

August 1865 which the Court dismissed by an order dated the 14th October 1865. Consequently more than three years had elapsed between the dates of the applications but not from the date of the former order, and the question is whether the period of limitation under Section 20 ran from the date of the former application, as the Civil Court has held, or from the date of the order dismissing it, and we think clearly from the latter date.

1869.  
March 10.  
C. M. R. A.  
No. 272 of  
1868,

The Section requires that some proceeding shall have been taken to enforce the decree or keep it in force within three years preceding the application, and so long as the former application remained on the file of the Court for consideration and determination it was a proceeding *de die in diem* to enforce the decree. Until the order of the Court disposing of it had been made a fresh application for the same purpose would not have been permissible. The application therefore was within the period of limitation, and the order appealed from must be reversed with costs.

**Appellate Jurisdiction. (a)**

*Civil Miscellaneous Special Appeal No. 18 of 1869.*

T. V. RAGAVA PISHARDI..... *Petitioner.*

AYUMANJIRI MANKAL THUPAN *alias* }  
VALIA THAMBRAKLE... } *Counter-Petitioner.*

A decree-holder applied for the sale of certain property then under attachment in the suit. The Court refused to issue process for the sale on the ground that the property could not be sold as certain claims and suits respecting it were still pending. The claims and suits having been determined the application was renewed. More than three years had elapsed between the date of the order on the first application and the date of the renewed application.

*Held*, that the second application was not barred, the order upon the first application operating simply as a temporary stay of process for the sale of the property and there was a pending proceeding to enforce the decree during the stay.

**A** PPEAL against the order of J. C. Hannington, the Acting Civil Judge of Calicut, dated the 23rd October, 1868.

1869.  
March 10.  
C. M. S. A.  
No. 18 of  
1869.

The petitioner (the decree-holder) applied to the Court of the Principal Sadr Amin of Calicut praying, that the

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

1869.  
*March* 10.  
*C. M. S. A.*  
 No. 18 of  
 1869.

amount of the decreè and interest in Suit No. 161 of 1861 might be recovered by sale of the defendants' property under attachment, and the balance from the defendants themselves.

The Principal Sadr Amin made an order directing a warrant of execution to issue as prayed.

The judgment-debtors appealed to the Civil Court, alleging that the application for execution was barred by the Limitation Act.

The Civil Judge found that a period of three years and ten months had elapsed between the first application for execution of the decree and the present application; but the first application was rejected because, though the property was under attachment at the instance of the petitioner, the attachment was removed in consequence of certain claims made and certain suits pending respecting the property. The petitioner waited until these claims were decided, and the Civil Judge held that under the circumstances the applicant was not barred.

The judgment-creditor appealed, relying on the Act of Limitation.

*Johnstone*, for *Green*, for the petitioner.

*Karunagara Menon*, for the counter-petitioner.

The Court delivered the following

**JUDGMENT.**—The question in this case is whether the plaintiff's right to process of execution is barred by Section 20 of the Act of Limitation, an interval of more than three years from the date of an order on a previous application having elapsed when the present application was made. The previous application was for the sale of the property of the judgment debtor then under attachment in the suit, and the order shows that the Court refused to issue process for the sale on the ground that the property could not be sold, as certain claims and suits respecting it were still pending. From the date of the order the property has continued under the attachment, and on the claims and suits being determined the application for a sale was renewed.

On these grounds the Civil Court was clearly right in holding that the application was not barred. The order

operated simply as a temporary stay of process for the sale of the property, and there was therefore a pending proceeding to enforce the decree throughout the period of the stay. The appeal will be dismissed with costs.

1869.  
March 10.  
C. M. S. A.  
No 18 of  
1869.

**Appellate Jurisdiction (a)**

*Special Appeal No. 342 of 1868.*

RAMANADA BUTT.....*Special Appellant.*

BITHEE and another.....*Special Respondents.*

The plaintiff sued to obtain a decree declaring that the ancestral land possessed by the family of the plaintiff was not liable to seizure and sale in satisfaction of an *ex parte* decree obtained by the defendant in a suit against the yejaman of the plaintiff's family on the ground that the decree had been obtained collusively and fraudulently for a debt alleged to have been contracted for the benefit of the family.

The decree against the yejaman was passed on the 22nd June 1857, and upon attachment of the family property the plaintiffs made a claim under Section 246 of the Civil Procedure Code, alleging their independent right to the property and resisting a sale. The claim was disallowed on the 18th October 1861, and an appeal from that decision was dismissed on the 15th November 1861. The present suit was instituted on the 2nd February 1864.

*Held*, that this was not a suit to which the limitation provided by Section 246 of the Civil Code or by Clause 5 Section 1 of Act XLV of 1859 was applicable, and that the suit was not barred.

**T**HIS was Special Appeal against the decision of Srinivassa Row, the Principal Sadr Amin of Mangalore, in Regular Appeal No. 325 of 1866, confirming the decree of Court of the District Munsif of Mulki in Original Suit No. 15 of 1864.

1869.  
March 31.  
S. A. No 342  
of 1868.

*Srinivasa Chariyar*, for the special appellant (the defendant.)

*Kurunagara Menon*, for *Parthasarathy Iyengar*, for the special respondents (the plaintiffs.)

The facts are sufficiently set forth in the following

**JUDGMENT:**—The plaintiffs in this case are members of a family subject to the Aliyasantana law, and the suit has been brought to obtain a decree declaring the ancestral land possessed by the family not to be liable to seizure and sale in satisfaction of an *ex parte* decree obtained.

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