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same as that of Theruvengada in this respect, but at the same time as against him also, I fail to see why the second defendant should be held responsible for moneys which are not shown to have been appropriated for the purposes of his family and towards the misapplication of which by his elder brother, he in no way contributed. I must therefore hold that the plaintiff has failed to establish that any of the debts relied on by the plaintiff is binding upon the second defendant, whose interest in the house in dispute, therefore, remains unaffected by the sale to the plaintiff.

The result is there must be a decree in favour of the plaintiff for a moiety of the house which will be sold and the plaintiff's moiety of the sale-proceeds paid to him. Both parties are permitted to bid for the property at the sale. The rest of the claim is disallowed. The plaintiff must pay the second defendant's costs, and the third and fifth defendants will pay those of the plaintiff.

APPELLATE CIVIL.

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

1895. October 15. November 5.

MANAVIKRAMAN (DEFENDANT), APPELLANT,

v.

AVISILAN KOYA (PLAINTIFF), RESPONDENT.*

Limitation Act—Act XV of 1877, sched. II, arts. 36, 49—Suit for compensation for attachment before judgment.

In a suit by A against B property of B was attached before judgment in November 1888. The suit was dismissed in October 1889, and an appeal by the plaintiff was dismissed in July 1890. B now sued A in September 1892 for damages occasioned by the attachment before judgment:

Held, that the suit was barred by limitation.

SECOND APPEAL against the decree of A. Venkataramana Pai, Subordinate Judge of South Malabar, in appeal suit No. 447 of 1893,

* Second Appeal No. 43 of 1895.

affirming the decree of A. Chathu Nambiar, District Munsif of Ernad, in original suit No. 550 of 1892.

Suit instituted on 28th September 1892 for compensation for an attachment before judgment on 1st November 1888. Both the Lower Courts held that the period of limitation applicable to the case was six years under Limitation Act, sched. II, art. 120, and they passed decrees for the plaintiff.

The defendant preferred this second appeal.

Subramania Sastri for appellant.

Sundara Ayyar for respondent.

JUDGMENT.—The timber in respect of which plaintiff seeks for compensation was attached before judgment in original suit No. 490 of 1888 on the file of District Munsif of Ernad. It had been cut in a forest by the plaintiff on the strength of a karar obtained from Manjery Karanamalpad, but the defendant sued in original suit No. 490 of 1888 alleging his own title to the *mala* and therefore to the timber which had been cut therein. It was on the allegation that the timber was his that the defendant obtained the attachment before judgment. Eventually the Court found that the defendant had no title to the *mala* and the judgment was confirmed on appeal (exhibit G).

Under section 491 of the Civil Procedure Code it is open to a Court on the application of a defendant to award compensation for attachment before judgment in two cases (1) when the attachment was applied for on insufficient grounds, and (2) if the suit fails and it appears to the Court there was no probable ground for instituting the suit. Both these cases are thus recognised as giving rise to a cause of action, and it is evident that the wrong (if any) done to the plaintiff falls within the second class since there could be no question of the sufficiency of the grounds for attachment had the defendant possessed any title at all.

The first question is as to whether the suit is or is not barred. The Courts below have held that article 120 of the Limitation Act applies to the case since they have not been able to see that the suit falls under any other article. We agree with them that article 29 does not apply since this is not a case of wrongful seizure, but it is argued for the appellant that the case falls under article 36 and that the suit should be regarded as one for misfeasance independent of contract, and that it falls under the description of a

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tort for which a limitation of two years is generally provided. See the judgment of Farran, J., in *Essoo Bhayaji* v. *The S. S. Savitri*(1).

It appears to us, however, from the observations of the learned Judge in that case that he would have classed a suit of this description under article 49 and not under article 36. His view was that for actions for tort a two years, limitation was provided as a general rule subject to certain special exceptions. Article 49 prescribes a limitation of three years for a suit for compensation for wrongfully taking or injuring or wrongfully detaining specific movable property, and the time runs from the date of the wrong. If this article applies the suit will be barred since defendant had no title whatever to the timber and the wrong was done at the date of the attachment (1st November 1888). In favour of this view it may be noted that the same period of limitation is prescribed for a suit for compensation for injury caused by an injunction wrongfully obtained (article 42) for which a similar compensation can be granted by the Court under section 497, Civil Procedure Code. The two classes of cases are exactly parallel, and we can hardly suppose that the Legislature intended to prescribe a limitation of three years in the one case and six years in the other. It is true that the unlawful taking was through a process of the Court, but the timber was attached as belonging to defendant, and had he succeeded in his suit it would have been handed over to him. It does not appear material that the actual seizure was made by the Court amin. If article 49 does not apply, the suit would appear to fall under section 36 and in either view the suit is barred. It is not necessary to consider the other points raised. The appeal must be allowed and the decrees of the Courts below reversed, the suit being dismissed with all costs throughout.

(1) I.L.R., 11 Bom., 133.