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argument a very sound one ; but it is an undisputed fact, and indeed was the ground of title on which the 1st plaintiff ultimately succeeded in 1863 in ejecting the usurpers who had been in possession since 1829, that this zemindary was the self-acquired property of the Istimrar Zemindar who executed the deed of 1828, and there can therefore be no question as to his right, according to the general Hindu Law, to make the alienation, at least in the absence of any male issue. Upon the whole we are of opinion that the contention for the special appellants is well founded, and that we are bound to hold in accordance with the Judgment of the Privy Council in 8 *Moore* that the deed of 1828 is not invalid for want of registration and is binding upon the plaintiffs. The result is that we shall reverse the decree of the Lower Appellate Court and dismiss the plaintiff's suit, and we think that no sufficient reason appears why the 4th and 12th defendants, the special appellants, should not have their costs as well in both the Lower Courts as also of this special appeal, and it will be decreed accordingly.

Appellate Jurisdiction (*a*.)

Special Appeal No. 541 *of* 1868.

NETIETOM PERENGARYPROM *alias* PANISHERRY DAMODREN NAMBUDRY. } *Special Appellant (Plaintiff.)*

TAVANBARRY PARAMESHWAREN NAMBUDRY. } *Special Respondent (Defendant's heir.)*

The plaintiff brought a suit to establish his right to certain property as against the claim which the defendant had successfully made under Section 246 of the Civil Procedure Code in execution of a decree obtained against the plaintiff. The order of the Court directed the release of the property from attachment. The present suit was brought more than one year from the date of the order.

Held, per Scotland, C. J, Bittleston, and Collett J, (Innes J. doubting) that the plaintiff was a party against whom the order was "given," within the meaning of the Section, and that the suit was barred by the Section.

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THIS was a Special Appeal against the decision of I. K. Ramen Nair, the Principal Sadr Amin of Calicut, in

(*a*) Present : Bittleston, Innes, and Collett, J. J.

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Regular Appeal No. 314 of 1867, confirming the decree of the Court of the District Munsif of Nedunganad in Original Suit No. 649 of 1864.

The plaint set forth that, when the 17 pieces of land were attached in execution of the decree of the late Muft Sadr Amin of Calicut in Suit No. 11 of 1862 passed against the plaintiff, the defendant presented a petition of claim No. 48 of 1863 to the Court of the Principal Sadr Amin of Calicut, stating that he (defendant) was in possession of the said pieces of land and the remaining pieces of land mentioned in the schedule under a jenmam deed of sale of such property obtained in 1838, and the Court thereupon investigated the claim and decided on the 17th September 1863 that the lands should remain in *statu quo*, and that the party feeling aggrieved might seek redress by a regular suit. He therefore brought this suit, valued at rupees 403-5-3, for setting aside the pretensions of the defendant as to jenm right.

The following is taken from the Munsif's judgment:—

The plaintiff, his vakil, and Krishnen, the writer of the plaint and vakalutnamah, were examined.

It appears that the cause of this action is the order dated 17th September 1863 on a petition of claim No. 84 of 1863 presented by the defendant when the property was placed under attachment in execution of the decree of the Mufti Sadr Amin of Calicut in Suit No. 11 of 1862.

Section 246 of the Civil Procedure lays down that a regular suit against an order on a claim presented on property attached in execution of a decree, must be instituted within one year from the date of such order, but his suit was only instituted a year and four day after the said order, namely on the 21st September 1864.

Upon Appeal, the Principal Sadr Amin confirmed the decree of the District Munsif for the follows reasons:—

The main question to be decided in this case is whether the limitation prescribed in Section 246 of Act VIII of 1859 is or is not applicable to this case.

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The appellant's vakil argues that it does not apply, because the plaintiff has not brought his suit to get the property sold for the judgment debt in question. The Section under consideration does not, in my opinion, make any such distinctions, as it only enacts that "the party against whom the order has been given may bring a suit to establish his right within one year." The procedure prescribed by the Section also appears to have been adopted in the case before us, and as the plaintiff has entirely based his suit upon an order passed under that Section, his suit should have been brought within the period prescribed in the Section.

Plaintiff presented a special appeal to the High Court on the grounds that,—

The suit was not barred by the 246th Section of the Civil Code of Procedure.

The order on the petition, dated 17th September 1863, did not define the rights of the debtor and the intervenor

Gover, for the special appellant, (the plaintiff).

Snell, for the special respondent, (the defendant's heir.)

The following are the opinions recorded :—

SCOTLAND, C. J.—This is a suit to establish the plaintiff's right to the property mentioned in the plaint, as against the claim which the defendant had successfully made under Section 246 of the Code of Civil Procedure after the property had been attached in execution of a decree obtained against the plaintiff in the Court of the Mufti Sadr Amin of Calicut. The order of the Court in favor of the claim and for releasing the property from the attachment was passed on the 17th September 1863, and this suit was instituted on the 21st September 1864. Both the Lower Courts have decreed the dismissal of the suit on the ground that as the interval between those dates was more than a year, the suit was barred by the provision in Section 246; "the order which "may be passed by the Court under this Section shall not "be subject to appeal, but the party against whom the order "may be given shall be at liberty to bring a suit to estab-

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"lish his right at any time within one year from the date "of the order."

The ground of objection now relied upon on the part of the plaintiff is that the investigation under the Section was between the judgment-creditor and the claimant (th present defendant,) and that the former and not the plaintiff (the judgment-debtor) was the party against whom the order was given within the meaning of the Section, and consequently that the limitation of one year did not apply to the plaintiff's right to sue.

I am of opinion that this objection is not tenable, and that the decision of the Lower Courts is right. The order in favor of the claim was undoubtedly against the interests of the plaintiff, for it was a decision against the very right which he has brought this suit to establish; and I think that, as the original defendant and judgment-debtor in the suit, he became a party to the investigation of the claim under the Section. The effect of the Section is to make the investigation of a claim to attached property a further summary proceeding between the parties to the suit who are interested in the property which is the subject of the claim. It provides that the Court is to proceed just as if the claimant had been originally made a defendant to the suit, and also for the summoning of the original defendant as a party to the investigation in the same manner as he might have been summoned before the decree, and all the questions which are made determinable by the Court on the investigation relate to the right of the judgment-debtor in the attached property. The plaintiff therefore was as much a party against whom the order was made under the Section as the judgment-creditor and the words "the party" have a plural as well as singular signification. Consequently, the suit has been rightly held to be barred, and the decree appealed from should be affirmed with costs.

INNES J.—In this Special Appeal the sole question is whether plaintiff is within time in bringing his suit.

In Suit No. 11 of 1862 he was defendant, and a decree was passed against him in enforcement of which certain lands

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were attached as his by the decree-holder. A claim against them was then preferred by the present defendant, and the Court which investigated the claim should have passed an order either allowing or disallowing the claim. The order actually passed was that the property should remain as it was, that is, should continue under attachment without any steps being taken to carry further the enforcement of the decree, and that the aggrieved party should seek redress by a regular suit. This order, no doubt, affected prejudicially the interests of the *decree-holder*, as he was thereby deprived for an indefinite period of the benefit of his attachment. The order therefore was in some sense an order passed against him, but not I think in the sense intended in the Section. Further, the property had been under attachment, and would have been sold in satisfaction of the decree, and in so far as by this order it was rendered for the present unavailable to satisfy the debt due by this plaintiff the order may also be said to have been passed against him. But to determine whether the order in this proceeding was in the sense intended in the Section passed against any one of the parties to it, it is necessary to see what was the issue between the parties to that proceeding. It was simply whether the claimant had a right to the property attached, and if the order passed can be said to be an order at all under the Section, the effect of it in that proceeding was to disallow the claim and therefore to decide this issue against the claimant. The claimant therefore was the person againt whom and against whom alone in my opinion the order was passed in the sense intended in the Section, and I think that the plaintiff's claim is not barred. I would reverse the decrees below and direct that the suit be disposed of on the merits.

In consequence of this difference of opinion, the order passed under Section 246 was called for and returned and thereupon the following modified opinion was recorded by

INNES J.—It now appears that the order of the Principal Sadr Amin was not that the property should remain in *statu quo* as translated in the printed paper, but that it should revert to its original condition; that is, that the attachment should be considered at an end.

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This being so, was there any order within the meaning of the Section passed against this plaintiff? He was the owner of the property and it was attached as his. The question at issue in the proceeding before the Principal Sadr Amin was whether the claimant had a right to the property attached.

I am of opinion that the order passed was no order at all within the meaning of the Section, and that whether it was so or not, it was not an order passed against the plaintiff, because the issue certainly did not allow (though it did not distinctly disallow) the right of the claimant. I am therefore of opinion that the claim of plaintiff in this suit is not barred by reason of his not having brought the suit within one year from date of the order.

The following are the judgments of the full Court :—

BITTLESTON, J.—In consequence of a difference of opinion between the Chief Justice and Mr. Justice Innes, this case was re-argued before myself, Mr. Justice Innes, and Mr. Justice Collett, and, after carefully considering the arguments addressed to us, I am of opinion that the present plaintiff was a party against whom the order of the Principal Sadr Amin was given in the former suit under Section 246 of Act VIII of 1859, and that therefore after the period of one year he was prevented from bringing a suit to establish his right. The reasons for this decision are fully expressed in the judgment written by the Chief Justice, in which I concur.

COLLETT, J. concurred.

INNES, J.—It seemed to me before hearing the argument in appeal to the full Court that the determination of the right in the attached property of the judgment-debtor and the claimant who in this proceeding occupy the position of 1st and 2nd defendants respectively was merely incidental to the substantial object of the proceeding, the determination of the question of whether the execution should proceed or the claim be allowed. In this view I looked upon the result arrived at as an order in favor of the claimant and against the judgment-creditor only.

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I do not, after hearing the argument, feel sufficient confidence in my opinion to dissent from the view taken by the Courts below and by my colleagues in full bench.

Appellate Jurisdiction (a.)

Special Appeal No. 61 *of* 1869.

ACHUMANDE AGATH KUNHI PATHUMAH and another.. } *Special Appellants (1st and 2nd Defendants.*

MAKACHINDE AGATH MAKACHI and another..... } *Special Respondents (Plaintiffs.)*

The plaintiffs were in possession of certain immoveable property, when the Joint Magistrate, under Section 319 of the Criminal Procedure Code, placed the 1st defendant in possession until the rights of the parties should be determined by a competent Civil Court.

Held, in a suit to recover possession of the property instituted more than six months after the plaintiffs were dispossessed, that the plaintiffs could not recover without showing title.

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THIS was a Special Appeal against the decision of K. R. Krishna Menon, the Principal Sadr Amin of Tellicherry, in Regular Appeal No. 230 of 1868, reversing the decree of the Court of the District Munsif of Kaway in Original Suit No. 85 of 1866.

The plaint stated that the property sought to be recovered was the ancient jenmon of the 1st plaintiff, and that upon a Police complaint the 2nd defendant having raised a jenmem dispute, the property was deposited with the 1st defendant. The 1st and 2nd defendants had no claim whatever to this land,—therefore it was prayed that the property be recovered to the plaintiff with rupees 320-15-10, the value of produce.

The issue was whether or not the disputed land was in the possession of the plaintiff and the 1st and 2nd defendants until ousted by the Magisterial decision.

The Munsif found that the title set up by the plaintiffs had not been established and dismissed the suit upon that ground.

(a) Present: Scotland, C. J. and Collett, J.