the order for attachment to issue on the first application for execution "must be considered to have determined that the decree was not barred"—and the order not having been appealed against, the question was *res judicata*—and, moreover, that the judgment-debtor having not only not appealed, but having actually acknowledged the validity of the order of attachment by presenting a petition praying for stay of the attachment for three months "it was impossible, in the face of the order and the subsequent proceedings," that the second application should be refused on the ground that the decree was dead when the first application was made. The latter part of the above reasoning of the Privy Council is inapplicable here. Not having taken the objection that the application was irregular, and having paid the costs with the full knowledge that the judgment-creditor, as stated by him in the *darkhást*, intended to make a separate application as to the ornaments, the judgment-debtor must be taken to have acknowledged the validity of the first application, and ought not, we think, now to be allowed to take the objection that it was not "in accordance with law." We must, therefore, confirm the order, with costs on the appellants.

Decree confirmed.

SECOND APPEAL, No. 441 OF 1887.

Before Mr. Justice Nánábhái Haridás and Mr. Justice Jardine.

KA'LID'S MA'NCHAND, (ORIGINAL DEFENDANT), APPELLANT, *v* VARJIVAN RÁNGJI AND OTHERS, (ORIGINAL PLAINTIFFS), RESPONDENTS.

THIS was a second appeal from the decision of G. Jacob, Joint Judge of Ahmedabad.

Suit to recover possession of a house. On the 27th January, 1881, the plaintiffs got a decree in second appeal, directing them to recover possession of the house in dispute after paying to the defendant the expenses properly incurred by the defendant in rebuilding the house. The decree awarded costs also to the plaintiffs.

On the 9th September, 1881, the plaintiffs presented an application for execution of the decree. The parties effected a settlement out of Court, and the application for execution was withdrawn by the plaintiffs on the 31st July 1882.

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On the 19th September, 1882, the plaintiffs presented another application for execution of the decree with respect to the costs only.

On the 28th April, 1885, plaintiffs filed a third application for execution; in this application the plaintiffs offered to pay a certain sum to the defendant which they alleged was actually spent by him in rebuilding the house, and sought to recover possession of it.

The defendant contended (*inter alia*) that the plaintiffs' application was not presented within three years from the date of their first application, namely, the 9th September, 1881; their present application was, therefore, time-barred, and that a larger sum than that offered by the plaintiffs was due to him on account of the rebuilding of the house.

The Subordinate Judge held that as the plaintiffs' second application, dated the 19th September, 1882, sought to execute the decree with respect to costs only, it did not furnish a fresh starting point for the period of limitation, and that as the present application was made after the expiration of three years from the date of the plaintiffs' first application, it was time-barred.

Against the decree made by the Subordinate Judge the plaintiffs appealed to the District Judge, who held that the plaintiffs' second application, dated the 19th September, 1882, was a step in aid of execution, and that the present application being made within three years from that date, was not time-barred. The District Judge reversed the decree of the Subordinate Judge. In his judgment the District Judge observed as follows:—

"It is contended for the respondent that article 178 and not article 179 of Schedule II of the Limitation Act applies to this case. It is argued that the decree of the High Court was not complete until amount due to defendant on account of the house should be determined. If this argument were sound, the decree would be inoperative, as it directs that the amount be determined in execution of the decree, and if there was no complete decree, there could be no execution.

"An application similar to the present one was made by the plaintiffs on the 9th September, 1881, and was subsequently withdrawn on the 31st July, 1882. It is unnecessary to discuss the effect of such withdrawal as nullifying the application, as paragraph 4 of article 179 provides that time is to run from the date of applying for execution, and not from the date on which the application was disposed of. There are two conflicting decisions of the Bombay High Court on the subject of the applicability of the section 374 of the Civil Procedure Code to such application (see I. L. R., 6 Bom., 681, and I. L. R., 10 Bom., 62; see also I. L. R., 7 All. 359). As the application was made in September, 1881, and the present one not until April, 1885, the latter is clearly time-barred, unless some other step in aid of execution has been taken in the interval.

"It is contended that such a step was taken by the application for execution in respect of costs made on the 19th September, 1882. Whether this is so or not, must depend on the construction to be placed on the second part of Explanation I to article 179 of the Limitation Act. This provides 'that when the decree has been passed severally against more persons than one, distinguishing portions of the

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subject-matter as payable or deliverable by each, the application shall take effect against only each of the said persons or their representatives as it may be made against. But when the decree has been passed jointly against more persons than one, the application, if made against any one or more of them or against his or their representatives, shall take effect against them all. In the present case there were several defendants. The decree in respect of the house was against the present respondent severally, but the order with regard to costs rendered him jointly liable to the plaintiffs with all other defendants except one. This fact, however, does not make the decree two separate decrees. An application to recover costs awarded by the decree is certainly a step in aid of execution of the decree, and as the present respondent was made a party to that application, I think it must be held sufficient under clause 4 of article 179 to keep the decree alive against him by affording a fresh starting point for limitation.'

Against the decree made by the District Court the defendant appealed to the High Court.

Gokuldás Kahándás Párekh for the appellant.

Govardhanrám Mádhavrám Tripathi for the respondent.

The High Court (Nánábhái Haridás and Jardine, JJ.) confirmed the decree of the District Court on the 25th January, 1888.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

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NÁRA'YAN JAGANNA'TH DIKSHIT, (ORIGINAL PLAINTIFF), APPELLANT, *v.* VA'SUDEO VISHNU DIKSHIT, (ORIGINAL DEFENDANT), RESPONDENT.*

Saranjám—Descent of—Impartibility of—Suit for possession of—Possession and interest in immoveable property within Article 144 *of Schedule II of Act XV of* 1877*—Adverse possession—Joint management of saranjám—Manager of saranjám a trustee of profits—Account of management.*

A *saranjám* is ordinarily impartible and descends entire to the eldest representative of the past holder.

In 1885 plaintiff brought this suit to recover possession of certain *saranjám* villages from the defendant. His beneficial right to a third share of the rents and profits of the villages was admitted by the defendant. The point in dispute was the possession and management. The defendant contended (1) that the plaintiff never was entitled to the exclusive possession and management; (2) that he (the defendant) had for years been in actual possession and management and entitled thereto by virtue of an arrangement between all the sharers in the villages; and (3) that the plaintiff's claim to such possession and management was barred.

Held, on the evidence, that the right of management belonged to the plaintiff's branch of the family, and that there was no proof of the arrangement alleged by the defendant. But

*Appeal, No. 76 of 1889.