APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

1896. *July* 28.

BAPUCHAND JETHIRAM GUJAR (ORIGINAL APPLICANT), APPELLANT, *v.* MUGUTRAO AND OTHERS (ORIGINAL OPPONENTS), RESPONDENTS.*

Limitation—Limitation Act (XV of 1877), Sch. II, Art. 179, Cl. 4—Instalment decree—Execution—Oral application by judgment-creditor for payment of money paid into Court—Step in aid of execution.

An application by a judgment-creditor for the payment to him of money which has been paid into Court on his account in execution of his decree is an application to the Court to take a step in aid of execution of the decree within the meaning of article 179 of Schedule II of the Limitation Act (XV of 1877).

SECOND appeal from the order of Ráo Bahádur Vishvanath B. Marathe, First Class Subordinate Judge of Sátára with appellate powers.

On 28th March, 1887, Bapuchand (appellant) obtained an instalment decree against the respondents. The decree ordered the payment of the first instalment before 1st April, 1887, and of each succeeding instalment before the 1st of April of each year, and directed that in default of any instalment the whole amount due under the decree should be recoverable at once.

The second instalment was not paid until the 3rd April, 1888; and was, therefore, late; the third instalment was also late, being made on 2nd April, 1889; the fourth was paid on the 1st April, 1890.

On 7th August, 1891, a sum of Rs. 605-15-0 was paid into Court by the judgment-debtor, and on the oral application of the judgment-creditor it was paid over to him next day.

On 6th August, 1894, the judgment-creditor Bapuchand (appellant) applied for further execution of the decree. The judgment-debtor pleaded that he was barred by limitation. The question then rose whether his oral application on the 7th August, 1891 for the money which had been paid into Court on his account was an application to take a step in aid of execution of the decree under article 179, sub-clause 4 of the Limitation Act (XV of 1879).

* Second Appeal, No. 167 of 1896.

The Subordinate Judge rejected the application as barred by limitation.

On appeal the Judge confirmed the order.

The applicant Bapuchand appealed to the High Court.

Vasudeo R. Joglekar for the appellant (applicant) :—An oral application is a step in aid of execution and saves time—*Venkatarayalu* v. *Narasimha*[1]; *Paran Singh* v. *Jawahir Singh*[2]; *Kerala Varma* v. *Shangaram*[3]; *Keshavlal* v. *Pitamberdas*[4].

Narayan G. Chandavarkar for the respondents (opponents) :—He relied on *Dulsook* v. *Chugon*[5]; *Hati Devchand* v. *Naroji*[6]; *Fazal Imam* v. *Metta Singh*[7].

FARRAN, C. J.:—Appellant Bapuchand applied on the 6th August, 1894, for further execution of an instalment decree of the 28th March, 1887. The two lower Courts have held that the application was time-barred. The decree directed the payment of the first instalment before the 1st August, 1887, and the payment of each succeeding instalment before the 1st April each year, and further directed that on default of payment of any instalment the whole amount due under the decree should be recoverable at once.

Payments were made as follows :—the first instalment on the 31st July, 1887; the second instalment on the 3rd April, 1888; the third on the 2nd April, 1889; the fourth on the 1st April, 1890; and on the 7th August, 1891, the sum of Rs. 635-15-0 was paid. As default was made in paying the second instalment, the whole amount of the decree became payable on the 1st April 1888. It appears from the rojnáma that the last of the above payments, that of Rs. 635-15-0, was made by the Court in pursuance of an oral application made to the Court by the judgment-creditor on the 7th or 8th August, 1891.

The question then arises, whether an application by a judgment-creditor for the payment to him of money which has been paid to Court on his account in execution of his decree, is an applica-

(1) I. L. R., 2 Mad., 174.
(2) I. L. R., 6 All., 366.
(3) I. L. R., 16 Mad., 452.
(4) I. L. R., 19 Bom., 267.
(5) I. L. R., 2 Bom., 356.
(6) P. J., 1894, p. 407.
(7) I. L. R., 10 Cal., 549.

1896.

BAPUCHAND v. MUGUTRAO.

tion to the Court to take a step in aid of execution of the decree. This question has been answered affirmatively by the Madras and Allahabad High Courts—*Venkatarayalu* v. *Narasimha*[1]; *Kerala Varma* v. *Shangaram*[2]; *Koormayya* v. *Krishnamma*[3]; *Paran Singh* v. *Jawahir Singh*[4]; *Sujan Singh* v. *Hira Singh*[5]. On the other hand the Calcutta High Court holds that such an application is not an application to the Court to take a step in aid of execution—*Hem Chunder* v. *Brojo Soondari*[6]; *Fazal Imam* v. *Melta Singh*[7]; *Ganga Pershad* v. *Debi Sundari*[8]; *Ananda* v. *Hara Sundari*[9]. In the last reported judgment of the Calcutta High Court touching this point, Sir Comer Petheram, after mentioning the view taken by the Madras and Allahabad High Courts, says (p. 199): "It seems to us that when the sale of the property attached in execution has been completed, and the purchase-money has been paid into Court, nothing more remains to be done in respect of the execution of the decree as against that property, and no application as regards the purchase-money, either to draw it out of Court or to set it off against the decree when the decree-holder is himself the purchaser, can be properly said to be an application to the Court to take some step in aid of the execution of the decree."

The lower Appellate Court has referred to *Dulsook* v. *Chugon*[10] decided by Sir Michael Westropp and Mr. Justice Melvill. The facts of that case were very similar to the facts of the present case, but the Limitation Act then applicable was Act IX of 1871 and the 4th clause of article 167 of the 2nd schedule of that Act corresponding with clause 4 of article 179 of Act XV of 1877 did not specially provide for an application to the Court to take a step in aid of execution: the words in clause 4 of article 167 were, "applying to the Court to enforce, or keep in force, the decree or order." The point which we are considering was (probably for that reason) not taken in that case. In *Keshavlal* v. *Pitamberdas*[11] Mr. Justice Jardine expressed an opinion that

(1) I. L. R., 2 Mad., 174.
(2) I. L. R., 16 Mad., 452.
(3) I. L. R., 17 Mad., 165.
(4) I. L. R., 6 All., 366.
(5) I. L. R., 12 All., 399 at 406.
(6) I. L. R., 8 Cal., 89.
(7) I. L. R., 10 Cal., 549.
(8) I. L. R., 11 Cal., 227.
(9) I. L. R., 23 Cal., 196.
(10) I. L. R., 2 Bom., 356.
(11) I. L. R., 10 Bom., 267.

in the case of a mere money decree, in which the execution by attachment was not intended to be a permanent arrangement, mere receipt of money is not a step in aid of execution, but he held that, where under the terms of the decree the judgment-debtor's property is attached, and the profits sequestrated for a long period, an application to receive the proceeds of such property is a step in aid of execution.

When money is paid into Court in satisfaction of a decree it is, in the ordinary course, placed to the credit of the judgment-creditor, and is then liable to attachment as his money. In a certain sense the decree is then satisfied to the extent of the payment; still it appears to us that the execution of the decree with regard to such payment is not fully completed till the money has been actually paid by the Court to the judgment-creditor or to some one on his account. We, therefore, agree in the view taken by the Madras and Allahabad High Courts.

It was contended by the pleader for the respondent that the decree was time-barred at the date when the last application for the payment out of the Rs. 635-15-0 was made by the judgment-creditor to the Court, inasmuch as the appellant has not shown that any previous application to take a step in aid of execution was made within three years of that date. We think under the circumstances that it was rather for the respondent to show that the decree was then time-barred; but at all events we think that we ought to presume, in the absence of proof to the contrary, that the previous payments out of the instalments to the judgment-creditor were made in pursuance of applications made by him for that purpose to the Court.

It was further contended for respondents that, assuming that an application to take money out of Court is an application to the Court to take a step in aid of execution, yet that as the whole amount of the decree became payable on the 1st April, 1888, the subsequent applications made in 1888, 1889 and 1890, being only for payment of instalments, would not keep the decree alive. We do not think this is a sound argument. The step in aid of execution, referred to in clause 4 of article 179, need not, we think, be a step directly towards the complete execution of the decree. The lower appellate Court was of opinion

1896.

BAPUCHAND v. MUGUTRAO.

that the decree in question had been fully satisfied, but it appears to have overlooked the interest which was due at the date of the decree and for payment of which the decree provides as well as for payment of future interest.

We reverse the decree of the lower appellate Court and remand the case that an account may be taken of what is due under the decree and an order may be made for its realization.

Decree reversed and case remanded.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

1896.
July 29.

RAOJI (ORIGINAL PLAINTIFF), APPELLANT, *v.* GENU (ORIGINAL DEFENDANT), RESPONDENT.*

Vatan—Vatandár—Vatandár family—Hereditary Offices (Bombay Act III 1874), Sec. 25 (1)—Suit for declaration of right to represent family—Jurisdiction of civil Court.

The plaintiff sued for a declaration that the branch of the Gavda family which he represented was elder than that represented by one of the defendants. The object which he desired to obtain by a declaration in that form was to influence the Collector in determining whether he should be recognized as the representative vatandár in respect of the four annas' share which the Gavda family possessed in a pátelki vatan.

Held that the civil Court had no jurisdiction to entertain the suit, since the declaration sought, if made, would in effect be a declaration of plaintiff's status as representative vatandár. This, however, equally with the duty of ascertaining the custom of the vatan as to service was a duty which by section 25 of the Bombay Hereditary Offices Act (Bombay Act III of 1874) was imposed on the Collector and not upon the civil Court.

SECOND appeal from the decision of A. Steward, District Judge of Poona, reversing the decree of Ráo Sáheb D. G. Medhekar Subordinate Judge of Junnar.

The plaintiff sued for a declaration that the branch of the Gavda family represented by him was elder than that repre-

* Second Appeal, No. 666 of 1895.

(1) Section 25 of the Bombay Hereditary Offices Act (Bom. Act III of 1874):—

25. It shall be the duty of the Collector to determine, as hereinafter provided, the custom of the vatan as to service, and what persons shall be recognized as representative vatandárs for the purpose of this Act, and to register their names