APPELLATE CIVIL.

Before Mr. Justice Krishnan and Mr. Justice Odgers.

1923, October 2.

MANYAM SURAYYA (PETITIONER—DECREE-HOLDER), APPELLANT,

v.

SUNKAVILLI VENKATARATNAM (SECOND DEFENDANT AND COUNTER-PETITIONER), RESPONDENT.*

Limitation Act (IX of 1908), arts. 181 and 182—Execution of decree—Attachment before Judgment—Claim petition filed by third party and allowed after decree—Suit by decree-holder to establish right to attach and sell property as that of Judgment-debtor—Decree obtained more than three years after first decree—Application for sale more than three years after decree under execution—No prior application for execution—Bar of limitation.

Where certain properties of a judgment-debtor had been attached before judgment in a suit for money, and after decree a claim petition was put in by a third party and allowed, and the decree-holder consequently filed a suit to establish his right to sell the properties in execution and obtained a decree in his favour, an application by the decree-holder for the sale of the properties attached before judgment, filed on the date of the latter decree but more than three years from the decree under execution, was not barred by limitation, even though there was no prior application for execution of the decree after it was passed.

The principle of revival of proceedings applicable to an application for sale of properties attached after decree under an application for execution, is equally applicable to applications for sale of properties attached before judgment. Article 181, and not article 182, Limitation Act, governs such cases.

Chalavadi Kotiah v. *Poloori Alimelammah* (1908) I.L.R., 31 Mad., 71; and *Rameshvar Singh* v. *Homeshvar Singh* (1921) 40 M.L.J., 1 (P.C.), applied.

APPEAL against the order of S. SUBBAYYA SASTRI, Additional Subordinate Judge of Rajahmundry, in Appeal

* Appeal against Appellate Order No. 56 of 1922.

Suit No. 117 of 1921, preferred against the order of R. NAGESWARA AYYAR, Principal District Munsif of Rajahmundry, in E.P. No. 738 of 1920 in O.S. No. 352 of 1917.

The appellant obtained a decree for payment of money on a promissory note executed by the husband of the defendant; the decree was passed on 3rd September 1917 against the widow for the amount to be paid out of the property of her deceased husband in her hands. The plaintiff had obtained an attachment before judgment of certain properties as belonging to the deceased on 25th August 1917. Eight days after the date of the decree, one Peramma filed a claim petition in respect of the properties attached before judgment on 11th September 1917, which was allowed by an order dated 6th October 1917. Thereupon the appellant (decree-holder) filed a suit to contest the order which was decreed in his favour on 8th December 1920. On the same date, the decree-holder applied for sale of the properties attached before judgment. It appeared that no prior application for execution of the decree had been filed after the date of the first decree; it also appeared that the judgment-debtor was in possession of other properties belonging to her husband on the date of the first decree. On these facts the District Munsif held that the application for sale of attached properties was not barred by limitation on the ground that article 181 and not article 182 applied to the case, though an application to proceed in execution against other properties not attached might be barred by limitation. On appeal by the judgment-debtor's legal representative, the Subordinate Judge held that the application was barred in respect of the properties attached before judgment, and he accordingly reversed the order of the District Munsif and dismissed the petition

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for execution. The decree-holder preferred this Civil Miscellaneous Second Appeal.

G. Lakshmanna and *V. Viyyanna* for appellant.

T. S. Raghunatha Rao for respondent.

JUDGMENT.

This case raises a question of limitation in execution proceedings. The appellant before us brought a suit against the widow of one Narayya on a promissory note executed by the said Narayya and while the suit was pending he obtained an order of attachment before judgment of certain properties belonging to Narayya in the hands of the widow. He then obtained a decree against the assets of Narayya in the hands of the widow. Eight days thereafter a claim petition seems to have been put in by one Peramma claiming those properties to be hers and to be not attachable for the debt of Narayya. That claim petition was allowed. Thereupon the decree-holder had to bring a suit to contest the order in the claim proceedings, and having brought the suit he finally succeeded in getting a decree only on the 8th December 1920 that the properties belonged to his judgment-debtor. In the meanwhile, it is true that he took no steps to execute the decree. He then put in the present application, which is now before us, on the very day, that is, the 8th December, when the decree in the second suit was passed in his favour, to bring to sale the properties he had already attached in the application before judgment. That application was allowed by the District Munsif to the extent of the properties which he found were actually attached by the order of attachment before judgment and was dismissed as regards the rest of the properties. The Subordinate Judge on appeal ruled that, even as regards the properties taken in attachment before judgment, the application was barred

by limitation as the application was made more than three years after the date of the decree.

The question thus before us is whether the view taken by the District Munsif that the present application is an application which could be treated as one for reviving the execution proceedings already commenced can be supported or not. It is clear from the authorities that, when an execution application is brought and properties are attached in execution of that application if any obstacle is placed in the way of the properties being sold and assets realized for the purpose of meeting the decree debt by the action of a third party putting in a claim petition and it becomes necessary for the decree-holder either to dispute the claim proceedings or to bring a suit to have the matter decided whether the properties are those of the judgment-debtor, his subsequent application to sell those properties is not governed by article 182 of the Limitation Act, but is in the nature of a revival of the original execution application and article 181 of the Limitation Act will apply. If we apply that principle to the present case, there can be no doubt that the District Munsif's view is correct and that the application by the appellant before us to sell the properties already attached is entirely within time. That this is the principle applicable as regards an execution application put in after the decree is not disputed by the other side because the authorities are all in favour of that view—vide *Chalavadi Kotiah* v. *Poloori Alimelammah*(1) and *Rameshvar Singh* v. *Homeshvar Singh*(2). It is, however, contended by the learned vakil for the respondent before us that that principle will not apply in the case of an attachment before judgment unless it had been followed by an application for

(1) (1908) I.L.R., 31 Mad., 71. (2) (1921) 40 M.L.J., 1. (P.C.).

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execution of the decree after the decree was passed. We are unable to accept that contention. Under the Code the attachment before judgment enures to the benefit of the decree-holder when the decree is passed so that it is no longer necessary to attach the property—vide Order XXXVIII, rule 11 of the Civil Procedure Code.

The principle applicable in the case of an application for execution after decree applies equally to the case of an attachment before judgment, because, after all, the position is exactly the same whether the attachment was before judgment or after the decree, when a man is prevented from getting the fruits of his decree because of somebody else's improper obstruction and his claim has been wrongly decided and he has been obliged to bring a second suit to put the matter right. We think that the principle clearly applies to the present case and, therefore, we hold that the application is not barred by limitation in this case.

In the result, we set aside the order of the Subordinate Judge and restore that of the District Munsif with costs here and in the Court below.

K.R.