

## APPELLATE CIVIL—FULL BENCH.

*Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar  
and Mr. Justice Russell.*

CHIDAMBARA PATTAR (THIRD DEFENDANT), APPELLANT,

v.

RAMASAMY PATTAR AND OTHERS (PLAINTIFF,

FIRST AND SECOND DEFENDANTS, L. R. OF SECOND DEFENDANT),  
RESPONDENTS.\*

1903.  
April 23.  
October 16.

*Limitation Act—XV of 1877, sched. II, art. 11—Suit to establish right to or present possession of property—Attachment of debt not secured by negotiable instrument—Claim by third party—Application of art. 11 to order disallowing claim—Civil Procedure Code—Act XIV of 1882, ss. 278-281—"Possession" not restricted to mere tangible or physical possession.*

When a debt which is not secured by a negotiable instrument is attached under section 268 of the Code of Civil Procedure a claim may be preferred by a third party and may be investigated under section 278.

An order passed on such a claim, disallowing it, is subject to the operation of section 283 of the Code of Civil Procedure and article 11 of the second schedule to the Limitation Act.

The words "possessed" (in section 279) and "possession" (in sections 280 and 281 of the Code of Civil Procedure) are not used in a restricted sense as relating to a mere tangible or physical possession. They include constructive possession, or possession in law, of debts and other intangible property.

*Basarayya v. Syed Abbas Sahib*, (I.L.R., 24 Mad., 20), dissented from.

Surt for a declaration that a sum of Rs. 1,600 deposited by second defendant in the kuri of Kannampra Nair had been assigned by second defendant to plaintiff, for proper consideration, that the assignment was valid, and that the money could not be attached and sold in execution of the decree in Original Suit No. 377 of 1899, and that the attachment and sale were null and void. Second defendant had assigned his right to the money to plaintiff in July 1900. First defendant obtained a decree against second defendant in Original Suit No. 377 of 1899, and attached the money. Plaintiff put in a claim petition, which was rejected in November 1900. In January 1901, the right to the money was sold and purchased by third defendant at a court sale for Rs. 260. Plaintiff

\* Appeal against order No. 170 of 1902, presented against the order of T. Venkataramaiya, Subordinate Judge of Palghat, dated 16th October 1902, in Appeal Suit No. 482 of 1902, preferred against the decree of M. G. Krishna Rao, District Munsif of Alatur, in Original Suit No. 556 of 1901.

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now sued for the reliefs already referred to. First defendant pleaded that the suit was barred by limitation as it had not been brought within a year from the date of the rejection of plaintiff's claim petition. He impugned the assignment to plaintiff by second defendant, and contended that the attachment and sale in execution of the decree in Original Suit No. 377 of 1899 were legal and valid, and that plaintiff was not entitled to any relief. Second defendant was *ex parte*. Third defendant supported first defendant. The first issue raised the question of limitation. The District Munsif held that the suit was barred. He said: "The claim was rejected on 29th of November 1900; the sale took place on 30th January 1901; the present suit was filed on 12th December 1901. The question is whether article 11 of the second schedule of the Limitation Act is applicable. The claim was put in under section 278 of the Code of Civil Procedure, and the order was passed under section 280. Hence the article is applicable." He dismissed the suit.

The Acting Subordinate Judge reversed that order on appeal, holding that section 278 must relate to specific immovable or moveable property, and that it would not apply to a debt attached under section 268. He held, in consequence, that the suit was not governed by article 11 and remanded it for trial on the merits.

The third defendant preferred this appeal.

The case first came before Benson and Bhashyam Ayyangar, JJ.  
*P. R. Sundara Ayyar* for appellant.

*K. R. Subrahmania Sastri* for respondent.

The Court made the following

ORDER OF REFERENCE TO A FULL BENCH.—Before disposing of this appeal we wish to refer the following question for the opinion of the Full Bench, viz :—

Whether when a debt not secured by a negotiable instrument is attached under section 268, Civil Procedure Code, a claim can be preferred by a third party, and investigated under section 278, Civil Procedure Code, and, if so, whether an order disallowing the claim is subject to the operation of section 283, Civil Procedure Code, and article 11 of Schedule 2, Limitation Act.

The question must be taken to have been decided in the negative in the case of *Basarajya v. Syed Abbas Saheb*(1), but we are doubtful as to the correctness of that decision and the question

is of such wide importance that we think it desirable that it should be settled by a Full Bench.

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The case came on for hearing in due course before the Full Bench constituted as above.

*C. V. Anantakrishna Ayyar* (for *P. R. Sundara Ayyar*) for appellant.—The suit is barred by limitation. Section 278 speaks of “any property” attached in execution. Section 266 makes it clear that a debt is “property.” A reference to sections 268 and 301 shows how a debt is to be attached and how possession thereof is to be given to the purchaser. Sections 278 to 283 are wide enough to cover debts. The Privy Council has decided that the Code is exhaustive (*Gopal Chunder Bose v. Kartick Chunder Dey*(1)). If sections 280 to 283 do not cover cases of debts, anomalies would follow. The word “possession” is used in these sections in its legal, technical sense. A creditor is in law seized of, or is in possession of, his debt. A mortgagor is in possession of his equity of redemption, though physical possession of the property may be with the usufructuary mortgagee. Reference may be made to other sections of the Code where the word “possession” is used, but it is submitted that section 355 is conclusive of the matter. It says that a receiver “shall possess himself of all such property” including “debts.” Section 246 of Act VIII of 1859 was differently worded.

*T. R. Ramachandra Ayyar* and *K. R. Subrahmania Sastri* for the respondent.—The suit is not barred by limitation. Article 11 of the Limitation Act does not apply, for sections 280 to 283 do not apply to cases where debts are attached. It is only if sections 280 to 283, Civil Procedure Code, apply to the attachment of debts not secured by any negotiable instrument, that article 11 of the Limitation Act would apply. Sections 280 to 283 speak of possession, and so they apply only to cases of property of which there could be possession; that is, those sections apply only to cases of specific moveable or immoveable property. The word “possession” is used in these sections in its popular sense of “physical possession.” [BHASHYAM AYYANGAR, J.—Should it not be taken that the word is used in its legal sense? Whenever the Legislature means “physical” possession, it expressly says so—see for example article 10 of the Second Schedule of the Limitation Act.] We rely on *Mussamut*

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*Rambutty Kooer v. Kamessur Pershad*(1), *Basavayya v. Syed Abbas Sahab*(2), *Harilal Amthabhai v. Abhesang Meru*(3), *Monmohiney Dassee v. Radha Kristo Dass*(4), and *Ibrahim Mullick v. Ramjadu Rakshit*(5). The definition of the word possession in the 'Century Dictionary' also supports our contention. [Bhashyam Ayyangar, J., referred to the definition of the word possession, given in Anderson's 'Law Dictionary,' Webster's 'Dictionary' and Stroud's 'Judicial Dictionary,' and suggested that "possession" meant such possession as the nature of the thing permitted.] We submit that section 301, Civil Procedure Code, shows that the Legislature was aware that a "debt not secured by a negotiable instrument" was not capable of "possession" as ordinarily understood, and so a specific mode of delivery of such a debt is pointed out for the purpose of execution. If sections 278 to 283, Civil Procedure Code, are made applicable to all debts and other intangible things, it is submitted that the consequences would be serious. We submit that *Basavayya v. Syed Abbas Sahab*(2) is rightly decided.

The appellant was not called upon to reply.

The Court expressed the following

OPINION.—Our answer to the questions put to us is in the affirmative. In our opinion sections 278 to 281 of the Civil Procedure Code are not restricted to properties under attachment which are capable of tangible or physical possession.

The term "possession" is, no doubt, one which is used in widely different senses in dealing with different subjects, and refers sometimes to tangible or physical possession and sometimes to constructive possession, or possession in law. In Webster's 'Dictionary' the legal meaning of "possession" includes "the having or holding of property in one's power or command." See also Anderson's 'Dictionary of Law,' page 790.

In our opinion it would be unreasonable to restrict the meaning of the word "possessed" in section 279, and of the word "possession" in sections 280 and 281 to merely tangible or physical possession. Such restricted meaning would, we think, unduly narrow the operation of section 278 which relates to

(1) 22 W.R., 36.

(3) I.L.R., 4 Bom., 323.

(5) I.L.R., 30 Calc., 710.

(2) I.L.R., 24 Mad., 20.

(4) I.L.R., 29 Calc., 543.

claims preferred to and objections made to the attachment of, "any property attached." Section 266 specifies a debt as one species of property which is liable to attachment, and section 268 prescribes the mode in which a debt is to be attached. Section 301, which vests a debt sold in execution in the purchaser, refers to such transfer of the debt as "delivery" of the debt. No reason can be suggested for excluding from the beneficent operation of the claim sections of the Code debts and other species of intangible property. We may also refer to section 355 of the Code in which the word "possess" is clearly used as applicable not only to tangible property but also to debts and other intangible property.

We are therefore of opinion that the words "possess" and "possession" in the claim sections of the Code include constructive possession, or possession in law, of debts and other intangible property, and that the decision to the contrary effect in *Basarayya v. Syed Abbas Saheb*(1) is erroneous.

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## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice  
Subrahmaniu Ayyar.*

MCDOWELL AND COMPANY LIMITED (PLAINTIFFS), APPELLANTS,

v.

RAGAVA CHETTY AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1903.  
February 20.  
March 6, 12.

*Stamp Act—II of 1899, s. 26, sched. I, art. 57 (b)—Security for fulfilment of duties as cashier—Duty payable—Hindu Law—Father's liability in respect of acts constituting criminal offence—Liability of sons.*

In 1895, first defendant (for himself and on behalf of his sons) executed a mortgage in favour of Ragava Chetty, who, in 1896, assigned it to McDowell and Company. In 1899, first defendant (for himself and on behalf of his sons), McDowell and Company, and the present plaintiffs entered into another agreement whereby the former mortgage was transferred by McDowell and Company

(1) I.L.R., 24 Mad., 20.

\* Original Suit Appeal No. 27 of 1902, presented against the judgment of Mr. Justice Boddam, dated the 21st day of April 1902, in Original Suit No. 181 of 1901.