1931
April, 16.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice, and Mr. Justice Bajpai.

BASANTI DEVI (OBJECTOR) *v.* CHHOTEYLAL DURGA PRASAD AND OTHERS (OPPOSITE PARTIES).*

Civil Procedure Code, order XXI, rules 58, 63—*Attachment in execution—Claimant's objection dismissed for default —Subsequent dismissal of execution application for default —Ceasing of attachment—Failure of claimant to institute title suit within one year—Fresh application for execution, fresh attachment and fresh objection—Refusal to entertain objection—Revision—Civil Procedure Code, section* 115.

A claimant's objection under order XXI, rule 58, was dismissed for default; within one year thereof the application for execution was itself dismissed for default, with the consequence that the attachment ceased. Upon a fresh application for execution the property was again attached and the claimant made a fresh objection. This objection was rejected on the ground that the claimant having failed to institute a suit in accordance with order XXI, rule 63, within one year from the order dismissing the previous objection, that order was conclusive.

Held that the attachment having ceased to exist within the period of one year, it was no longer incumbent upon the claimant to institute a suit for a declaration of his title to the property.

Held further, that the court below had refused to exercise the jurisdiction vested in it to inquire into the objection of the claimant, on the wrong view that there was a bar to the hearing of the objection, and therefore the High Court interfered in revision.

Mr. *Govind Das*, for the applicant.

Mr. *Bankey Behari*, for the opposite parties.

SULAIMAN, A. C. J., and BAJPAI, J.:—This is an objector's application in revision from an order refusing to inquire into the objection made under order XXI, rule 58, of the Code of Civil Procedure to an attachment. It appears that while the decree was in execution certain property was attached by the decree-holder and an objection was preferred by the present

*Civil Revision No. 199 of 1930.

applicant, under which she claimed the property as her own. This objection was dismissed for default on the 12th of September, 1925. It was for her to sue within one year of that dismissal if she wanted to nullify the order disallowing her objection. It happened, however, that owing to the non-payment of the necessary expenses for the issuing of a fresh proclamation, the decree-holder's application for execution was itself struck off for default. The order of the court did not clearly specify that the attachment ceased, but it followed as a matter of law under rule 57. This happened on the 16th of March, 1926, long before the period of one year had expired from the dismissal of the objection. There was an application for execution and a fresh attachment, followed by a fresh objection. The court below rejected the objection on the ground that she failed to bring a suit within a year of the dismissal of the previous objection. It seems to us that the court below has refused to exercise the jurisdiction vested in it to inquire into the objection of the applicant, on the wrong view that there was a bar to the hearing of her objection.

Rules 58, 60 and 61 show that the objection preferred is probably against the attachment of the property of the claimant, her principal object being to get her property released from such attachment. If the objection is disallowed, the party against whom an order is made can institute a suit under rule 63 to establish his right to the property, and subject to the result of such suit the order shall be conclusive. The language of rule 63 is somewhat ambiguous and it may have been possible to treat it as implying that it was the duty of the objector, whose objection had been dismissed, to establish her claim to the property in dispute within one year from the dismissal of the objection. But the courts in India have interpreted the rule so as to apply it to the order of attachment; it has been held by the High Courts at Calcutta, Bom-

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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.