1862. *December* 22 *S. A. No.* 63 *of* 1862

Mr. Branson's argument, that acquiescence is a binding presumption of law after the lapse of several years. But it would be difficult to apply such a doctrine. What is to be the time which is so to operate? There is no dividing time stated, and whilst in one case nothing may appear to account for the lapse of time, in another the same length of time may be shewn to be inconsistent with either consent or acquiescence. The decision referred to cannot, I think, be taken to amount to more substantially than this, that there was evidence in that case which showed acquiescence. If, however, it can be said to go beyond that, I cannot concur in it. In the two other cases cited, lapse of time appears properly to have been put as matter of evidence.

FRERE, J. concurred.

Issue directed.

APPELLATE JURISDICTION (*a*)

Civil Petition No. 130 *of* 1862.

Ex parte CHELLAPPERUMÁL PILLAI.

A Mufti Sadr Amin may set aside an attachment in a suit issued from his court and no longer properly in force in the suit, although no express statutory power to do so exists.

But on a petition to set aside such an attachment, he cannot also make a declaration as to the right to the property attached and claimed to have been acquired subsequently, and direct that possession should be transferred to the petitioner.

1863. *January* 5. *Civ. P. No.* 130 *of* 1862.

THIS was a petition under section 35 of Act XXIII of 1861 (*b*), against an order of J. W. Cherry, the Civil Judge of Salem, on Summary Appeal Petition, No. 135 of 1862.

It appeared that certain land in zil'a Salem had been taken on attachment pending a suit (No. 510 of 1830) respecting it in the court of the Mufti Sadr Amin. The suit

(*a*) Present Scotland, C. J. and Frere, J.

(*b*) This section enacts that the Sadr Court may call for the record of any case decided on appeal by any Subordinate Court in which no further appeal shall lie to the Sadr Court, if such Subordinate Court Shall appear in hearing the appeal to have exercised a jurisdiction not vested in it be law, and the Sadr Court may set aside the decision passed on appeal in such case by the Subordinate Court, or may pass such other order in the case as to such Sadr Court may seem right.

1863. *January 5.* *Civ. P. No.* 130 *of* 1862.

was dismissed for want of prosecution, but the defendant, the owner of the land, omitted to get the attachment removed, and died, leaving a son and heir the petitioner. Thereupon the defendant's widow, usurping a right to alienate, sold the property. The vendee remained in undisturbed possession for thirty years. The son, the legal heir, then petitioned the Mufti Sadr Amin of Salem to set aside the attachment and get back the property as having been illegally sold. The Mufti Sadr Amin made an order, not only setting aside the attachment, but also declaring that the widow had no right to sell, and that the petitioner should be put into possession of the land. On appeal the Civil Judge reversed this order so far as it related to putting the patitioner into possession.

Sadagopacharlu for the petitioner.

SCOTLAND, C. J. :—We are asked to exercise the general jurisdiction given to us by section 35 of Act XXIII of 1861; and if the appellate court below had no power to entertain the appeal, then it is clear that we may exercise the jurisdiction given by that section.

The first question then is, had the appellate court below jurisdiction to entertain the appeal? Now I am not aware of the existence of any provision giving the right to appeal against an order of the kind made by the Mufti Sadr Amin in the present case. On the contrary, section 364 of Act VIII of 1859 expressly negatives any right to appeal against an order like this made after decree, except as otherwise expressly provided; and I have vainly asked the learned vakil for the respondent to point out any provision such as I have referred to. The conclusion is that the Civil Court had no such jurisdiction as it has assumed to exercise; and the case therefore comes within the jurisdiction given under section 35 of Act XXIII of 1861.

Then, the next question to consider is whether or not the Mufti Sadr Amin had power to make the order in question? Now, although there appears no express statutory power to set aside the attachment, he is certainly authorised to set aside an attachment issued from his court by mistake or on insufficient grounds or no longer properly in force in the suit. Otherwise an attachment might become the means

1863.
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of inflicting the greatest injustice, instead of being, as it was intended to be, an useful means of enforcing legal rights. In such a case nothing can be more reasonable than that a party should be entitled to call upon the Court to relieve him from the prejudice of having a standing attachment against his property. It is clear, then, I think, that the Mufti possessed an incidental jurisdiction to set aside the attachment ; and in the present case it was right and proper for him do to so. But the Mufti not only does this but something more. He not only sets aside the attachment, but goes on to direct that possession of the property shall be transferred to the petitioner. This was unquestionably *extra vires*. The Mufti should not have gone on to decide as to the widow's right to sell and the possession. He should merely have confined himself to setting aside the attachment. The petitioner cannot complain, for the application is made after the lapse of thirty years, and his laches in lying by for such a time is altogether his own.

As then the order of the Mufti Sadr Amin, so far as it declared the incapacity of the widow to sell, was clearly *extra vires*, we may, without setting aside the order *in toto*, direct that it shall stand so far as it sets aside the attachment ; but that it shall be quashed so far as it was declaratory of the right to the property. I will only add that it seems very likely that this was an attempt to get rid of the statute of limitations, which will probably be relied on if a suit is brought for possession of the land.

FRERE, J. concurred.

Order modified.