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inquiries when the point is disputed. The sums are ascertained and fixed by the decrees; all that rule 18 contemplates is the mechanical process of setting off one against the other.

Reliance has been placed on the case of *Nagar Mal v. Ram Chand* (1). In that case a decree for money was set off against a decree for sale by the court below. The holders of the money decree applied to this Court for the revision of the said order. The judgement-debtors in the decree for sale were not impleaded in that suit in a capacity different from that in which they had obtained their decree for money. The Court (KNOX and KARAMAT HUSAIN, JJ.) in that case saw no reason for interference in revision. In this case the character in which the defendants were sued in the case on the mortgage is different from the character in which they obtained their decrees for money. For these reasons I would decree the appeal and set aside the order made by the court below with costs.

WALSH, J.—I entirely agree with the judgement of my brother Sundar Lal.

Appeal allowed and cause remanded.

Before Mr. Justice Walsh and Mr. Justice Sundar Lal.

NIADAR SINGH (DEFENDANT) v. GANGA DEI (PLAINTIFF)*

Act No. IX of 1908 (*Indian Limitation Act*), schedule I, article 62,—*Suit for money taken in execution of a decree—Compensation—Suit for money had and received.*

In execution of a decree certain rents due to the judgement-debtor from his tenants were attached. Prior to the passing of this decree the judgement-debtor had sold the property to a third party. The decree-holder got the court *amin* to realize the rents due from the tenants, and they were deposited in Court and ultimately paid over to the decree-holder. The purchaser brought the present suit against the decree-holder for the recovery of the money. *Held* that the suit was for money had and received within the meaning of article 62 of schedule I to the Indian Limitation Act. *Jagjivan Javherdas v. Gulam Jilani Chaudhri* (2) dissented from.

THE facts of this case were as follows:—

In 1911, the plaintiff respondent purchased at auction zamindari property belonging to one Jangi. She obtained formal possession from court in May, 1912. The defendant appellant obtained a decree against Jangi and in execution of that decree

* First Appeal No. 39 of 1916, from an order of Bansgopal, Subordinate Judge of Meerut, dated the 7th of December, 1915.

(1) (1911) I. L. R., 33 All., 240. (2) (1883) I. L. R., 8 Bom., 17.

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the court Amin went and realized from the tenants the rent due to the zamindar of the land the ownership of which had then passed to the respondent. The rent so realized was deposited in court and paid over by the court to the decree-holder (the defendant appellant) in August, 1912. The respondent sued the appellant for the recovery of the amount claiming interest thereon as damages in August, 1915, within three years of the date of payment by the court to the appellant. The Munsif held that article 29 of the Indian Limitation Act, 1908, applied to the case and dismissed the suit as barred by limitation. The learned District Judge held that the case was governed by article 62 of the Limitation Act and remanded the case for trial on the merits. The defendant appealed to the High Court.

Babu *Harendra Krishna Mukerji*, for the appellant :—

The Munsif was right in dismissing the suit. The money was brought into court and paid to the defendants in August, 1912. The plaintiff claims, not the actual coins but compensation for wrongful seizure. The money obtained by the defendant appellant was movable property. It was seized by process of law. We had an attachment order in our favour. The Amin went on the strength of this attachment order and obtained money from the tenants. This amounts to seizure and the case is governed by article 29 of the Limitation Act; *Jaggivan Javherdas v Gulam Jilani Chaudhri* (1). He submitted that (1) the plaintiff could not claim the return of the identical coins which the defendants took away. Further, in his plaint he claims interest as damages, which is an equivalent term for compensation. (2) The seizure was certainly wrongful, the defendant attached the property not of his judgement-debtor but of a third party. It is not a case of money had and received, as the money was removed by the defendant from the court not for the plaintiff's use but for his own use. Article 62 applies when the defendant obtains the money by deceit or fraud and not when he takes it asserting a title thereto; *Yellammal v. Ayyappa* (2).

Pandit *Mohan Lal Sandal*, for the respondent, was not called upon.

(1) (1888) I.L.R., 8 Bom., 17.

(2) (1912) 23 M.L.J., 519.

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WALSH, J.—This case has been thoroughly argued. But really the point is hardly open to discussion. The plaintiff sues to recover from the defendant certain money which has been received by the defendant, in the form of rent paid to the defendant through the court under a decree entitling the defendant to receive such rent as against the tenants, but in respect of property of which the plaintiff was entitled to the possession, and also to the receipt of the rents. It is suggested that for such an action the Limitation Act provides one year's limitation by reason of the terms of article 29, that is to say, that it is an action for compensation for wrongful seizure of movable property under legal process. It is nothing of the kind. The moment one appreciates the distinction between tort and contract all difficulty disappears. Assuming for a moment that such money can be movable property, it is obvious that it has never been in the possession of the plaintiff at all. Compensation for wrongful seizure is another way of stating a claim for damages for tort in *detinue* or trespass. There can only be wrongful seizure when the property was in the possession of the person who is setting up the wrong. An action for *detinue* involves the proof of a right to actual possession, and of a deprivation of possession. In the case now before the court there was no seizure; there is no tort, that is to say, there is nothing wrongful in the sense in which it is used in the article; there is no claim for compensation, and I very much doubt whether rents payable under these circumstances are movable property at all. It is quite clear that money received by B from a third person, to which A is rightfully entitled, is money which, from the date of its receipt by B, B is under an implied contract to pay to A. The cause of action which A has for that implied contract has always been known to the common law as an action for money had and received by the defendant to the use of the plaintiff. That is what the present suit is really for, and article 62 of the first schedule to the Limitation Act is the appropriate article. I think the case of *Jagjivan Javherdas v. Gulam Jilani Charudhri* (1) was wrongly decided.

The appeal must be dismissed with costs.

SUNDAR LAL, J.—I am of the same opinion.

BY THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.

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Before Mr. Justice Piggott and Mr. Justice Lindsay.

KANHAIYA LAL AND OTHERS (DEFENDANTS) v. KISHORI LAL AND ANOTHER (PLAINTIFFS) AND DULI CHAND (DEFENDANT).*

Hindu Law—Hindu widow—Effect of compromise entered into by a Hindu widow with a limited estate—Rights of reversioners.

A Hindu widow in possession as such of her husband's estate brought a suit for possession of two shops on the allegation that they formed part of her husband's estate. The suit was compromised, the effect of which was that the widow recognized the defendants as full proprietors and they, on the other hand, had to pay a certain sum of money. To raise this money they mortgaged the two shops. The mortgagee brought a suit for sale and the shops were purchased by H., at the auction sale. After the death of the widow the reversioners of her deceased husband brought a suit to recover possession of the aforesaid shops.

Held, that a compromise entered into by a Hindu widow with a limited estate, resulting in the alienation of property forming part of her husband's estate, cannot bind the reversioners, unless it is shown that it was for such purposes as would justify a sale by a Hindu widow—*Inrit Kunwar v. Roop Narain Singh* (1), *Musammatt Raj Kunwar alias Sheo Murat Koer v. Musammatt Inderjit Kunwar* (2), *Rajlakshmi Dasee v. Katyayani Dasee* (3), *Khunni Lal v. Gobind Krishna Narain* (4), *Mahadei v. Baldeo* (5) and *Bihari Lal v. Daud Husain* (6), referred to.

THE facts of this case were as follows :—

Kunj Lal and Duli Chand were in possession of a certain shop. They were sued for rent by Musammatt Lachcho, widow of Dwarka Das, who alleged that the shop had belonged to her husband. The suit was dismissed by the appellate court in 1894. After that, in October, 1894, Musammatt Lachcho together with her alleged adopted son Chunni Lal brought a suit against them for possession. That suit was compromised on the 9th of April, 1895, on the terms that if the defendants deposited Rs. 1,500 within six months, they should be considered to be in proprietary

* First Appeal No. 379 of 1914, from a decree of Banke Bihari Lal, Subordinate Judge of Aligarh, dated the 10th of July, 1914.

(1) (1880) 6 C. L. R., 76.

(4) (1911) I. L. R., 33 All., 356.

(2) (1870) 5 B. L. R., 585.

(5) (1907) I. L. R., 30 All., 75.

(3) (1910) I. L. R., 33 Cal., 639.

(6) (1913) I. L. R., 35 All., 240.