

1941

*Present : Moseley S.P.J. and Keuneman J.*MEENATCHY ATCHY *v.* PALANIAPPA CHETTIAR.

17—D. C. Colombo, 17,348.

Decree—Agreement substituting new decree for original decree—Date of new decree—Prescription—Civil Procedure Code, s. 337 (1) (a) and (b).

Where a decree which was entered in January, 1926, was adjusted by means of a consent motion filed to the effect that "the date of the decree in this case should be reckoned as from this date" (October, 1933).

Held, that the agreement incorporated in the order substituted a new decree for the original decree and that the date given in the agreement must be regarded as the date of the decree for the purposes of section 337 (1) (a) of the Civil Procedure Code.

Held further, that the agreement may be regarded as "a subsequent order directing the payment of money to be made at a specified date", within the meaning of section 337 (1) (b) of the Civil Procedure Code.

A PPEAL from an order of the District Judge of Colombo.

N. E. Weerasooria, K.C. (with him E. B. Wikremanayake), for first and third defendants, appellants.

C. Thiagalingam (with him N. Kumarasingham), for plaintiff, respondent.

Cur. adv. vult.

May 29, 1941. KEUNEMAN J.—

In this case in default of appearance of the defendants decree *nisi* was entered on October 30, 1925, in favour of plaintiff in the sum of Rs. 12,500 with interest at 9 per cent. from September 3, 1925, till payment in full. This decree was made absolute on January 18, 1926. There were applications for writ made on more than one occasion. Eventually on October 17, 1933, a consent motion was filed to the effect that "the following adjustment of the decree in this case be entered and certified of record".

Inter alia this "adjustment" provided—

- (1) that the date of the decree in this case be reckoned as from this date (October 17, 1933);
- (2) that the sale already fixed be stayed and stand adjourned for November 17, 1933;
- (3) that the defendants do pay to the plaintiff the balance amount of the decree, viz.:—a sum of Rs. 10,450 and costs (Rs. 300) with interest on Rs. 10,450 at the rate of 9 per cent. by quarterly instalments of Rs. 250 on January 24, April 24, July 24, and October 24, each and every succeeding year for a period of three years, the first payment to be on January 24, 1934, and all balances after payment of the above instalments on January 24, 1936. On October 17, 1933, the motion was allowed and order made accordingly.

After certain other proceedings which need not be mentioned, on January 24, 1940, the plaintiff applied to re-issue writ. This application was allowed. Thereafter on February 22, 1940, the first and third defendants

filed the application now in question, requesting the Court to order the withdrawal of the writ issued, as the decree was no longer executable as provided by section 337 of the Civil Procedure Code.

The learned District Judge dismissed the objections of the first and third defendants, who appeal from that order.

The argument of the appellants, in short, is that as more than 10 years have elapsed since the date of the decree entered on January 18, 1926, no application for execution can now be allowed.

The District Judge held that in the view of the consent order of October 17, 1933, whereby the date of the decree was to be reckoned as from October 17, 1933, it was not open to the defendants to say that the application for execution is barred.

The appellants contend that the District Judge based his judgment on estoppel and that estoppel cannot prevail against the clear words of the Statute (of *re The Stapleford Colliery Co. Ltd., Barrow's case 1880, 14 Ch. Div. 432, 41 L.T. 755*). I do not think however it is necessary to discuss the point regarding estoppel, if in fact the District Judge based his judgment on estoppel. For I think the case can be decided on other grounds.

Counsel for the respondent argued that on October 17, 1933, a new decree had been substituted for the decree dated January 18, 1926. He emphasized the agreement that the date of the decree should be reckoned as from that date, the entering of a new and smaller sum as the amount payable, and the order for the payment of this sum by instalments. He relied on the case of *H. Sanyal v. K. N. Sanyal and others*¹ in which under circumstances not dissimilar to the present, the application for writ was held to be an application to execute the substituted decree, and the provisions of section 48 of the Indian Civil Procedure Code did not operate as a bar. In the present case I think there is good ground for holding that the agreement of October 17, 1933, which was incorporated in the order of that date, in effect substituted a new decree for the original decree. No doubt, to establish his point, the respondent must show that the original decree was actually superseded by the new arrangement, and that it was not merely an intermediate arrangement for the payment of the original decree. But I think the terms of the compromise of October 17, 1933, show that a new decree was in fact brought into being.

Counsel for the appellant argued that this procedure was unknown to our law, and was bad. He further argued that at best, the compromise of October 17, 1933, was an agreement which could be enforced by separate action, and could not be executed as a substantial decree. These points were dealt with in the Indian case referred to above, which followed earlier decisions in India and England to the effect that, provided there is no inherent want of jurisdiction in the Court with regard to the subject-matter before it or with regard to the person, parties by agreement may arrange their own procedure and give jurisdiction to the Court to adopt that procedure, and that the parties should be held to the agreement that questions between them should be heard and determined by proceeding, quite contrary to the *cursus curiae*, even to the extent that money due under the agreement be realized as in execution of a decree rather than by recourse to a separate suit.

¹ *A. I. R. (1929) Cal. 687.*

I think the argument advanced in the Indian case apply with equal force in Ceylon. In *Chettinad Corporation v. Raman Chettiar*¹, Fernando A.J. regarded as possible "an agreement which satisfies the decree and which attempts to substitute another in its place", although he held that the agreement he was dealing with did not have that effect.

If we accept the arrangement of October 17, 1933, as a substitution of a new decree, then the application for execution is not barred under section 337 (1) (a) of the Civil Procedure Code.

It has also been argued for the respondent that the present case should be decided under section 337 (1) (b), as the agreement of October 17, 1933, can at least be regarded as "a subsequent order" directing the payment of money to be made at a specified date, in which case the ten-year period will run only from the date of the default. I think there is force in this argument. Counsel for appellant tried to restrict the words "subsequent order" to such order as is separate from the decree, e.g., a subsequent order for costs. I do not think such a restricted interpretation can be justified, and in fact in my opinion it does violence to the language of the section.

I have accordingly come to the conclusion that the judgment of the District Judge is correct. I dismiss the appeal with costs.

MOSELEY S.P.J.—I agree.

Appeal dismissed.

