APPELLATE CIVIL.

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

APPANDAI AND ANOTHER (COUNTER-PETITIONERS), APPELLANTS, 1892. April 8.

v.

SRIHARI JOISHI (PETITIONER), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, s. 622—Rent Recovery Act—Act VIII of 1865, s. 76—Revision by the High Court.

The defendant in a suit under Rent Recovery Act was evicted in pursuance of an order made under s. 10. That order having been reversed on appeal, he applied to be replaced in possession, but the Sub-Collector dismissed that application:

Held, that the High Court could not interfere in revision under Civil Procedure Code, s. 622.

APPEAL under Letters Patent, s. 15, against the judgment of Mr. Justice SHEPHARD on civil revision petition No. 99 of 1890.

That was a petition under Civil Procedure Code, s. 622, praying the High Court to revise the order of C. M. Mullaly, Sub-Collector of Chingleput, in summary suit No. 485 of 1888. The petitioner before the Sub-Collector had been ejected from certain land in accordance with an order made by the Sub-Collector under Madras Rent Recovery Act, s. 10, which had since been reversed on appeal and he prayed to be replaced in possession. The Sub-Collector dismissed the petition, saying "I do not see how I can review the order already passed and "carried out for ejectment."

The petitioner preferred the above petition to the High Court under Civil Procedure Code, s. 622.

The case came on for disposal before Mr. Justice SHEPHARD who reversed the order of the Sub-Collector, expressing the opinion that that officer had jurisdiction to undo what he had wrongly done, and to restore defendant to the possession in which he was before the earlier order had been made.

The respondents preferred this present appeal under Letters Patent, s. 15.

Sriranga Chariar for appellants.

Ramachandra Rau Saheb for respondent.

* Letters Patent Appeal No. 20 of 1891.

APPANDAI v. SRIHARI JOISHI.

JUDGMENT.—It has been held in *Vełli Periya Mira* v. *Moidin Padsha*(1) that section 622 of the Code of Civil Procedure is not applicable to orders passed under Act VIII of 1865 (Madras). Moreover section 76 of that Act expressly provides that no judgment of a Collector and no order passed by him after decree and relating to execution thereof shall be open to revision otherwise than by appeal. The order of the learned Judge must, therefore, be set aside. But under the circumstances there will be no order as to the costs.

APPELLATE CIVIL.

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

1892. March 29.

KERALA VARMA VALIYA RAJAH (COUNTER-PETITIONER), APPELLANT,

v.

SHANGARAM (PETITIONER), RESPONDENT.*

Limitation Act—Act XV of 1877, sch. II, art. 179—Step in aid of execution—Malabar law—The Valiya Rajah of a kovilagom sued as such—Liability of kovilagom properties.

A decree was passed in 1884 against the Valiya Rajah of Chirakal Kovilagom, since deceased. In 1886 the decree-holder made an application in execution for the attachment of a judgment-debt, but he did not pay the process charges, and the application was dismissed on that ground.

Held, that that application was a step in aid of execution within the meaning of Limitation Act, sch. II, art. 179.

Semble: that a decree passed against the Valiya Rajah of a kovilagom is *primâ facie* binding upon his successor and his kovilagom.

APPEAL against the order of J. P. Fiddian, Acting District Judge of North Malabar, in miscellaneous appeal No. 442 of 1890, confirming an order of the District Munsif of Kavai made on miscellaneous petitions Nos. 742 and 1347 of 1890.

This was an application for execution of a decree for costs, in which the judgment-debtor since deceased was described as the Valiya Rajah of Chirakal Kovilagom, by attachment and sale of properties belonging to the kovilagom. The decree was passed on

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(1) I.L.R., 9 Mad., 332. * Appeal against Appellate Order No. 25 of 1891.

25th April 1884. In bar of limitation the decree-holder relied upon the following circumstances, viz., that on the 1st November 1886 he had made an application in execution for the payment of Rs. 326 recovered by the attachment of a judgment-debt, which application was rejected on 19th November, as no batta had been paid for issue of notice to the judgment-debtor, and that on the 23rd November 1886 he had made another application for the payment of the same amount, which application was also rejected for the same reason. The lower Courts held the present application was not barred by limitation and that kovilagom property was liable for the judgment-debt and passed orders accordingly.

The Valiya Rajah of the Chirakal Kovilagom preferred this appeal.

Sankaran Nayar and *Ryru Nambiar* for appellant.

Respondent was not represented.

JUDGMENT.—The application of 23rd November 1886 for payment of money realized by attachment was in our opinion a step in aid of execution within the meaning of article 179. This was the view taken in *Venkatarayalu* v. *Narasimha*(1) and also *Paran Singh* v. *Jawahir Singh*(2).

As to the objection that the decree against the late Valiya Rajah was only personal, and not binding as against the present Valiya Rajah or his kovilagom, it appears from the execution petition that the plaint described him as "Valiya Rajah of Chira-"kal Kovilagom," and the expression Valiya Rajah is the one by which the representative of a kovilagom is ordinarily known. The appellant has not produced either the decree or the judgment, nor has he pointed out to us anything in the record which shows that the Valiya Rajah did not sue as head of the kovilagom.

We dismiss the appeal. No costs, as respondent has not appeared.

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(1) I.L.R., 2 Mad., 174. (2) I.L.R., 6 All., 366.