decree" : *Alamelu Ammal* v. *Rama Aiyar*.[1] That was also the view taken in *The Bengal Coal Company, Ltd.* v. *Apcar Collieries, Ltd.*,[2] where it was stated (p. 930) "If the decree follows the order it will be no straining of the language to say that the order, and for that matter all previous proceedings, get merged in the decree which is the final declaration of the Court's mind and decision and lose their separate existence." See also *Madhu Sudan Sen* v. *Kamini Kanta Sen*,[3] where it was held that the right of appeal from interlocutory orders ceases with the dispcsal of the suit. I, therefore, think that in a case of this nature, if a party wishes to appeal against an order recording a compromise, and a decree has followed, he must, if at all, appeal against the decree, and challenge the order in such appeal.

Appeal dismissed.

J. G. R.

[1] (1922) 43 Mad. L. J. 290. [2] (1924) 29 Cal. W. N. 928.
[3] (1905) 32 Cal. 1023.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Murphy.

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October 31

TRIMBAK TUMBDU SHET RANGARI (ORIGINAL DEFENDANT), APPELLANT *v.* SIPARU CHATURDAS BAIRAGI (ORIGINAL PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act V of 1908), Order XXI, rules 58 proviso, and 63—Application made after unnecessary delay—Order rejecting claim—Order within Order XXI, rule 63—Suit to establish claim—Limitation—Indian Limitation Act (IX of 1908), Schedule I, Article 11.

When an objection to execution proceedings is dismissed under the proviso to Order XXI, rule 58, Civil Procedure Code, 1908, as being made after unnecessary delay, the order rejecting the claim is an order made against the claimant within Order XXI, rule 63, and the time within which to bring a suit to establish the applicant's claim is limited to one year by Article 11 of the Indian Limitation Act, 1908.

Venkataratnam v. *Ranganayakamma* [1]; *Nagendra Lal Chowdhury* v. *Fani Bhusan Das*[2] and *Gobardhan Das* v. *Makundi Lal*,[3] referred to.

*Second Appeal No. 1059 of 1930.

[1] (1918) 41 Mad. 985. [2] (1918) 45 Cal. 785.
[3] (1923) 45 All. 438.

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TRIMBAK TUMBDU v. SIPARU CHATURDAS

SECOND APPEAL against the decision of A. S. R. Macklin, District Judge at Nasik, confirming the decree passed by J. L. Parikh, Subordinate Judge at Satana.

Suit to recover possession.

One Bala Bhica obtained a money decree against Tanaji in 1917. Pending proceedings in execution of the decree, Tanaji sold to the defendant Survey No. 84 (1) on June 28, 1918. The executing Court attached the survey number and put it to auction sale. The defendant thereupon put in an objection to the attachment under Order XXI, rule 58, Civil Procedure Code, 1908, but the objection was dismissed on the ground that the application had been made at an unduly late stage. The property was eventually put to sale to satisfy the decree and at the sale the plaintiff purchased an undivided one-fourth share of Survey No. 84 (1). In 1928 the plaintiff sued to recover by partition the one-fourth share.

The defendant contended *inter alia* that he was a *bona fide* purchaser for value before the plaintiff's purchase and therefore no interest passed to the plaintiff by his auction purchase.

The Subordinate Judge held that it was not open to the defendant to rely on the sale effected in his favour by Tanaji, as he did not file a suit to set aside the order passed rejecting the application to raise the attachment in execution of decree against Tanaji. He, therefore, decreed that the plaintiff was entitled to recover one-fourth share of suit land by partition.

On appeal the District Judge confirmed the decree.

The defendant appealed to the High Court.

H. M. Choksi, for the appellant.

S. Y. Abhyankar, for the respondent.

BEAUMONT C. J. This is a second appeal from a decision of the District Judge of Nasik raising a short point of law

which has come before the other High Courts in India, but does not appear to have come before this Court. The point of law is whether, when an objection to execution proceedings is dismissed under the proviso to Order XXI, rule 58, as being made after unnecessary delay, the order rejecting the claim is an order made against the claimant within Order XXI, rule 63. If the order does fall within rule 63 then the time within which to bring a suit to establish the applicant's claim is limited to one year by Article 11 of the Indian Limitation Act.

The facts giving rise to the question are not in dispute. A money decree was obtained in 1917 against one Tanaji, and on June 28, 1918, Tanaji sold Survey No. 84 (1) the property in suit to the defendant. Execution proceedings were then taken under the decree of 1917 and in 1920 an undivided one-fourth of Survey No. 84 (1) was purchased by the plaintiff in those execution proceedings. On July 7, 1919, the defendant, knowing about those execution proceedings, filed an application to raise the attachment, and on January 22, 1920, that application was dismissed under the proviso to rule 58 of Order XXI. The actual terms of the order of January 22, 1920, were "Application rejected. Costs on applicant". Order XXI, rule 58, so far as material, provides that where any claim is preferred to, or any objection is made to, the attachment of any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects as if he was a party to the suit: Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed. It was under that proviso that the order of January 22, 1920, was made. Then rule 59 of Order XXI contains provisions as to the evidence to be adduced on

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Beaumont C. J.

a claim under rule 58, and rules 60, 61 and 62 contain provisions as to an investigation made under rule 58. Then rule 63 provides that where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive. Then Article 11 of the Indian Limitation Act provides that the claim by a person against whom *inter alia* the following order has been made to establish the right which he claims to the property comprised in the order, namely, an order under the Code of Civil Procedure, 1908, on a claim preferred to or an objection made to the attachment of property attached in execution of a decree, must be brought within one year from the date of the order. So that, if this order of January 22, 1920, is an order made against the claimant within rule 63, he must bring his suit within a year, and admittedly he did not bring this suit within that period. On the language of rule 63, apart from authority, it seems to me difficult to see why an order dismissing the claimant's application with costs is anything but an order made against the claimant. Mr. Choksi for the appellant has contended that the only order referred to in rule 63 is an order made upon an investigation of the claim made under rule 58. If that was the intention of rule 63 it would have been easy so to provide. Not only has the Legislature not so provided, but they have adopted language in rule 63 different from the language of section 283 of the older Code which rule 63 replaced, under which section the appellant's claim would have been right. Section 283 was confined to orders made under the three preceding sections which corresponded to rules 60, 61 and 62 of Order XXI, whereas under rule 63 the language is perfectly general; it is not confined to orders made under the three preceding rules, but covers any order made against the party making the claim. Mr. Choksi contends that that inflicts a hardship on his client, which

could not have been intended by the Legislature. Even if a hardship were inflicted we could not do otherwise than give effect to the plain language which the Legislature has used. But I am not satisfied that in fact there is any material hardship. The claimant in this case, objecting to an attachment being levied on the property which he claimed to have purchased, was not bound to avail himself of the procedure provided in Order XXI, rule 58. If he had not availed himself of that procedure, he would have had the normal period of 12 years in which to bring his suit. Having availed himself of that procedure he must be taken to have known that if his claim failed he would have only one year in which to bring his suit, and it does not seem to me to matter much whether the claim failed on its merits, or on the ground that it was presented after undue delay. In either case the claimant knew when he presented his claim and adopted the procedure under Order XXI, rule 58, that his period of limitation would be limited to one year after an order made against him. This view is in accordance with the view taken by the other High Courts. I would refer particularly to the decision of the Full Bench of the Madras High Court in *Venkataratnam* v. *Ranganayakamma*,[1] the decision of the Calcutta High Court in *Nagendra Lal Chowdhury* v. *Fani Bhusan Das*,[2] and the decision of the Allahabad High Court in *Gobardhan Das* v. *Makundi Lal*.[3] With all those decisions I respectfully agree. I think, therefore, that the decisions of the lower Courts were right and that the appeal must be dismissed with costs.

MURPHY J. I agree.

Decree confirmed.

J. G. R.

[1] (1918) 41 Mad. 985. [2] (1918) 45 Cal. 785.
[3] (1923) 45 All. 438.