

BHUPATHI
v.
RAJAH
RANGAYYA
APPA RAU.

manul garden rate. There are no grounds for interference in second appeal.

The next objection taken by the raiyats is as to the stipulation that the raiyats shall not build houses on the land, and the Judge has allowed the stipulation to stand. The question whether a tenant can build on his lands was discussed in *Ramanadhan v. Zamindar of Ramnad*(1), and the decision arrived at in that case was that the tenant was not at liberty to turn land originally let for cultivation into a house site without the consent of the zamindar, and that he is only entitled to raise such buildings as are not incompatible with the character of his holding as an agricultural holding. The stipulation in the *patta* should be so modified as to prevent the raiyat from raising any building incompatible with an agricultural holding.

The last objection taken is as to the tenant's right to cut down trees, and on this point the Judge has decided in accordance with the decision of this Court in *Appa Rau v. Ratnam*(2).

We modify the decrees of the District Judge so far as they relate to building on the land as indicated above and confirm them in other respects. The appeals having substantially failed, appellants will pay respondent's costs in second appeals Nos. 681 and 682. The respondent not being represented in the other appeals, we make no order as to costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

RANGASAMI CHETTI (PLAINTIFF), APPELLANT,

v.

PERIASAMI MUDALI (DEFENDANT), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, s. 273—Dismissal of an application for execution—Attachment of a decree—Execution of attached decree.

The holder of a decree dated 1885 applied to execute it, but his application was dismissed in March 1887 on the ground that "no further steps had been taken."

(1) I.L.R., 16 Mad., 407.

(2) I.L.R., 13 Mad., 249.

* Second Appeal No. 555 of 1892.

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It did not appear that any notice was given to him before the order of dismissal was made. Nevertheless the decree-holder proceeded to execute a decree of the judgment-debtor attached by him and brought to sale certain property which was in question in the present suit, and it was purchased *bonâ fide* by the present defendant who obtained a sale certificate from the Court. The present plaintiff claimed as assignee from the holder of the attached decree to execute it against the same land and now sued for a declaration that it was liable to be brought to sale by him and that the defendant's purchase was void as against him :

Held, (1) that under the circumstances of the case the attachment in execution of the decree of 1885 was subsisting at the time of the purchase by the defendant,
(2) that a judgment-creditor who attaches a decree is competent to execute it.

SECOND APPEAL against the decree of C. Venkoba Chariar, Subordinate Judge of Tanjore, in appeal suit No. 382 of 1891, confirming the decree of A. Kuppusami Ayyangar, District Munsif of Kumbaconam, in original suit No. 193 of 1890.

In June 1887 the father (since deceased) of the plaintiff became the assignee of a decree passed by the District Munsif of Kumbaconam in 1881, and in execution he attached certain land as property of the judgment-debtor. The present defendant objected that the land was his property. The plaintiff now sued for a declaration that the land in question was not the property of the defendant and was liable to be attached in execution of the decree of 1881.

It appeared that a suit was brought in 1885 against the assignor of the above-mentioned decree and that the plaintiff therein obtained against him a decree which was subsequently assigned to one Ramaohandra Rau. In execution of the last-mentioned decree Ramachandra Rau attached the decree of 1881 under Civil Procedure Code, s. 273, and having proceeded to execute it he brought to sale the land in question in this suit and the present defendant became the purchaser and obtained a sale certificate in 1888.

Ramachandra Rau's application to execute the decree of 1885 was dismissed by an order made on the 19th March 1887 on the ground that "no further steps had been taken," but it did not appear that any previous notice had been given to the execution-creditor before that order was made, and it was found that the defendant was a *bonâ fide* purchaser.

The plaintiff contended that the order of 19th March 1887 put an end to the attachment and that for that reason the defendant acquired no title by his purchase at the subsequent court-sale.

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Both of the lower Courts overruled this contention and the suit was dismissed.

The plaintiff preferred this appeal.

Sankaran Nayar and Panchapagesa Sastriar for appellant.

Sankara Narayana Sastri for respondent.

JUDGMENT.—We think the order appealed against is right. Both Courts considered that the attachment in execution of the decree in original suit No. 75 of 1885 of the decree in original suit No. 252 of 1881 was subsisting at the date of the purchase by defendant at the court-sale on 5th July 1888. It is contended that an order was made on 19th March 1887 to the effect that the application for execution of the decree in original suit No. 75 of 1885 was dismissed on the ground that no further steps had been taken and that this order put an end to the attachment; whether the attachment ceased at the date of this order or continued to subsist is a matter to be decided with reference to the circumstances of each case as observed by the Privy Council in *Puddomonee Dossee v. Roy Muthooranath Chowdhry*(1).

We observe that up to 16th March 1887 some steps had been taken and the application was dismissed on 19th March, and it does not appear that any previous notice was given to the execution-creditor before the order of 19th March was made. Moreover, defendant was a *bonâ fide* purchaser at a court-sale of the lands in question, and any irregularity in the proceedings which led to the sale cannot be relied on as a ground for setting aside the sale after it had been confirmed and a certificate issued. See *Rewa Mahton v. Ram Kishen Singh*(2) and *Mothura Mohun Ghose Mondul v. Akhoy Kumar Mitter*(3). Another contention for appellant is that under section 273 of the Civil Procedure Code the decree-holder in original suit No. 75 of 1885 was not competent to execute the decree in original suit No. 252 of 1881 attached by him. Section 273 expressly authorizes the Court in such a case to apply the proceeds of the decree attached in satisfaction of the decree sought to be executed. This direction clearly implies that the attaching decree-holder is entitled to take all steps necessary for the realization of the proceeds of the attached decree by the Court. The same view is taken by the Calcutta

(1) 12 B.L.R., 411; s.c., 20 W.R., 133.

(2) I.L.R., 14 Cal., 18.

(3) I.L.R., 15 Cal., 557.

High Court in *Peary Mohun Chowdhry v. Romesh Chunder Nundy* (1). In the view of the case which we take, it is not necessary to consider whether article 12 or 11 of the second schedule to the Limitation Act governs the case.

The second appeal fails and is dismissed with costs.

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APPELLATE CIVIL.

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

GNANASAMMANDA PANDARAM (PLAINTIFF), PETITIONER,

v.

PALANIYANDI PILLAI (DEFENDANT), RESPONDENT.*

Limitation Act—Act XV of 1877, s. 25—Date from which time runs.

A registered lease provided that the rent should be paid on 30th Masi Tharana. The month Masi in the year Tharana ended on the 29th day, which corresponded with 11th March 1885. A suit to recover the rent was filed on 12th March 1891:

Held, that the suit was not barred by limitation.

PETITION under Provincial Small Cause Courts Act, 1887, section 25, praying the High Court to revise the proceedings of T. M. Ranga Chari, District Munsif of Trichinopoly, in small cause suit No. 538 of 1891.

Suit for rent. The District Munsif dismissed the suit as barred by limitation. He said:—"The rent sued on was payable "within 30th Masi Tharana according to the rent deed. Now, "there was no such day as 30th Masi in the year Tharana, the "month having ended with 29th Masi. Therefore time began "to run from 29th Masi Tharana, equivalent to 11th March "1885. See on this point *Migotti v. Cobvill*(2), quoted in *Mitra's* "Limitation, 2nd Edition. The rent deed being registered, plain- "tiff had six years from 11th March 1885. Plaintiff should have "launched this suit on 11th March 1891, whereas the plaint was "put into Court only on the succeeding day, namely, 12th March "1891. The suit is then time-barred. On this ground the suit "is dismissed with costs."

(1) I.L.R., 15 Calo., 371.

* Civil Revision Petition No. 257 of 1892.

(2) L.R., 4 C.P.D., 233.