

GREGORY
v.
VADAKASI
KANGANI.

The case is similar to that on which the High Court Proceedings of 15th December 1876, No. 2940, were passed, in which case it was shown that the contract was made in British territory. It was then held that such an order was *ultrâ vires*.

The order of the Second-class Magistrate must be set aside.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

NÁRÁYANA NAMBI (DECREE-HOLDER), APPELLANT,

and

PAPPI BRAHMANI AND ANOTHER (JUDGMENT-DEBTOR'S
REPRESENTATIVES), RESPONDENTS.*

1886.
August 20, 80.

*Limitation Act, sch. II, arts. 178, 179—Decree—Execution—Attachment set aside—
Time occupied in suing to declare property liable to attachment not excluded from
computation.*

An application for execution of a decree having been made in 1880, certain land was attached as being the property of the judgment-debtor (deceased). His children thereupon claimed the land and the attachment was raised. Upon this, the judgment-creditor sued to establish his right to sell the land in execution and obtained a decree in 1882, which was confirmed on appeal in 1883. In 1885, the judgment-creditor again applied for attachment and sale of the same land:

Held that the application was barred by limitation—*Paras Ram v. Gardner*, I.L.R., 1 All., 355, dissented from.

APPEAL against an order of H. J. Stokes, Acting District Judge of South Malabar, reversing an order of the District Munsif of Chowgát in execution of the decree in suit 132 of 1877.

In suit No. 132 of 1877, the decree-holder, Thengil Náráyana Nambi, applied for execution, on the 19th June 1880, by attachment of certain land, the property of the deceased judgment-debtor, Undadi Vasu Nambi. After attachment his daughter Pappi Brahmani and two others presented claim petitions, and the attachment was withdrawn. The decree-holder then instituted suit No. 383 of 1882 on 10th July against the claimants, and on the 13th September the Court decreed that the property which had been attached was liable to be sold in satisfaction of the decree.

* Appeal against Appellate Order 56 of 1885.

On appeal, that decree was confirmed on the 16th June 1883.

On the 28th July 1881 suit No. 132 of 1877 was struck off the file.

On 6th July 1885, the decree-holder applied for execution of the decree in suit No. 132 of 1877 by attachment and sale of the property previously attached.

The Munsif granted the application, but the District Court reversed his order on appeal, dismissing the application as barred by limitation.

The decree-holder appealed to the High Court on the ground, *inter alia*, that limitation began to run from 16th June 1883 when suit No. 383 of 1882 was decided on appeal.

Anantan Nayar for appellant.

Sankaran Nayar for respondents.

The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT:—The first application to execute the decree was made on 19th June 1880. An objection petition was put in on 9th February 1881 and allowed on 11th July 1881. On 10th July 1882 the decree-holder brought a suit to have it declared that the property was liable to his attachment, and got a decree in his favor on the 13th September 1882. On appeal, that decree was confirmed on 16th June 1883. The present application, which is to attach *the same property*, was put in on 6th July 1885.

The District Munsif, following the Full Bench decision in *Paras Ram v. Gardner*, (1) held that the application was not barred, since it was in effect an application to revive the previous application and was brought within three years of the date of the declaratory decree in plaintiff's favor.

On appeal, the District Judge held the application was barred, since the extension of time—if the decree-holder was entitled to any at all—could not exceed the time actually taken up in prosecuting the suit. He refused to follow the Allahabad High Court in reckoning a new period of three years from the date of the decree in the declaratory suit.

The decisions referred to by the District Munsif [*Ramsoonder Sandyal v. Gopessur Mostofee*, (2) *Krishna v. Anandráv* (3)] which he refused to follow, do not really apply to such a case as this, since in the one case the second application was to attach *other*

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(1) I.L.R., 1 All., 355.

(2) I.L.R., 3 Cal., 716.

(3) I.L.R., 7 Bom., 293.

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lands than those at first attached, and in the second to arrest the judgment-debtor. They were, therefore, fresh applications and could not be regarded as reviving previous ones.

In *Virusami v. Athi*, (1) the question was discussed. In that case the fresh application was also to arrest the debtor, and was therefore held to be barred, but the Court (Turner, C.J., and Brandt, J.) intimated that, could the subsequent application have been regarded as a continuance of the former proceedings suspended, by a step necessary to give effect to them, it would have followed *Paras Ram v. Gardner*. (2)

This remark, however, is not authoritative, since the question did not arise in that appeal, and the cases *Krishna Chetty v. Rami Chetty* (3) and *Mahalakshmi Ammal v. Lakshmi Ammal* (4) were not brought to the notice of the Court. In appeal against appellate order No. 47 of 1883 (not reported) in which they were quoted, this Court has taken a different view.

These two rulings were given under the Limitation Act IX of 1871, art. 167; and in both of them the decree-holder applied a second time to attach *the same property*, which had been released on an objection petition and the liability of which to his decree had been established by a regular suit. In both these cases, it was held that the time must run from the date of the first application, and that the time during which the judgment-creditor was prosecuting another suit to remove obstacles to the execution of his decree could not be deducted. These cases are in conflict, therefore, with 1 All., 355, which was also a ruling under the Limitation Act of 1871. It will be observed that Pearson, J., dissented from the Full Bench ruling of the Allahabad Court and took the same view as Morgan, C.J., and Kindersley, J., in the Madras High Court.

Article 179 of the present Limitation Act follows art. 167 of Act IX of 1871, in that it makes the time run from the date of the decree, or from the date of the last application to execute; and though it might appear reasonable and equitable to exclude from the computation of the period of limitation the time during which the suit was pending, such a course is not authorized by the law.

(1) I.L.R., 7 Mad., 595

(2) I.L.R., 1 All., 355.

(3) 8 M.H.C.R., 99.

(4) 8 M.H.C.R., 105.

The Allahabad High Court in *Basant Lal v. Batul Bibi*(1) held that an application of this nature ought to be considered as one for the revival of former proceedings after removal of the injunction, and that art. 178 of the Limitation Act 1877 (rather than art. 179) was applicable to it; but, with all respect, we cannot agree with the learned Judges in that conclusion. In the first place, the application in that case was to attach *other* property than that in respect of which the execution of the decree had been stayed; and, secondly, art. 178 only applies to applications for which no period of limitation is provided elsewhere in the schedule. But art. 179 clearly provides for *all* applications for the execution of decrees or orders, and hence art. 178 will not, in our judgment, apply

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The date of the last application in the present case was 19th June 1880, and the decree is therefore barred. We must dismiss the appeal with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Parker.

VERNEDE IN RE.*

1886.
September 23

Criminal Procedure Code, s. 517—Disposal of stolen property—Cow stolen—Disposal of calf, not in esse at time of theft, by Magistrate on conviction of thief.

R.'s cow having been stolen, the thief after a lapse of a year and-a-half was convicted. Six months after the theft, V. innocently purchased the cow, which while in his possession had a calf. The magistrate, under s. 517 of the Code of Criminal Procedure, ordered that the cow and calf should be delivered up by V. to R.:

Held that, as the calf was not even in embryo at the date of the theft, the order to deliver up the calf was illegal.

CASE referred to the High Court by L. R. Burrows, District Magistrate of Nilgiris.

The case was stated as follows:—"About a year and-a-half before the 3rd of February 1886, a cow was stolen from one Rangasami and was sold by the thief to Mr. A. Stonehouse, second witness in calendar case No. 53 of 1886, on the file of the second-class Magistrate of Coonoor. After that, it changed hands several

(1) I.L.R., 5 All., 23.

* Criminal Revision Case 431 of 1886.