was out of possession, it was open to him to sue for such possession (other than *exclusive* possession the right to which had already been negatived by suit) as he might be entitled to. And this being so, we are of opinion that the subordinate court rightly decided that the exceptional form of relief by way of perpetual injunction was not open to the plaintiffs and that such relief was rightly refused to them.

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For the reasons already stated, however, we dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

PARVATHEESAM (PLAINTIFF), APPELLANT,

v.

BAPANNA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1890. Mar. 27, 31.

Civil Procedure Code, s. 266— Unascertained interest in a partnership.

The plaintiff having purchased at an execution sale the interest of the judgment-debtor in a partnership, of which the undivided father (deceased) of the judgment-debtor had been a member, now sued the other partners praying that an account be taken and that the share of the judgment-debtor be paid to him :

Held, that the execution sale was not bad in law and that the present suit was accordingly maintainable. *Dwarika Mohun Das* v. *Lukhimoni Dasi* (I.L.R., 14 Cal., 384) dissented from.

APPEAL against the decree of J. Kelsall, District Judge of Vizagapatam, in original suit No. 15 of 1888.

One Ramamurti, who died on 23rd April 1885, and the first three defendants, carried on business in partnership. In February 1887, in execution of the decree passed in original suit No. 386 of 1885 against an undivided son of Ramamurti, the present plaintiff became the purchaser of Ramamurti's interest in the partnership. The plaintiff in this suit prayed that an account of the late partnership be taken and that he be declared entitled to receive such sum as may be found due by the other partners to Ramamurti.

The District Judge held that "an uncertain sum of money "which may or may not be payable by one member of a partner-

* Appeal No. 41 of 1889.

PARVATHEESAM v. BAPANNA.

"ship to another, cannot be attached and sold," and accordingly dismissed the suit.

The plaintiff preferred this appeal.

Bhashyam Ayyangar and *Krishnasami Rau* for appellant.

Subramanya Ayyar for respondents.

MUTTUSAMI AYYAR, J.—It is contended for the appellant that Ramamurti's interest as a partner in the business which he had carried on in partnership with defendants Nos. 1, 2 and 3 was liable to be attached and sold in execution, and that the Judge was in error in holding that the court-sale was bad in law and that Ramamurti's right to an account did not pass by it to the appellant. I am of opinion that this contention must prevail.

Prior to 1885 Ramamurti and defendants Nos. 1—3 traded in jaggery in partnership at Chodavaram, and the former died on 23rd April 1885. The partnership was therefore dissolved on that date by his death, and his son became entitled to sue for an account and to recover what might be found to be due to him. In February 1887 the appellant attached that interest and bought it at the court-sale held in execution of the decree which he had obtained against Ramamurti's son in original suit No. 386 of 1885. Thereupon he brought the present suit as purchaser against Ramamurti's partners to ascertain and recover the balance which might be found due to him upon the partnership account. The Judge considered that the balance which was unliquidated at the time of attachment and sale, and which might possibly turn out to be nothing, was not saleable property within the meaning of section 266 of the Civil Procedure Code. That the right to an account is a vested and heritable interest, there can be no doubt. Section 265 of Act IX of 1872 recognizes the right of a deceased partner's representative to apply for winding up the partnership business, for an account being taken, and for the distribution of the surplus according to the shares of the several partners. Nor is there any reason to doubt that, although a partner is not at liberty to introduce a new partner into the firm without the consent of all the partners, and thereby give him the *status* of a partner, his interest in the partnership may be legally transferred. The effect of such transfer is that it is operative for all purposes but that of forcing him as a partner on the other partners without their consent, the relation of partners being one of mutual confidence and fiduciary in its character. This is clear from sec-

tion 254, clause 3, and section 262 of the Indian Contract Act. This being so, it is not correct in principle to say that a partner's unascertained interest in partnership business is not his saleable property, or that a Court is not entitled to sell it, though he himself can do so during his life. It is argued for the respondents that the sale of an unascertained interest may not fetch an adequate price at a public auction, and that it is the practice of the Courts of Chancery to ascertain first the *quantum* of interest which is to be put up to sale with precision, and then to proceed to sell it. But it is to be observed that the interest of an undivided co-parcener, though equally uncertain, is liable to be sold in execution. So also the right of redemption may be an uncertain interest when there are several incumbrances, and yet it is sold in execution. Again, the right, title, and interest of a judgment-debtor may be uncertain in some cases, but it has not been considered to bar its sale in execution. I think, therefore, that the contention that a vested interest is not saleable whenever its *quantum* is uncertain and until it is made certain cannot be upheld with reference to the provisions of the Code of Civil Procedure. There is a distinction between such interest and a mere expectancy or contingent or possible right or interest which is not liable to be attached in execution (see section 266, clause K). In that case, there is no vested right of property upon which the attachment can operate when it is made, and no future right nor mere possibility can be attached by anticipation. But the interest of a partner is one growing out of a pre-existing contractual relation, and though, under certain circumstances, it may turn out infructuous in common with several other recognized forms of saleable property, it does not on that ground cease to be saleable property. That this is the proper construction to be put upon section 266 is clear from the observations of the Privy Council in *Deendyal Lal* v. *Jugdeep Narain Singh*(1). The question in that case was as to the rights of an execution creditor and of a purchaser at an execution sale in regard to the interest of an undivided co-parcener in a Hindu family and it was held that such interest was liable to be attached and sold. In stating the ground of decision, their Lordships of the Privy Council observed as follows :—"It is sufficient to instance the seizure and sale of a

(1) L.R., 4 I.A., 247.

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"share in a trading partnership at the suit of a separate creditor of "one of the partners. The partner could not have himself sold his "share so as to introduce a stranger into the firm without the "consent of his co-partners, but the purchaser at the execution "sale acquires the interest sold, with the right to have the part-"nership accounts taken in order to ascertain and realize its value. "The same principle may and ought to be applied to shares in "a joint and undivided Hindu estate." In this connection, the pleader for the respondents draws our attention to the decision of the Judicial Committee in *Syud Tuffuzzool Hossein Khan* v. *Rughoonath Pershad*(1). The particular interest attached in that case was, as observed by the Privy Council, not an unliquidated demand *ex contractu* nor an antecedent share of the existing assets, but an uncertain future right which was to come into existence under a future award, the terms of which depended on the extensive discretionary powers conferred upon certain arbitrators. Far from this decision being an authority in support of the respondent's contention, it appears to me to illustrate the distinction between a possible future interest and a vested interest.

As to the case of *Karimbhai* v. *The Conservator of Forests* (2), it is not in point, and, so far as it goes, it recognizes the right of the purchaser to the partner's share in the assets.

As to the decision in *Abbott* v. *Abbott and Crump*(3), which seems to support the respondents' contention, it is to be observed that it is the decision of a single Judge and cannot prevail against the authority of the Privy Council. As to the decision of the Divisional Bench in *Dwarika Mohun Das* v. *Luckhimoni Dasi*(4), it purports to proceed on the decision of the Privy Council in *Syud Tuffuzzool Hossein Khan* v. *Rughoonath Pershad*(1), but it appears to me not sufficiently to recognize the distinction between a saleable interest which might turn out to be infructuous under certain circumstances and a mere expectancy or possibility. The reasoning of the Privy Council in *Deendyal Lal* v. *Jugdeep Narain Singh*(5), was not considered in that decision. The contention for the appellant is, in my judgment, sound in principle and supported by authority.

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(1) 14 M.I.A., 40. (2) I.L.R., 4 Bom., 222. (3) 5 Beng. L.R., 331.
(4) I.L.R., 14 Cal., 384. (5) L.R., 4 I.A., 247.

The next objection argued before us is as to limitation. Ramamurti died on 23rd April 1885, and the plaint was presented on 26th April 1888. It appears that the Court was closed for the annual recess from 23rd April, but that arrangements were made and duly notified for the reception of plaints on every Monday and Thursday during the recess. There is an endorsement on the plaint apparently by the Sheristadar of the Court that Monday the 23rd April was a local holiday and that the plaint was presented on the 26th *idem*. It is conceded that, if the 23rd April were a local holiday, the suit would be brought in time, but it is contended that the endorsement is not sufficient legal evidence. I consider it desirable to ask the Judge to ascertain whether the 23rd April 1888 was a local holiday and the Court was closed on that day.

I would set aside the decree of the Judge and remand the case with the direction that the Judge do re-try the issue as to limitation with reference to the foregoing remarks, and that if he comes to the conclusion that the suit is not barred, he do proceed to dispose of it on the merits.

Costs hitherto incurred will be provided for in the revised decree.

BEST, J.—I concur.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

NARASIMMA AND OTHERS (DEFENDANTS), APPELLANTS,

v.

MUTTAYAN AND OTHERS (PLAINTIFFS), RESPONDENTS.*

1890. May 1.

Limitation Act—Act XV of 1877, s. 14—Exclusion of time of proceeding with suit bonâ fide—Cause of like nature.

Of six persons in whom was vested the obligee's interest under a hypothecation bond, three brought a suit upon it in a District Court and the other three brought a similar suit in a District Munsif's Court to recover, with interest, their respective shares of the sum secured. The former suit was dismissed as not being maintainable and the latter was withdrawn. The present suit was brought by all six:

* Appeal No. 71 of 1889.