Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kotagiri Venkata Subbamma Rao v. *Vellanki Venkatrama Rao, from the High Court of Judicature at Madras; delivered* 28*th June* 1900.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD HOBHOUSE.
LORD MORRIS.
LORD DAVEY.
LORD ROBERTSON.
SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

The delivery of the judgment on this Appeal has been delayed at the request of the Respondent's Solicitors. In the first instance the Respondent's Counsel desired to draw their Lordships' attention to certain articles of the Code of Procedure which had not been sanctioned at the hearing of the Appeal and subsequently a petition was lodged for leave to produce fresh evidence which was disposed of yesterday morning.

The facts which have given rise to the present Appeal are shortly as follows. A suit was brought to recover the estate of one Sudarsana Rao the succession to which opened on the death of his mother in 1872. There were four Defendants. The second and fourth Defendants were the widow and (alleged) adopted son of one Suryaprakasa Rao deceased and between them represented one interest. The first and fourth Defendants by their written statements admitted the Plaintiff's case. The third Defendant and

second Defendant contested it. But the interest of the second Defendant depended on the alleged adoption of the fourth Defendant by Surya-prakasa Rao turning out to be invalid. The Respondent is the representative of the first Defendant now deceased. That Defendant was the natural father of the original Plaintiff which to a certain extent may serve to explain the delay in executing the decree against him.

The District Judge decided in favour of the Plaintiff and by his decree dated the 17th October 1884 it was ordered that the Plaintiff's claim be allowed with mesne profits, and that the costs of Plaintiff and Defendants one and four be paid by Defendants two and three; that the fourth Defendant be personally exonerated but should he succeed in establishing his adoption and get possession of the property of the second Defendant then such property be liable to this decree and that subject to this limitation first second and third Defendants be severally and jointly liable to this decree.

The second and third Defendants appealed to the High Court with the result that on the 12th July 1886 that Court confirmed the decree of the original Court and dismissed the appeal with costs.

The Plaintiff died on the 18th August 1886 and his widow Buchamma was substituted on the Record as his legal representative. Buchamma subsequently died and her infant daughter Subbamma (the present Appellant) was brought on the Record in her place.

In September 1886 the second and third Defendants applied to the High Court for leave to appeal to Her Majesty in Council against the decree of the High Court. Pending the proceedings on this application Buchamma and the third Defendant compromised the suit as between themselves. And on the 23rd November 1887

they presented to the High Court a Razinamah petition in the following terms:

"The Respondent's widow Rajah Vellanki Buchamma Rao "Zamindar Garu, begs to submit as follows:—

"As the Appellant has presented a petition praying for "permission to appeal to the Privy Council, and as I am a "female and not sufficiently wealthy to defend the suit, I "have agreed to the effect that I should receive from the "Appellant Rs. 9,000 (nine thousand) now paid, exclusive of "Rs. 1,000 (one thousand) already paid on account of costs "&c., as proper consideration, that the Appellant should be "in enjoyment of one-third share in the Zamin of the northern "portion of Vinigadapa estate in suit, one-third share in the "houses and the Devastanam Dharmakartaship as usual, and "that I should give up my claim against the Appellant.

"The Appellant submits as follows:—

"As I have agreed to the terms stated above by the Re-"spondent widow, I most respectfully pray that the petition "put in by me praying for permission to appeal to the Privy "Council may be dismissed, that this Razinama petition may "be filed with the records of your Court and that the decree "may be amended on the terms hereof."

On the 1st February 1888 the High Court made the following order on this petition:—

"We make the razee set out in Civil Miscellaneous Petition "No. 71 of 1888 a rule of Court and accordingly direct that "the decree in Appeal No. 40 of 1885, dated the 12th day "of July 1886 be amended by omitting the words 'This "'Court doth order and decree that the decree of the Lower "'Court be, and the same hereby is, confirmed, and this "'Appeal dismissed; and this Court doth further order and "'decree that the Appellants do pay to the Respondent "'Rs. 270-8-5 for his costs in opposing this Appeal,' and by "substituting therefor the words 'It appearing that Rs. 9,000, "'exclusive of Rs. 1,000 already paid on account of costs, has "'been paid to the Respondent as proper consideration, this "'Court doth order and decree that the Appellant do enjoy "'one-third share in the Zamin of Magadapa estate in suit, "'one-third share in the houses and the Devastanam Dhar-"'makartaship as usual, and that the Respondent's represen-"'tative do give up her claim against the 2nd Appellant.'"

The application for leave to appeal to Her Majesty in Council was thereupon dismissed.

The actual amendment of the decree in pursuance of this order, was not made until the 3rd March 1891. As amended the decree bore date the 12th July 1886 (the day on which the

order was made dismissing the Appeal to the High Court) and was in the following terms:—

"*Decree.*—This Appeal coming on for hearing on Monday, "the 22nd day of March 1886, and having stood over for "consideration till this day; upon perusing the grounds of "appeal, the judgment and decree of the Lower Court, and "the material papers in the suit, and upon hearing the "arguments of Mr. R. Sadagopachariyar, Vakil for the "Appellants, and of Mr. J. H. S. Branson, Counsel for the "Respondent; it appearing that Rs. 9,000, exclusive of "Rs. 1,000 already paid on account of costs, has been paid by "the Respondent as proper consideration, this Court doth "order and decree that the 2nd Appellant do enjoy one-third "share in the Zamin of the northern portion of Inagadapa "estate in suit, one-third share in the houses and the Devas-"tanam Dharmakartaship as usual, and that the Respondent's "representative do give up her claim against the 2nd "Appellant."

It is not easy to understand what jurisdiction the High Court supposed themselves to have to amend their decree in this manner. So far as their Lordships are aware the High Court has no power to alter its own decrees except under the provisions of either Section 206 or Section 623 of the Civil Procedure Code, and neither of these sections authorise such an amendment as was made by the Court. Section 206 enables the Court to amend the decree if it is found to be at variance with the judgment or if any clerical or arithmetical error be found in it. Section 623 enables any of the parties to apply for a review of any decree on the discovery of new and important matter and evidence, which was not within his knowledge, or could not be produced by him at the time the decree was passed, or on account of some mistake or error apparent on the face of the Record, or for any other sufficient reason. It is not necessary to decide in this case whether the latter words should be confined to reasons strictly *ejusdem generis* with those enumerated as was held in *Roy Meghraj* v. *Beejoy Gobind Burral and others* L. R. 1. Calcutta, Ser. 197. In the opinion of

their Lordships, the ground of amendment must at any rate be something which existed at the date of the decree, and the section does not authorise the review of a decree which was right when it was made, on the ground of the happening of some subsequent event. It is however easy to point out the inaccuracies of the decree as amended. It does not dispose of the appeal of the second Defendant who was also Appellant and it states circumstances as appearing to the Court on the 12th July 1886 which were not at that date existent. A plausible explanation of the extraordinary order made by the High Court is that it was really based on an agreement between all the parties to the litigation including the first second and fourth Defendants as well as the third Defendant who made the compromise to which effect was given by the order. But no such agreement was proved or even suggested at any stage of the proceedings which followed the amendment of the decree and neither the order of the 1st February 1888 nor the amended decree is expressed to be made by the consent of any party other than the third Defendant nothing of the kind is to be found in the Record or Proceedings before their Lordships nor was any suggestion of the kind made at the hearing of the Appeal. It is too late now for their Lordships to listen to any suggestion of such an agreement even if could regularly be put in evidence in the execution proceedings and the case must be dealt with on the footing that no such agreement existed.

Buchamma on 4th August 1891 petitioned the High Court to further amend the decree so as to establish the compromise without disturbing the rest of it. This application was refused, on the ground that the amendment was made in accordance with the compromise, and in terms of that compromise. Their Lordships

are unable to agree with the view so expressed. The petition asked only that the Razinama might be placed on the files of the Court, and the decree amended accordingly *i.e.*, so as to give effect to the compromise between the Appellant and the third Defendant only. It was no doubt erroneous in asking for any amendment of the decree, and the only order which should have been made on it was to make the Razinama a rule of Court, and stay all further proceedings on the decree against the third Defendant except for the purpose of enforcing the compromise.

In the meantime and on the 28th January 1891 Buchamma filed an application for execution of the original decree of 17th October 1884. In the column headed "whether any Appeal was pre-"ferred against the decree," it is mentioned that an Appeal was preferred and the decree of the Lower Court was confirmed, "thereupon appli-"cation for review having been made review "order was passed on 1st February 1888." The petition sought possession of two-thirds of the estate with mesne profits. All four original Defendants or their representatives were made parties to the application. The present Respondent claimed that the application was barred by limitation. The third Defendant relied on the compromise. And the fourth Defendant in addition to the defence of limitation averred that he was not a party to the "review order" mentioned by Plaintiffs and it did not affect him. The second Defendant offered no opposition.

This application has come before the Courts no less than five times and various judicial opinions have been expressed. When the case first came before the District Judge he had not before him the amended decree and he held that the application was barred by limitation three

years having elapsed since the date of the Appeal decree in 1886. On Appeal the amended decree was produced and the case was remanded. On coming again before the District Judge he held that the time for limitation ran from the date of the order of 1st February 1888 and decreed execution for two-thirds of the estates and mesne profits. On Appeal to a single Judge Mr. Justice Parker concurred and dismissed the Appeal. The learned Judge seems however to have thought that the application for leave to appeal to Her Majesty in Council stayed proceedings on the decree which is clearly erroneous. On a second Appeal by the present Respondent to the High Court on the ground that the amended decree grants no relief against the first Defendant the Court set aside the order of Mr. Justice Parker and dismissed the execution petition. There was in fact (they held) nothing in the decree that can be executed against that Defendant.

There is now an Appeal to this Board. Their Lordships have had great difficulty in unravelling the tangled skein of these proceedings. The whole difficulty has been occasioned by the terms in which the order of 1st February 1888 and the amended decree were drawn up. Mr. Mayne argued that there was no final decree or order until that order was made and consequently limitation only then began to run against his client. He is at once met with the difficulty that the amended decree which he seeks to have executed gives no relief against the Respondent. It is difficult looking to the terms of the amended decree to accept his suggestion that the two together form the final decree. The amended decree clearly is intended by its terms to be a substitution for the whole of the Appeal decree. But in truth the Appeal decree of 1886 required nothing to complete it and when closely examined Mr. Mayne's argument rests on the erroneous

assumption that the application for leave to appeal to Her Majesty in Council by the second and third Defendants operated as a stay of execution against the other Defendants and required to be got rid of to make the Appeal decree complete or operative. In fact he treats the application for leave as equivalent to an Appeal.

Their Lordships have come to the conclusion that the order of the 1st February 1888 so far as it directed an amendment of the decree was *ultra vires* and had no operation either in favour of or against the Defendants who were not parties to that application. Or (in other words) they must regard it as an order made only for the purpose of giving effect to the compromise and not as adding to the decree but as *pro tanto* satisfaction of it. The original decree (as confirmed on appeal) therefore remained in force against the other Defendants and might have been executed against them and on the other hand they are entitled to the benefit of limitation as from the date of the appeal decree.

Their Lordships will therefore humbly advise Her Majesty that the Appeal be dismissed. They would gladly relieve the Appellant from the costs as the whole difficulty has been occasioned by the form in which the order of 1st February 1888 was drawn up by the officers of the High Court. But on the most favourable view to the Appellant she and her predecessors have remained idle and not enforced their decree while the period of limitation has been running and their Lordships cannot deprive the Respondent who they hold is right of his costs. The Appellant will pay the costs of the Appeal but may set off the costs of the Respondent's petition for the admission of fresh evidence.