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rajulu Reddi(1) in which it appears *post diem* interest was awarded under Act XXXII of 1839, notwithstanding that the plaints therein were presented after the lapse of six years from the dates fixed for the payment of the principal amounts. But in neither of these decisions is the question of limitation noticed at all. On the contrary in the judgment in *Rama Reddi* v. *Appaji Reddi*(2) the learned Judges expressly follow *Bikramjit Tewari* v. *Durga Dyal Tewari*(3), which in its turn quotes with approval *Gudri Koer* v. *Bhubaneswari Coomar Singh*(4) where Macpherson and Amir Ali, JJ., held that a claim like the present is barred unless instituted within six years from the date of the breach of contract. In these circumstances the decisions in the second appeal and the original side appeal, relied upon by the appellant, can hardly be said to be in conflict with that of Muttusami Ayyar and Best, JJ., referred to above.

I concur therefore in holding that the appeal fails and should be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Best and Mr. Justice Subramania Ayyar.

1895. Feb. 28, April 29.

VENKATESA TAWKER AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

RAMASAMI CHETTIAR AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, *s.* 54—*Rejection of plaint already registered—Specific Relief Act—Act I of* 1877, *s.* 56—*Injunction to restrain proceedings—Multiplicity of proceedings.*

Certain traders having failed in business, and being indebted to the defendant

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(1) Original Side Appeal No. 19 of 1894. Before COLLINS, C.J., and PARKER, J.

JUDGMENT.—Although no contract for *post diem* interest can be inferred from exhibit A, we think interest from 30th December 1884 can be given under the Interest Act XXXII of 1839 under the principle laid down in *Bikramjit Tewari* v. *Durga Dyal Tewari* (I.L.R., 21 Calc., 274) which case has been followed by this Court in *Rama Reddi* v. *Appaji Reddi* (I.L.R., 18 Mad., 248). We will therefore allow Rs. 696 as interest at 6 per cent. per annum from the due date to date of plaint, and make it a charge upon the mortgaged property.

The decree of the learned Judge will therefore be modified by adding this sum to the principal sum adjudged and decreeing Rs. 2,598 instead of Rs. 1,902 with costs and further interest at 6 per cent. per annum. The appellants are entitled to proportionate costs on this appeal.

(2) I.L.R., 18 Mad., 248.

(3) I.L.R., 21 Calc., 274.

(4) I.L.R., 19 Calc., 19.

* Appeal No. 112 of 1894.

under a decree of the District Court of Trichinopoly, entered into a composition with their creditors, and a deed was executed to which the defendant became a party in respect of his judgment-debt. The defendant subsequently applied for execution of this decree. The trustees, to whom the debtor's assets were made over under the deed, together with the debtors now brought a suit in the same Court for an injunction restraining the defendant from executing or proceeding to execute his decree. The plaint was rejected by the District Judge after it had been registered and numbered and a written statement had been filed :

Held, (1), that the Court had jurisdiction to reject the plaint under Civil Procedure Code, section 54 ;

(2), that the injunction sought for was not necessary to prevent a multiplicity of proceedings within the meaning of Specific Relief Act, section 56, clause (*a*).

Semble : the suit for the injunction prayed for was not maintainable with reference to Specific Relief Act, section 56, clause (*b*).

APPEAL against the decree of J. P. Fiddian, District Judge of Trichinopoly, in original suit No. 18 of 1892.

The plaint set out that defendant No. 1 had obtained a decree in original suit No. 10 of 1888 on the file of the District Court of Trichinopoly for Rs. 4,739 against plaintiffs Nos. 1 and 2; that plaintiffs Nos. 1 and 2 had been declared insolvent in the Court for the Relief of Insolvent Debtors at Madras, but the vesting order made thereon had been cancelled on the execution of a creditor's composition-deed; that plaintiffs Nos. 3, 4 and 5 and defendant No. 2 were appointed trustees by that deed ; that defendant No. 1 concurred in the composition-deed, the terms of which included the judgment-debt above referred to ; that defendant No. 1 in fraud thereof applied on the 25th September 1889 for the execution of his decree against the movable properties of plaintiffs Nos. 1 and 2. The plaint proceeded as follows :—"The plaintiffs are, "they submit, entitled to an injunction restraining the first defend- "ant from executing the said decree instead of allowing him to "proceed with such execution and trusting to the chance of their "recovering damages from him, and are so entitled on the ground "(among other reasons) that pecuniary compensation would not "afford adequate relief, and for the purpose of preventing a "multiplicity of judicial proceedings and because of the uncer- "tainty and improbability of their being able to recover back "the value of such property, if sold." And the prayer of the plaint was, "for a perpetual injunction against the first defendant "restraining him from executing or proceeding with the execution "of the said decree in original suit No. 10 of 1888 on the file of "this Court."

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The District Judge rejected the plaint on the grounds that the suit was not maintainable under Specific Relief Act, section 56, clauses (*a*) and (*b*), after it had been numbered and registered and a written statement had been filed.

The plaintiffs preferred this appeal.

Mr. *R. F. Grant* for plaintiffs.

Krishnasami Ayyar and *Sundara Ayyar* for respondents.

JUDGMENT.—This suit was instituted in the District Court at Trichinopoly for an injunction restraining first defendant from executing a decree obtained by him against first and second plaintiffs, on the ground that the debt in question is included in a composition-deed executed by the general body of first and second plaintiffs' creditors (including first defendant) appointing the other plaintiffs and second defendant trustees for the realization of the debtors' assets and payment of their debts, including the judgment-debt in question, in consideration of which all the debtors' assets were made over to the joint trustees.

The suit was dismissed by the District Judge under section 54 of the Code of Civil Procedure as being opposed to section 56, clauses (*a*) and (*b*) of the Specific Relief Act, No. I of 1877.

Hence this appeal by the plaintiffs, on whose behalf it is contended (i) that the Judge was wrong in dismissing the suit under section 54 of the Code of Civil Procedure after it had been registered and written statement filed, and (ii) that the suit is not opposed to section 56 of the Specific Relief Act.

In support of the first of these contentions we are referred to *Valiya Kesava Vadhyar* v. *Suppannair*(1), where it is stated "section 54 applies only to the initial stages of a suit before a "plaint has been registered" and, again, "the proceedings had "passed the initial stage and section 54 of the Civil Procedure Code "was no longer applicable." The suit then in question was, however, held to have been rightly dismissed under section 10 of the Court Fees Act. The remarks with reference to section 54 may therefore be treated as mere *obiter dicta*. Moreover, it does not appear that the decision to the contrary in *Chetti Gaundan* v. *Sundaram Pillai*(2) was brought to the notice of the learned Judges who heard the case of *Valiya Kesava Vadhyar* v. *Suppannair*(1). Both the above cases were considered in the more recent case of

(1) I.L.R., 2 Mad., 308. (2) 2 M.H.C.R., 51.

Kishore Singh v. *Sabdal Singh*(1), wherein it was decided that section 54 of the Code of Civil Procedure "is capable of being, "and is intended to be, applied at any stage of the suit." With this opinion and the reasoning on which it rests we concur. The first objection is therefore disallowed.

As to the second contention, it is urged on behalf of appellants that section 56 of the Specific Relief Act does not apply, as the injunction asked for is "against the defendant personally" and in support of this contention we are referred to *Dhuronidhur Sen* v. *The Agra Bank*(2). That case is, no doubt, authority for distinguishing between a suit to set aside an order and a suit to restrain defendants from enforcing the order. But it is clearly no authority for the proposition that the injunction referred to in section 56 of the Specific Relief Act is an injunction to the Court and not to the party. In fact the Specific Relief Act is not even referred to in that judgment, nor, as far as can be seen, was it referred to in the arguments. The decision of this Court in *Appu* v. *Raman*(3) seems to favour the distinction relied upon by the plaintiff; but even in that case the decision proceeded on the ground that the effect of the injunction granted was "to prevent "the appellants from applying for execution of the decree" and it is added "no application for execution has yet been made "and so long as the injunction is in force none can be made and "therefore no pending proceeding of a Court is restrained by the "injunction." This is quite consistent with clause (*a*) of section 56 of the Specific Relief Act, which provides against the grant of an injunction to stay a judicial proceeding "pending at the insti- "tution of the suit in which the injunction is sought," unless such restraint is necessary to prevent a multiplicity of proceedings.

With reference to the remarks in *Appu* v. *Raman*(3), it is, however, as well to notice here that the injunctions issued by the Courts of Chancery in England for controlling proceedings in other suits are not orders issued to such other Courts but to the party, such party being amenable to the jurisdiction of the Court granting the injunction, and capable of being acted on by the process of contempt of Court and they are in fact orders *in personam*.

The question then is, is the injunction sought for in the present suit "necessary to prevent a multiplicity of proceedings?" It is

(1) I.L.R., 12 All., 553. (2) I.L.R., 5 Calc., 86.
(3) I.L.R., 14 Mad., 425.

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difficult to see how it is necessary for such purposes more than in any ordinary case in which execution of the decree is resisted.

It is also impossible to say that the Judge is wrong in holding this suit to be in contravention of clause (*b*) of section 56, as the proceedings sought to be stayed are proceedings in his own Court and not in a Subordinate Court. Such being the case, it is unnecessary to consider the question whether this suit is barred by section 244 of the Code of Civil Procedure.

The appeal fails therefore and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Best and Mr. Justice Subramania Ayyar.

1895. Mar. 6, 7, 13. April 22.

SUBBARAMAYYAR (PLAINTIFF), APPELLANT,

v.

NIGAMADULLAH SAHEB AND OTHERS (DEFENDANTS NOS. 1, 2, 3 AND 5), RESPONDENTS.*

Limitation—Adverse possession—Mortgage by previous owner out of possession for twelve years.

In a suit on a mortgage, dated 19th June 1888, and executed by the superintendent of a mosque, the endowments of which were comprised in the mortgage, together with defendant No. 1, therein described as his disciple, it was admitted that the first mortgagor had occupied the position of superintendent up to 1871 and that in that year he had executed an instrument authorizing defendant No. 2 to take possession of the properties on behalf of defendant No. 3 whom, as was recited, the executant had taken in adoption and appointed to be his successor. In 1874 the first mortgagor purported to cancel the instrument above referred to, but it appeared that he never actually resumed the management, and that defendant No. 2 resisted various attempts then and subsequently made to interfere with his possession, and held the properties together with defendant No. 3 up to the date of the suit:

Held, that defendants Nos. 2 and 3 were in adverse possession of the mortgage premises from 1871, and that the mortgage was consequently invalid whatever the purpose of the debt intended to be secured thereby.

APPEAL against the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in original suit No. 48 of 1892.

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* Appeal No. 28 of 1894.