less "a decree *or order* of the Appellate Court" for the purposes of limitation and within the meaning of Article 182 of the Indian Limitation Act : *Nand Ram* v. *Sita Ram* [1]; *Venkayya* v. *Ragavacharlu* [2].

SCOTT, C. J. :—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

[1] (1886) 8 All. 545. [2] (1897) 20 Mad. 448.

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.

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.

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

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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.

Decree confirmed.

J. G. R.