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bay and Madras that where the attachment has ceased to exist within the period of one year it is no longer incumbent upon the claimant to file a suit for a declaration of his title to the property: *Najimunnessa Bibi* v. *Nacharuddin Sardar* (1), *Manilal Girdhar* v. *Nathalal Mahasukhram* (2), and *Kumara Goundan* v. *Thevaraya Reddi* (3).

There is, therefore, the probability that the applicant did not think it worth while to institute a suit after the attachment had ceased to exist in view of these rulings. We do not think that it would be proper for us to depart from this course of decisions interpreting the rule in this way. Accepting the view expressed in these cases, we hold that as soon as the attachment ceased to exist the obligation on the claimant to institute a civil suit also disappeared and she is not prevented from bringing an objection afresh when the property has been re-attached.

The application is allowed, the order of the court below is set aside and the case is remanded to that court for disposal on the merits. The applicant will have the costs of the revision from the respondent.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice King.

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April, 21.

NURUL HASAN (DEFENDANT) v. AISHA BI AND OTHERS (PLAINTIFFS) AND ZAHURUL HASAN AND OTHERS (DEFENDANTS).*

Land Revenue Act (Local Act III of 1901), *section* 111—*Partition—Question of proprietary title—Title already determined by civil court decree—Question challenging such decree on ground of fraud.*

Where a question of proprietary title was raised at the partition of a zamindari property, and such question had already been determined by a civil court decree, but the objector

*First Appeal No. 6 of 1928, from a decree of S. H. Mirza, Assistant Collector, first class, of Etawah, dated the 20th of October, 1927.

(1) (1923) I.L.R., 51 Cal., 548. (2) (1920) I.L.R., 45 Bom., 561.
(3) 1924) 87 Indian Cases, 635.

raised a question challenging the validity of the decree on the ground of fraud, it was *held* that such question was not a question of proprietary title within the meaning of section 111 of the Land Revenue Act and it was not the duty of the revenue court to have stayed the partition proceedings and directed the objector to file a suit in the civil court for setting aside the decree.

Dr. *M. H. Faruqi*, for the appellant.

Mr. *Mukhtar Ahmad*, for the respondents.

BANERJI and KING, JJ. :—This appeal arises out of an application for partition of certain zamindari property. Musammat Aisha Bi and others were applicants for partition. Nurul Hasan, one of the non-applicants, made an objection on the 7th of September, 1927, alleging that his sisters Aisha Bi and Fatima Bi did not get any share in the zamindari property left by the father, as there was a custom in the objector's family that the daughters of a deceased person get no share in the zamindari property left by their father. He also alleged in paragraph 6 of his objections that the decree of the civil court, relied upon by the applicants for partition, is only a fictitious and *ex parte* proceeding as against the objector and not binding upon him.

A reply was made to this objection on behalf of Musammat Aisha Bi. She maintained that her rights had already been declared by a decree of the civil court, that her name and that of the other applicants had been entered in the revenue papers, and that the objector had no right to raise any objection. The revenue court passed an order on the 20th of October, 1927, saying that the applicants are recorded co-sharers and their title is supported by certified copies of civil court's and other court's orders; and that the contention that they have come upon the property by means of fraud does not involve the question of proprietary title. The court held that it was not empowered under section 111 of the U. P Land Revenue Act to re-open

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the question of title which had already been decided by the civil court, and disallowed the objection.

This appeal is against the above mentioned order of 20th October. It has been argued for the appellant that even though the applicants have been declared by a competent civil court to be entitled to the shares which they claimed, by the decree dated the 11th of January, 1918, this decree was obtained by fraud and it is open to the objector to institute proceedings for having the decree set aside as having been fraudulently obtained, and the revenue court should have stayed the proceedings, directing the objector to file a suit in the civil court for setting aside the decree.

In our opinion the court below has taken the correct view of its powers under section 111. That section lays down that if a recorded co-sharer makes an objection involving a question of proprietary title *which has not been already determined by a court of competent jurisdiction*, then the Collector may adopt one of three courses for the purpose of getting the question determined. In the present case the provisions of section 111 did not apply because the question of proprietary title raised before the revenue court had already been determined by a court of competent jurisdiction. It may be open to the objector to institute a suit on the ground that the decree was obtained by fraud and without his knowledge, but this will not bring the question of title within the purview of section 111. In our opinion, when the question of title has been determined by a court of competent jurisdiction, then section 111 is no longer applicable and it is not open to the revenue court to refer the objector to the civil courts for getting the decree set aside on the ground of fraud. The question whether the decree of the civil court was obtained by fraud is not a "question of proprietary title" within the meaning of section 111. We think the order of the court below is correct and dismiss the appeal with costs.