

## APPELLATE JURISDICTION (a)

*Special Appeal No. 171 of 1866.*VENKATANÁRU.....*Appellant.*AKKAMMA and 2 others.....*Respondents.*

Certain property was sold in 1858, in execution of a decree, as the property of the present 2nd defendant's brothers. Plaintiffs presented petitions claiming a right in the property and protesting against the sale. Their petitions were rejected and they were referred to a regular suit, which they brought in 1861. Under the old law the time within which a suit might be brought on such a cause of action was 12 years. Sec. 246 of Act VIII of 1859 shortened the period to 1 year.

*Held*, reversing the decision of the Civil Judge, that the plaintiff's action was not barred.

The period of limitation contained in Sec. 246, Act VIII of 1859, is applicable only to a case in which the procedure prescribed by that Section has been adopted.

THIS was a special appeal from the decision of J. G. Thompson, the Acting Civil Judge of Cuddapah, in Regular Appeal No. 80 of 1863, modifying the decree of the Principal Sadr Amin of Cuddapah in Original Suit No. 1 of 1861.

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*Venkatapathy Rao*, for the appellant, one of the plaintiffs.

The Court delivered the following judgments, in which the facts of the case are fully set forth.

INNES, J.—Certain property was attached in execution of a decree of the Civil Court and sold in the year 1858 as the property of K. Subbanna, brother of the present second defendant, against whom the decree had been passed.

Plaintiffs presented petitions claiming right in the property so attached and protesting against the seizure and sale of it. Their petitions were however rejected and they were referred to a regular suit.

The time within which a suit might be brought upon such a cause of action was at the date of the order of the Civil Court in 1858, 12 years. Section 246 of the Code of Civil Procedure introduced a shorter period of limitation,

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viz., 1 year for actions to establish claims which should be rejected by orders passed under that Section. The plaintiffs brought their suit in 1861, and the Civil Judge in the appeal from the decree of the Principal Sadr Amin, who awarded the plaintiffs Rupees 1,171-12-2, as damages, was of opinion that the time allowed from the date of the order in 1858 for bringing a suit was the time given in Section 246 of the Code of Procedure just referred to; and that consequently plaintiffs had lost their remedy by action. The question now before us is whether plaintiffs' action is barred, and my opinion is that it is not. I was at first inclined to doubt whether the words in Section 246 "the order which may be passed under this Section," &c., standing as part of a Procedure Code, might not be intended to be read as though they ran as follows:—"The order which may be passed in circumstances to which this section would have been applicable had the Code been at the time in operation, &c." But on consideration I am satisfied that that meaning cannot be attributed to them and that the order passed on plaintiffs' petitions protesting against the attachment and sale of the property cannot be said to be an order passed *under this section*.

That being so, it is clear that plaintiff is not by this section limited to the period of one year from the date of the order passed in his case. The present law of limitation was not in force at the date of the institution of plaintiffs' suit, and the case is therefore governed by the old law and the plaintiff's right of action is not barred.

The decision of the Civil Judge therefore must, in my opinion, be reversed and the case be remanded for decision on the merits.

HOLLOWAY, J.—I am of opinion that the period of limitation contained in Section 246 is applicable only to a case, in which the procedure prescribed by that section has been adopted. In this case it manifestly was not adopted. I desire to give no opinion as to the effect of the Limitation Act. On the reasons stated at the hearing, I am of opinion that the suit must be remitted.

*Suit remanded.*