

APPELLATE CIVIL.

*Before Sir S. Subrahmania Ayyar, Offg. Chief Justice, and
Mr. Justice Bhashyam Ayyangar.*

1903.
October
22, 23.

MULTAN CHAND KANYALAL (FIRST DEFENDANT), APPELLANT,

v.

BANK OF MADRAS (PLAINTIFF), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, s. 269—Attachment—Causing Court seal to be affixed on door of warehouse—“Actual seizure”—Limitation Act—XV of 1877, sched. II, art. 29.

A judgment-creditor obtained a warrant of attachment which was executed by affixing it to the outer door of a warehouse in which goods belonging to his judgment-debtors were stored. The door was not broken open, nor was physical possession taken of the goods inside:

Held, that this, in effect, was actual seizure, within the meaning of section 269 of the Code of Civil Procedure, and that the suit was, in consequence, barred, under article 29 of schedule II to the Limitation Act.

Suit for damages. This suit was connected with the suit reported at page 343. In this suit a warrant of attachment was executed as sanctioned by the order of the Subordinate Court, by affixing the Court seal to the outer door of a warehouse. The attachment had been issued at the instance of the defendants, who were judgment-creditors of the owners of certain jaggery which was stored in the warehouse. The plaintiff Bank was also a judgment-creditor of the owners of the jaggery, and, prior to the attachment, the warehouse warrants relating to the jaggery had been assigned to the plaintiff, who thereby became entitled to the jaggery. The act of the defendants in attaching the jaggery prevented the Bank from selling or otherwise dealing with the jaggery for many months. The result was that the jaggery deteriorated in quality, diminished in quantity, and its market value fell. Plaintiff now brought this suit against the defendants for the damages so caused. The Subordinate Judge held that plaintiff's loss had been caused by the illegal conduct of the defendants, and that plaintiff had a cause of action against them. He held that the suit was governed by

* Appeals Nos. 231 of 1901 and 7 of 1902 presented against the decree of C. G. Kuppaswami Ayyar, Subordinate Judge of Cochinada, in Original Suit No. 18 of 1900.

article 42, and was, in consequence, not barred by limitation. He awarded damages.

MULTAN
CHAND
KANYALAL
v.
BANK OF
MADRAS.

Defendants preferred separate appeals.

Mr. *C. Krishnan*, *B. Govindan Nambiar* and *T. Balakrishna Bhat* for appellant in Appeal No. 231 of 1901.

P. Nagabhushanam for appellant in Appeal No. 7 of 1902.

Mr. *Chamier* for respondent in both appeals.

JUDGMENT.—In this case the Subordinate Judge finds that the article of the Limitation Act applicable is article 42 and the suit is therefore within time. We must, however, accede to the argument on behalf of the appellants that the article applicable is article 29 and that the suit was therefore barred by limitation. Here the warrant of attachment was executed as sanctioned by the order of the Court by affixing the Court seal to the outer door of the warehouse without breaking open the door and taking physical possession of the jaggery inside the warehouse. In our opinion the property was attached as property in the possession of the defendants and the attachment was effected by affixing the seal of the Court to the outer door. This, in effect, was actual seizure within the meaning of section 269, Civil Procedure Code. Upon the seal being affixed the jaggery passed into the custody of the Court and the suit having been brought more than one year after the date of seizure and there having been no fraudulent concealment of the fact of seizure from the knowledge of the Bank the claim, as already stated, is barred under article 29. The appeals are, therefore, allowed with costs and, reversing the decree of the lower Court, we dismiss the suit with costs.
