

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

T. K. P. MAMMALI (THIRD RESPONDENT), PETITIONER,

v.

T. KUTTI AMMU (FIRST APPELLANT), RESPONDENT.*

1915,
March 2,

*Indian Penal Code (Act XLV of 1860), sec. 188—“Promulgated,” meaning of—
Injunction, disobedience to—No offence under Penal Code.*

The word “promulgated” in section 188 of the Penal Code refers to orders issued under the Code of Criminal Procedure and not to judgments and orders of Civil Courts.

PETITION under section 115 of Civil Procedure Code (Act V of 1908), praying the High Court to revise the order of S. G. ROBERTS, the District Judge of North Malabar, in Civil Miscellaneous Appeal No. 4 of 1914, preferred against the order of K. S. VENKATACHALA AYYAR, the District Munsif of Tellicherry, in Miscellaneous Petition No. 2378 of 1913 (Original Suit No. 779 of 1913).

The petitioner as third defendant in Original Suit No. 779 of 1913 in the Court of the District Munsif of Tellicherry was prohibited by an order of injunction of that Court from continuing the construction of a building. It was found that the third defendant violated the above order by continuing the constructions even after the receipt of the order; but the District Munsif let off the petitioner by merely warning him. On appeal the District Court of North Malabar sent the case under section 476 of the Code of Criminal Procedure to the Joint Magistrate of Tellicherry for trial of the third defendant for the offence of disobedience of the lawful order of a public servant. The petitioner preferred this Civil Revision Petition.

J. L. Rosario and Kutti Krishna Menon for the appellant.

A. Sundram for the respondent.

The following Judgment of the Court was delivered by SESHAGIRI AYYAR, J. :—The District Judge is wrong in holding that disobedience to an injunction issued by a Civil Court is punishable under section 188 of the Indian Penal Code. The

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* Civil Revision Petition No. 206 of 1914.

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word promulgated in that section refers as pointed out in *In the matter of the petition of Chandrakanta De*(1) to orders issued under the Code of Criminal Procedure, not to judgments and orders of Civil Courts. We must set aside the order of the lower Appellate Court and direct him to dispose of the appeal on the merits.

Costs to abide the result.

S.V.

APPELLATE CIVIL.

*Before Mr. Justice Seshagiri Ayyar and Mr. Justice Kumara-
swami Sastriyar.*

1915.
March 17
and 19.

MUHAMMAD HUSSAIN SAHIB AND ANOTHER (DEPENDANTS—
RESPONDENTS), APPELLANTS,

v.

ABDUL KARIM SAHIB (SECOND PLAINTIFF—PETITIONER),
RESPONDENT.*

Mortgage-decree—Application for order absolute—Transfer of Property Act (IV of 1882), ss. 88 and 89—Successive applications within three years of each preceding application—Last application within twelve years of decree, if barred—Indian Limitation Act (IX of 1908), arts. 181, 182 and 183—Preliminary decree, executability of—Civil Procedure Code (Act V of 1908), sec. 43.

A decree for sale was passed in a mortgage suit on the 7th October 1901, and an application for order absolute was made on the 6th April 1904; subsequent applications were made in 1907, 1910 and 1912, all within three years of the immediately preceding application; notices were sent to the judgment-debtor in most of the applications, but the latter were all dismissed without the relief prayed for being granted; the last application was made on the 15th April 1912; the judgment-debtor objected that the application was barred by limitation as more than three years had elapsed from the date of the decree:

Held, that the application was not barred by limitation.

Held also, that the following propositions are deducible from the decisions of the Privy Council:—

(1) The preliminary decree passed under section 88 of the Transfer of Property Act is executable.

(2) In order to obtain the order absolute under section 89 of the Transfer of Property Act, steps have to be taken in execution.

(1) (1881) I.L.R., 6 Calo., 445.

* Appeal Against Order No. 75 of 1914.