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No council were instructed.

The Court delivered the following

JUDGMENT:—We are opinion that it was not the duty of the Nundiyalumpett District Munsif's Court to name a time for the presentation of the plaint in the proper Court under Section 3 of Act XXIII of 1861, and that the case must be looked at just as if he had not named a time. Now as the presentation of a plaint is the commencement of a suit, we should probably have held that the bar of the suit was saved by the provision in Section 14 of the Act of Limitations if it had appeared that by excluding the time between the presentation and return of the plaint the period of limitation was not exceeded, but the fact is otherwise. We therefore hold that the suit was barred when presented to the District Munsif's Court of Cuddapah.

Appellate Jurisdiction. (a)

Civil Mis. Regular Appeal No. 15 *of* 1870.

A. VENKATA NARASIMHA APPAROW NAIDU...*Petitioner.*

K. VENKATAKRISTNIA and another...*Counter-Petitioners.*

While a decree for money was being executed by the sale of immovable property, the judgment-creditor petitioned the Court to stay the sale for two days as the defendants, the judgment-debtors, had entered into a razinamah with him. On the same day the judgment-debtors petitioned the Court to continue the sale for three days. Two days afterwards the judgment creditor presented a Petition to the Court, stating that the judgment-debtors had executed a note in his favor for Rs. 8,500 in part payment of the decree and promising to execute a deed of sale on a stamp, but a sum of Rs. 9,600 having been subsequently offered, the judgment-debtors failed to execute the deed of sale: and he prayed that the judgment-debtors might be examined in respect of the sale for Rs. 8,500, and that the sale to him be confirmed.

The Civil Judge made an order refusing to accede to the prayer of the judgment-creditor.

Held, (Innes, J. dissenting) that the order of the Civil Judge was right.

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THIS was an appeal against the order of E. C. G. Thomas, the Civil Judge of Vizagapatam, dated the 15th October 1869, passed on Miscellaneous Petition, No. 795 of 1869.

Rama Row, for the counter-petitioner.

(a) Present: Holloway, Innes and Kindersley, JJ.

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Srinivása Cháriyár, for *Sloan,* for the petitioner.

The facts appear from the following judgments:—

INNES, J.—I do not think that the prohibition of a private alienation of property attached extends to transactions between the parties in adjustment of the decree. There can be no question that if the Petitioner in this case had alleged that the sale to him had effected an entire discharge of his demand and on that ground had asked for a stay of process, the Court would have been bound to stay the auction notwithstanding the violation of the literal terms of Section 240, which, I think, is only intended to prevent fraud on the judgment-creditor and not to obstruct such arrangements as the parties themselves may choose to make. Then as adjustments in whole or in part are equally recognized by the Code, I do not see that any distinction can be made in the application of the prohibition in Section 240 between the case of the private sale to the judgment-creditor being in part adjustment, and that of its being an entire adjustment of the decree. It seems to me that when an adjustment is alleged by the judgment-creditor and the Court is asked to act upon it, it must record satisfaction to the amount stated to have been satisfied, and stay any process of execution which the judgment-creditor may in consequence of the adjustment desire to have stayed. The Judge should, I think, in the present instance, have recorded satisfaction to the amount which the judgment-creditor gave as the extent to which the decree had been satisfied, and stayed the sale by court auction, leaving the parties to settle the question, should any be raised, of whether there had been a private sale or not. Of course, when I speak of staying process, I do not intend it to be understood that this should be done where it would prejudice the interests of third parties, as where the property had been actually knocked down to a purchaser, but the alleged adjustment to the extent specified should, I think, even in that case be recognized.

I think the order refusing to recognize the adjustment and stay the sale was wrong, and that it should be reversed, and the sale set aside and satisfaction of the decree recorded to the amount of 8,500 Rupees.

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KINDERSLEY, J.—In this case, while a decree for money was being executed by the sale of immoveable property, the judgment-creditor, on the 6th September, petitioned the Court to stay the sale for two days, as the defendants had entered into a razinama with him. I have not been able to find that the defendants, the judgment-debtors, signified to the Court that they consented to the sale being stayed. On the contrary, in a Petition of the same date, the 6th September, they say that the bid for the property is already 9,000 Rupees and that the land will fetch 11,000 Rupees if the sale be continued; they therefore pray that the sale may be continued for three days.

Two days afterwards, on the 8th September, the decree-holder presented another Petition, in which he stated that on the 6th idem the defendants had executed a note in his favor on plain paper selling the property for Rupees 8,500 in part payment of the decree and promising to execute a deed of sale on a stamp: the Petitioner proceeded to complain that the auction not having been stayed and the sum of Rs. 9,600 having been bid for the property, the defendants delayed to execute the deed of sale for Rs. 8,500 on a stamp. He therefore prayed that the defendants might be examined in respect of the sale for rupees 8,500, that the property might be confirmed to him, and that execution might be issued upon other attached property. He further claimed to be entitled to whatever the property might fetch in excess of Rupees 8,500.

The question is whether the Civil Judge was bound to comply with this Petition. It appears to me that after the attachment, and while the property was in the custody of the Court, no sale of the property could be made, even to the decree-holder, without the sanction of the Court. The attachment of immoveable property is made by a written order prohibiting the defendant from alienating the property by sale, gift, or in any other way, and *all persons* from receiving the same by purchase, gift, or otherwise. Section 235. It is nowhere laid down in the Code that the decree-holder may at any time stay the progress of a sale by auction by alleging a private purchase. And I think it

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was in the discretion of the Judge to disallow such private purchase, and that he exercised his discretion wisely in disallowing the purchase in this case, when he saw that the property would fetch a much larger price. I would therefore dismiss the appeal.

HOLLOWAY, J.—The question is whether the Civil Judge was bound to stay a sale of property going on under the order of the Court at the instance of the decree-holder, because that decree-holder desired that it should be stayed on the ground that he had made a private purchase of it.

It is in effect an application to set aside a sale, but no grounds are alleged justifying such a proceeding.

It was necessary therefore to put the objection to the Civil Judge's order upon the ground that as the plaintiff had applied for execution, the Court was bound to stay its hand in any matter growing out of that execution, whenever the plaintiff asked it to do so.

There can be no doubt whatever that if the plaintiff had said " my decree is satisfied, I do not wish to proceed further," the Court would not have sold. If it had sold, the person to complain would not have been the plaintiff but the defendant.

I find it impossible to accede to this doctrine in its generality, because it is quite obvious that its effect would be to put in the power of any plaintiff to stay any sale which was proceeding favourably for the interests of the judgment-debtor, and continue his operations until by a long series of abortive offerings for sale he had driven away every bidder except himself.

Whether, however, I am right or wrong in my view of this proposition, the question here is not whether a Court is bound to stay execution without the consent of the judgment debtor, but whether it was bound to stop this sale on the allegation that the decree-holder had effected a private purchase. It was not " do not sell it, because I do not wish to execute my decree," but " do not continue to sell it

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because I have already bought it. The Law requires me to register such a purchase in order that it may be rendered effective. That is rather a troublesome and a slightly expensive process. I may be involved in a suit to compel the defendant to register the document. Act therefore upon a document which the Law has directed that you shall not receive in evidence, and declare me the purchaser at the sale under a decree of Court, although mine is not a purchase under such a decree but one made to defeat that which the Court has ordered to be done."

In my Judgment the Civil Judge was not only not bound to do anything of the kind, but that he would have violated the law if he had done so.

This was property not only under attachment but under sale, and Section 240 in the very largest words declares that after such attachment "any private alienation of the property by sale, gift, or otherwise shall be null and void." In the particular case in which the alienee is the person at whose instance the attachment has been made, it seems to me that the effect of these words is to assimilate the rule as to sales of property to that of the Court of Chancery in England. The natural object of the Court is to sell the property to the greatest advantage. Where it orders a sale by public auction one by private contract may be substituted, but its validity is dependent upon the express order and approbation of the Court. Until that confirmation there is no sale at all. Is it possible to say that any Judge using a sound discretion ought to have confirmed a sale with the best evidence before him that it was not to the best advantage?

Finding no warrant whatever in the Civil Procedure Code for our interference with the order of the Civil Judge, and being clearly of opinion that if there were the right to interfere, the circumstances of this case would render it improper to do so, I continue of the opinion which I entertained at the original hearing that this appeal ought to be dismissed with costs.

Appeal dismissed.