

APPELLATE CIVIL.

Before Mr. Justice Subramanya Ayyar and Mr. Justice Best.

1892.
February 15.

KRISHNAN (PLAINTIFF), APPELLANT,

v.

PERACHAN (DEFENDANT), RESPONDENT.*

Limitation Act—Act XV of 1877, sched. II, arts. 62, 120—Money received for plaintiff's use—Suit for which no period prescribed—Transfer of Property Act—Act IV of 1882, ss. 2, 135.

A obtained a money decree against B and attached certain land in execution. C intervened in execution successfully. A then brought a suit to establish that the land was liable to be sold in execution, and obtained a decree. Meanwhile the land was taken up by Government under the Land Acquisition Act, and the compensation money was paid to C. A attached this sum as a debt due to B and sold it in execution, and it was purchased by the plaintiff. The plaintiff now sued C to recover the amount of the debt :

Held, that the suit was governed by Limitation Act, sched. II, art. 120, and not by art. 62, and that the plaintiff was entitled to recover without regard to the terms of Transfer of Property Act, s. 135.

SECOND APPEAL against the decree of A. Thompson, Acting District Judge of South Malabar, in appeal suit No. 570 of 1890, confirming the decree of T. V. Anantan Nayar, Principal District Munsif of Calicut, in original suit No. 708 of 1889.

The plaintiff's case was that one Ayyan Chetti obtained a money decree against Kelu in original suit No. 512 of 1885, and attached the Maligakandi paramba in satisfaction thereof; the present defendant Cherukutti Perachan then put in a claim petition and his claim was allowed on 16th February 1886. Ayyan Chetti brought a suit No. 89 of 1887 to declare the liability of the Maligakandi paramba to sale in execution of his decree and obtained a decree as prayed. Meanwhile Government took up the Maligakandi paramba under the Land Acquisition Act and paid compensation for it to the defendant Perachan. Ayyan Chetti then attached this sum as a debt due by Perachan to his (Ayyan Chetti's) debtor, Kelu. This debt was sold on 13th April 1889 in Court auction for Rs. 65 and bought by plaintiff who filed this suit on 9th October 1889 to recover the amount of the debt.

* Second Appeal No. 775 of 1891.

The District Munsif dismissed the suit and his decree was affirmed on appeal in the District Court. The District Judge observed that it was the plaintiff's case that the defendant received the money on behalf of Kelu, the original judgment-debtor, and ruled that the case was governed by Limitation Act, sched. II, art. 62, and that, since the decree in original suit No. 89 of 1887 did not constitute a fresh starting point for limitation, see *Hanuman Kamut v. Hanuman Mandur*(1), the suit was barred by limitation.

KRISHNAN
v.
PERABRAN.

The plaintiff preferred this second appeal.

Sundara Ayyar for appellant.

Sankara Menon for respondent.

JUDGMENT.—We do not think that the money can be considered as having been received by the defendant for the plaintiff's use, so as to make article 62 applicable; nor is the case one coming within any other special article of schedule II of the Limitation Act. It is, therefore, one for which no period of limitation is provided elsewhere, and consequently falls within article 120, which gives a period of six years from the date when the right to sue accrued *Nund Lall Bose v. Meer Aboo Mahomed*(2) and *Gurudas Pyne v. Ram Narain Sahu*(3). This suit having been brought within six years from date of receipt of the money by defendant is therefore not time-barred.

The Lower Appellate Court has found to be valid the sale at which plaintiff acquired a right to the money in question. In this finding we concur. As, by section 2 of the Transfer of Property Act, clause (d), transfers in execution of decrees and unaffected by the provisions of section 135 of the same Act, we give plaintiff a decree for Rs. 579-6-1 with interest at 6 per cent. per annum from date of suit to date of payment. Each party to pay proportionate costs throughout.

(1) I.L.R., 15 Cal., 51.

(2) I.L.R., 5 Cal., 597.

(3) I.L.R., 10 Cal., 860.