Seshagiri Ayyar for appellant.

Ramachandra Rau Saheb for respondent.

JUDGMENT.—We have no doubt but that the learned Judge is right in holding that applications made to obtain restitution under a decree in accordance with section 583, Civil Procedure Code, are proceedings in execution of that decree, and are governed, as regards limitation, by article 179 of the second schedule of the Limitation Act. This is in accordance with the view taken in *Nand Ram* v. *Sita Ram*(1).

The appellant's vakil relies on a remark in the case reported as *Kurupam Zamindar* v. *Sadasiva*(2) to the effect that the learned Judges in that case were disposed to think that the application in a similar case was governed by article 178. That remark, however, is a mere *obiter dictum* and as such is not binding on us. One of the Judges who took part in that case is the learned Judge, whose order in the present case rules that article 179 is the article properly applicable. The appeal, therefore, fails and we dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

RAJA GOUNDAN (DEFENDANT), APPELLANT,

1897. March 29.

v.

RANGAYA GOUNDAN (PLAINTIFF), RESPONDENT.*

Rent Recovery Act—Act VIII of 1865 (*Madras*), *s.* 78—*Limitation—Suit to recover property wrongfully distrained.*

The plaintiff sued to recover certain property wrongfully distrained by the defendant who was his landlord, or in the alternative for its value. The defendant had tendered no patta to the plaintiff, but the distraint had taken place professedly under the Rent Recovery Act. The suit was not brought within six months from the date of the wrongful distraint:

Held that the suit was not barred under Rent Recovery Act, section 78.

SECOND APPEAL against the decree of W. J. Tate, District Judge of Salem, in Appeal Suit No. 181 of 1894, affirming the decree of

(1) I.L.R., 8 All., 545. (2) I.L.R., 10 Mad., 66.

* Second Appeal No. 14 of 1896.

RAJA GOUNDAN v. RANGAYA GOUNDAN.

Syed Tajuddin Saheb, District Munsif of Namakal, in Original Suit No. 469 of 1893.

The plaintiff sued to recover certain property alleged to have been illegally distrained by the defendant who was his landlord more than six months before the institution of this suit. The defendant pleaded that the suit was barred under the six months' rule in section 78 of the Rent Recovery Act.

The District Munsif overruled this plea and passed a decree in favour of plaintiff, and his decree was affirmed on appeal by the District Judge.

The defendant preferred this second appeal.

Subramania Ayyar for appellant.

Sundara Ayyar for respondent.

JUDGMENT.—This was a suit by a tenant to recover specific property alleged to have been wrongfully distrained by his landlord, the defendant. The plaint prayed for the recovery of the property, or of its price, Rs. 100.

The defendant pleaded that the suit was barred by the special limitation prescribed under section 78 of Rent Recovery Act (Madras) VIII of 1865, as the suit was brought more than six months after the cause of action accrued. Section 78 enacts that "nothing in this Act contained shall be construed to debar any "person from proceeding in the ordinary tribunals to recover money "paid, or to obtain damages in respect of anything professedly done "under the authority of this Act:

"Provided that Civil Courts shall not take cognizance of "any suit instituted by such parties for any such cause of action, "unless such suit shall be instituted within six months from the "time at which the cause of action arose."

The District Judge held that the distraint was not an act professedly done under the law, but in defiance of it, inasmuch as no patta had, in fact, been tendered as required by law and he referred to *Srinivasa* v. *Emperumanar*(1) in support of his decision. He, therefore, held that the special limitation in section 78 of Act VIII of 1865 did not apply, but that the case was governed by article 49, schedule 2 of the Indian Limitation Act, and confirmed the decree of the District Munsif awarding the plaintiff Rs. 60 as the value of the property distrained.

(1) I.L.R., 2 Mad., 42.

The defendant appeals.

We are unable to agree with the District Judge that the appellant did not act professedly under the Rent Recovery Act, but in defiance of it. The case of *Srinivasa* v. *Emperumanar*(1) stands on a different footing from the present case. There the Sub-Collector, finding that the formalities required by the Act had not been observed, removed the attachment and directed the restoration of the property. The cause of action was the refusal to restore the property after such order. That could not, in any view, be regarded as a thing even professedly done under the Act. It was clearly a wrongful withholding of the property independently of any provisions of the Act. In the present case the distress professed to be made by the landlord under the provisions of the Act. The fact that no patta had previously been tendered, though it may affect the legality of the distress, does not alter its character as a thing done professedly under the Act. We, therefore, disagree with the ground on which the District Judge has based his decision. We, however, hold on other grounds that section 78 is inapplicable.

The special limitation provided in that section must be restricted to the classes of suits specified in the section, viz., to suits (1) to recover money paid and (2) to obtain damages in respect of anything professedly done under the Act. The present suit was for the recovery of specific movable property, and therefore does not fall within the category under section 78. We are satisfied that the suit was not brought in this form in order to evade the limitation provided by section 78. The suit was for a jewel and a brass pot, and there was no allegation on either side that the property had been sold prior to the suit. The mere fact that there was an alternative prayer for the value of the property does not alter the essential character of the suit as one for recovery of specific movable property.

As section 78 is inapplicable, the limitation is that prescribed by article 49, schedule 2 of the Indian Limitation Act, and the suit is not barred.

We, therefore, confirm the decrees of the Courts below and dismiss this second appeal with costs.

---

(1) I.L.R., 2 Mad., 42.