

APPELLATE CIVIL.

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

MUNISAMI REDDI (PLAINTIFF), APPELLANT,

1894.
December 10.

v.

ARUNACHALA REDDI AND OTHERS (DEFENDANTS), RESPONDENTS.*

*Limitation Act—Act XV of 1877, sched. II, art. 11—Civil Procedure Code—A
XIV of 1882, ss. 278, 281—Disallowance of claim to property under attachment—
Subsequent suit.*

In 1879 the plaintiff purchased at a court sale the first defendant's interest in certain land, but did not obtain possession. In 1888 the same property was purchased by the fourth defendant in execution of another decree against the same judgment-debtor. It appeared that the plaintiff raised an objection by petition in the course of the proceedings in execution of the last-mentioned decree, but his petition was dismissed on his vakil stating that he was not in possession. The plaintiff now sued in 1891 for the property purchased by him :

Held, that no order had been passed under Civil Procedure Code, section 281, and that the suit was not barred under Limitation Act, schedule II, article 11.

SECOND APPEAL against the decree of E. J. Sewell, District Judge of North Arcot, in appeal suit No. 126 of 1891, affirming the decree of V. Cuppusami Ayyar, District Munsif of Sholinghur, in original suit No. 1 of 1891.

Suit in 1891 for possession of the first defendant's share in certain land. A decree having been passed against the present first defendant in original suit No. 604 of 1875, his share in the land now in question was sold in execution and bought by the present plaintiff in 1879, who, however, failed to obtain possession. Subsequently the same property was attached in execution of another decree passed against the same defendant in original suit No. 747 of 1875 and was purchased by the present fourth defendant. The plaintiff raised an objection by petition which was however in effect abandoned on 23rd June 1888, on which date the following order was made:—"Petitioner's vakil states that the petitioner is not at present in possession of the property. The petition is accordingly dismissed as he can recover his rights in a suit."

* Second Appeal No. 808 of 1894.

MUNISAMI
REDDI
v.
ARUNACHALA
REDDI.

The Lower Courts both held that the present suit was barred under Limitation Act, schedule II, article 11, as having been instituted more than one year from the last-mentioned date.

The plaintiff preferred this appeal.

Jivaji for appellant.

Krishnamachariar for respondent No. 4.

JUDGMENT.—The question is whether there was any order under section 281 of the Code. When a claim is preferred under section 278 and duly prosecuted, it is incumbent on the Court after investigation of the fact to satisfy itself either that the facts are as stated in section 280 or as stated in section 281. Without being satisfied either way, no order can properly be passed (*Chandra Bhusan Gangopadhyaya v. Ram Kanth Banerji* (1)). In this case the claim was practically withdrawn and there was no investigation.

There being no order within the meaning of section 281, the one year's rule does not apply.

We reverse the decree and remand the suit for trial by the District Munsif. The respondents must pay costs of this appeal, other costs to be provided for in the revised decree.

APPELLATE CIVIL.

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

SATHIANAMA BHARATI (PLAINTIFF No. 2), APPELLANT,

v.

SARAVANABAGI AMMAL AND OTHERS, (DEFENDANTS),
RESPONDENTS.*

1893.
September 5.
1894.
May 1.

Religious endowments—Gosami mutt—Grant by the head of the mutt to his brother for his maintenance—Suit by a successor to recover the land—Limitation Act—Act XV of 1877, s. 10—Evidence—Yadasts from revenue officials.

In 1544 a village was granted to the head of a Gosami mutt to be enjoyed from generation to generation and the deed of grant provided that the grantee was "to improve the mutt, maintain the charity and be happy." The office of head of the mutt was hereditary in the grantee's family. In 1866 an inam title-deed was issued to the then head of the mutt, whereby the village was confirmed to him and