

SETRU
v.
SUBBRAMANYA.

The facts stated in the plaint and the relief prayed, viz., "a decree that plaintiff do recover from the first and second defendants" the money would be suitable to a claim for compensation or for repayment; but if the right to follow the trust fund is thereby disclosed, though not referred to in express terms on the plaint, there seems no reason why the suit should not be taken as one to follow the trust property. We think therefore that this suit may be treated as one to follow the property entrusted to the first defendant for a specific purpose, and that we should hold that s. 10 of the Limitation Act applies.

We reverse the decree of the Subordinate Judge and remand the suit for a hearing on the merits. The appellant must have the costs of this appeal, but the costs in the court below will abide and follow the result.

APPELLATE CIVIL.

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

CHATHU (PLAINTIFF), APPELLANT,

and

KUNHAMED (DEFENDANT No. 3), RESPONDENT.*

Decree—Execution—Assignment of interest of judgment-debtor in surplus proceeds of sale—Attachment by creditor of judgment-debtor—Suit for declaration of assignee's title—Civil Procedure Code, s. 266 (k)—Contingent interest.

In execution of a decree in a District Munsif's Court, certain property having been sold, a balance, after satisfying the decree, remained in favor of the judgment-debtor X. After the date of sale, but before the whole of the purchase money had been paid into court, X applied to the court by petition, praying that the amount due to him might be paid to A, to whom, he alleged, he had assigned it. Before any order was made on this petition, B, C, D, and E, in execution of separate decrees against X, attached the sum in court. The District Munsif ordered that B, C, D, and E should be paid before A. A brought a suit against B, C, D, and E in another District Munsif's Court for a declaration that he was entitled to the money and to set aside the said order. The Munsif set aside the order and declared the plaintiff to be entitled to the amount. B, C, D, and E severally appealed against this decree, and the District Court passed a decree in each appeal, dismissing A's suit. A presented one second appeal, making B, C, D, and E parties thereto, against the four decrees of the District Court :

* Second Appeals Nos. 990 of 1885 and 1158 to 1160 of 1886.

Held (1) that A was bound to file a separate appeal against each of the decrees passed by the District Court;

(2) that A (having by permission of the Court amended his second appeal and filed three more second appeals) was entitled to a decree, declaring his title to the amount claimed.

CHATHU
v.
KUNHAMED.

APPEALS from the decrees of H. T. Ross, Acting District Judge of Tellicherry, reversing the decree of P. J. Ittiyerah, District Munsif of Tellicherry, in suit No. 245 of 1884.

The Acting Advocate-General (*Mr. Shephard*) and *Anantan Nayar* for appellants.

Mr. Wedderburn and *Mr. Brown* for respondents in S.A. 990 of 1885 and 1168 and 1169 of 1886.

Mahadeva Ayyar for respondent in S.A. 1160 of 1886.

It was argued, for the respondents, that the plaintiff had a separate cause of action against each of the defendants and that the suit was therefore bad for misjoinder; that the plaintiff should have sued in the Chavacherry District Munsif's Court and was not entitled to any decree setting aside the order of that court; that he was bound to bring an appeal against each decree of the District Court, and his remedy was now barred by limitation.

The facts appear from the judgment of the Court (*Collins, C.J., and Parker, J.*).

JUDGMENT.—A decree was obtained against Govindu Poduval and Vasu Poduval in suit No. 186 of 1882 in the Chavacherry District Munsif's Court, in execution of which there was a balance of Rs. 687 to the credit of the judgment-debtors after paying the plaintiff. On 29th August 1883, Govindu Poduval transferred his right to this amount to plaintiff, and by a joint petition (B) they prayed that the amount be paid to plaintiff. The sale had taken place on 27th August, and on the date of the petition (29th Aug.) only 25 per cent. of the sale amount had been deposited. No orders were passed till 11th December, but in the meanwhile the amount had been realized, and before 11th December the amount had been attached by the four defendants in execution of decrees obtained by them in the Subordinate Court. By his order of 11th December 1883, the Chavacherry District Munsif held that the decree-holders had priority over the assignee and refused to pay the amount to plaintiff. The plaintiff then brought this suit on the file of the District Munsif of Tellicherry to cancel the order of the Chavacherry Court and for a declaration against the

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decree-holders in all the four suits that he was entitled to the Rs. 687. No objection was taken as to misjoinder, or as to the jurisdiction of the court, and the District Munsif decreed in plaintiff's favor with costs. Against this decree, the defendant preferred four separate appeals, and the Acting District Judge, on the ground that a contingent interest only was transferred on 29th August and that the sum was attached before the contingency became vested, reversed the District Munsif's decision and dismissed the plaintiff's suit with costs throughout.

Against these four decrees, the plaintiff has now preferred one second appeal only. It was argued for him by the Acting Advocate-General (1) that the only ground of defence (collusion) having been abandoned, the plaintiff should have had a decree; (2) that if no sum could be assigned on the ground that it was a contingent interest only, so also none could be attached, and that in any case the assignment had priority; (3) that costs had been wrongly given in the four appeals.

Viewing the suit as one for a declaratory decree, we are of opinion that no objection can be properly taken to its being brought in the Tellicherry Court and against all four defendants. Should plaintiff succeed in establishing his title by declaratory decree, he could then carry his decree to the court by which the order of attachment was issued, and such court would be bound to recognize the adjudication and act accordingly—see *Kolasherri Illath Narainan v. Kolasherri Illath Nilakandan Nambudri*(1)—but four decrees have been passed by the lower appellate court, and against them only one second appeal has been preferred. We are of opinion that this course cannot be adopted and that a second appeal must be preferred from each decree, though the decision in one second appeal will govern the rest. We will, therefore, allow the plaintiff, as the omission appears to have been due to a mistake, to put in three more second appeals and to amend the present one by limiting it to one of the decrees only, and will allow him a month's time for this purpose. If this be done, we shall be in a position to dispose of the whole case, but if it is not done, this second appeal must fail.

The appellant having now (25th July 1887) put in three more second appeals, we now proceed to dispose of the other points raised.

(1) I.L.R., 4 Mad., 131.

We can see no reason why the assignment of the interest to the plaintiff should not be upheld. The same objection now raised would equally apply to the attachment as to the assignment of the interest.

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We must reverse the decree of the lower appellate court and restore that passed by the District Munsif with the exception of the words "it is ordered that the order on petition 1387 of 1883, passed by the District Munsif of Chavacherry on 11th December 1883, be, and the same hereby is, set aside." In other words, we allow the declaration only. We will allow the appellant half costs in this Court and full costs in the lower appellate court.

This governs second appeals 1158, 1159, and 1160 of 1886.

APPELLATE CIVIL.

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

ATHAVULLA (DEFENDANT), APPELLANT,

and

GOUSE (PLAINTIFF), RESPONDENT.*

1886.
Nov. 10.
1887.
Sept. 12.
1888.
Feb. 6.

Pensions Act, 1871, s. 4—Religious Endowments Act, 1863, ss. 14, 15—Yaumia granted to mosque—Suit against co-trustee for declaration of right.

Section 4 of the Pensions Act, 1871, provides that no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former government, whatever may have been the consideration for any such pension or grant and whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted :

Held that a yaumia allowance granted to a religious institution did not fall within the purview of the Pensions Act.

Where a trustee of a Muhammadan mosque sued for a declaration of his title as against a co-trustee :

Held that ss. 14 and 15 of the Religious Endowments Act, 1863, were not applicable to the suit.

APPEAL from the decree of K. R. Krishna Menon, Subordinate Judge of Tinnevely, in suit No. 19 of 1884.

The plaint in this suit was as follows :—

* Appeal No. 144 of 1885.