

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Vasudeva Mudaliar and others v. K. S. Srinivasa Pillai and another, from the High Court of Judicature at Madras; delivered the 22nd July 1907.

Present :

LORD ROBERTSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[Delivered by Sir Arthur Wilson.]

This is an appeal from a judgment and decree of the High Court of Madras, dated the 13th March 1905, modifying those of the Subordinate Judge of Negapatam, of the 17th February 1902.

The controversy arises out of a mortgage executed on the 22nd September 1883, by the first and third Appellants in favour of Krishna Mudaliar Avergal, to secure Rs. 8,000 and interest as stipulated. The mortgage was of the kind long known as a mortgage bond or hypothecation bond, and now described in the Transfer of Property Act as a simple mortgage.

In the course of a partition suit, relating to the estate of the mortgagee, the first Respondent was appointed receiver of that estate, and as such he instituted the present suit, joining as Defendants the two actual mortgagors and their respective sons, which four persons are now the Appellants. The object of the suit, so far as it need now be noticed, was to enforce payment of the amount due under the mortgage, by sale of the mortgaged property.

In carrying out the partition the claim now in question was allotted to the now second Respondent, whereby he became the person really interested in the claim. Accordingly he was made a party to this appeal, by order of the High Court, and he is the contesting Respondent.

The only issue in the case which need be noticed was whether the suit was barred by limitation, and the principal question discussed on the argument of this appeal (the only one on which their Lordships propose to express an opinion) is whether the period of limitation applicable to such a case is sixty years, under Art. 147 in the Second Schedule to the Indian Limitation Act (XV. of 1877), as held by the High Court, or twelve years, under Art. 132, as contended for by the Appellants.

This question is one as to which there has been great diversity of opinion among the several High Courts in India for many years past, almost from the time of the passing of the Act of 1877. If there had been a uniform current of decision in India upon such an Act and for such a period of time, their Lordships would have been very slow to interfere. But though the Act to be construed is one applicable to India generally, and must bear the same meaning everywhere, different and conflicting views have so far prevailed in the different provinces of India. Their Lordships have therefore no alternative but to decide between the conflicting opinions.

The two Articles in question run thus:—
 Art. 132. Suit “to enforce payment of money charged upon immoveable property,” “twelve years.”
 Art. 147. Suit “by a mortgagee for foreclosure or sale,” “sixty years.”

Before balancing the two views which have been taken of the effect of these Articles, it may

be well to see how the law stood when they were passed. The previous Act was Act IX. of 1871, in which Art. 132, referring to suits "for money charged upon immoveable property," was practically the same as the present Article bearing that number. There was nothing corresponding to Art. 147. Under that state of things it was perfectly settled law that suits of the present class were governed by Art. 132, whilst some uncertainty had been felt as to the rule of limitation applicable to another class of mortgage, the English mortgage.

The two views taken under the Act of 1877 are these: According to one view, Art. 147 applies to every suit by a mortgagee, in which he asks either for foreclosure or for sale. According to the other view, Art. 147 applies only to the class of mortgages (English mortgages) in which the suit may be, and in fact always is, brought for "foreclosure or sale," while Art. 132 means what the corresponding Article meant before.

In support of the first of these constructions, reliance has mainly been placed upon the view that the terms of Art. 147 require its acceptance, and that the other construction is not a legitimate construction, as not giving fair effect to the language used. If this be so, it is of course conclusive. But their Lordships think it is not so. They are of opinion that the narrower construction of Art. 147, limiting its application to the one class of mortgages in which alone the suit can be, and always is, brought for "foreclosure or sale," is a legitimate construction, and gives reasonable effect to the language used.

That being so, their Lordships think that the reasons for adopting the narrower interpretation of Art. 147 greatly outweigh those on the other side. The preponderating consider-

ations, in their Lordships' opinion, are the following. The narrower construction escapes the necessity of attributing to the Legislature a great and sudden change of policy. It also gives effect to the ordinary presumption, that the Legislature, when it repeats in substance in a later Act an earlier enactment, that has obtained a settled meaning by judicial construction, intends the words to mean what they meant before. The other construction fails in both these particulars.

One argument urged for the Respondent calls for notice. It was said that, whatever might have been the original operation of the Limitation Act of 1877, the effect of Art. 147 might be extended by the subsequent passing of the Transfer of Property Act in 1882, so as to make the Article apply to everything which was declared to be a mortgage by the later Act. This contention appears to their Lordships to assume the very point in controversy, namely, that Art. 147 purports to apply to every suit on a mortgage, in which there is claim for foreclosure or for sale.

Their Lordships will humbly advise His Majesty that it should be declared that Art. 132 is the Article which provides the rule of limitation applicable to this case, and that the case should be remitted to the High Court to be disposed of in accordance with this declaration.

The second Respondent will pay the costs of this Appeal.
