

APPELLATE JURISDICTION (a)

*Special Appeal No. 371 of 1866.*SETTIAPPAN and 3 others.....*Appellants.*SARÁT SINGH and another.....*Respondents.*

The effect of the last sentence of Sec. 246, Act VIII of 1859, is to exclude a party to an investigation under that Section from any other remedy than that expressly provided for him by that Section, viz., a regular suit to be brought within one year from the date of the order made against him; and such party cannot wait till the sale of the attached property has taken place and been confirmed, and then bring his suit within one year from the last date.

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THIS was a special appeal from the decision of C. F. Chamier, the Civil Judge of Salem, in Regular Appeal No. 118 of 1865, confirming the decree of the District Munsif of Ussur, in Original Suit No. 617 of 1864.

G. E. Branson, for the special appellants, the 2nd, 3rd, 5th and 9th defendants.

The facts sufficiently appear in the following.

JUDGMENT :—It appears that the lands now sued for were attached in execution of a decree made in favor of the tenth defendant. The plaintiffs then applied to the Court executing that decree to release the lands from attachment under Section 246, claiming them as their own property. The order rejecting their application was dated the 13th July 1863, and the present suit was not brought till a year and four months from that date. The lands were eventually sold to the defendants, the special appellants, in execution of the decree, and the present suit, it appears, has been brought within one year from the date of the confirmation of such sale. The question is whether the present suit has been brought in time. The Civil Judge decided that it had been brought in time, and that Clause 3 of Section I of the Limitation Act applied; but unfortunately he gives no reason for his decision. No doubt the object of the present suit is to set aside the sale in the execution of the former decree, but Clause 3 applies only “when

(a) Present : Collett and Ellis, J. J.

such suit is maintainable ;” and the question is whether a party to an investigation under Section 246 of the Code is competent to maintain a suit to set aside the sale that may ultimately be made by the Court, or is limited to his remedy by a regular suit to establish his rights, and so to set aside the order made against him in the proceeding under Section 246 of the Code. We think that the effect of the last sentence of Section 246 is to exclude a party to an investigation under that section from any other remedy than that expressly provided for him by that section, viz., a regular suit to be brought within one year from the date of the order made against him, and that, consequently, such party cannot wait till the sale of the attached property has taken place and been confirmed, and then bring his suit within one year from the last date. The Legislature has provided a procedure for the summary investigation of his rights pending the attachment of the property prior to its sale ; the procedure in such investigation is to be the same “as if the claimant had been made a defendant to the suit ;” it is in effect a suit between the decree-holder and the claimant ; no appeal is allowed to either party, but when a party has availed himself of, or has been subjected to, such procedure, and an order has been made against him, his sole remedy, as it seems to us, is that expressly provided for him. The section cited from the Code fixes the period of limitation, and it is not necessary to refer to the Limitation Act, but we have little or no doubt that an order under Section 246 of the Code is one of those orders referred to in Clause 5 of Section 1 of the Limitation Act. The result of our view of the law is, that the present suit has not been brought in time, and must consequently be dismissed, and this must be with the costs of such of the defendants as appeal throughout.

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Appeal allowed.