

MADRAS HIGH COURT REPORTS.

1877.  
 Arch 13.  
 S. C. No 11  
 of 1871.

The Court delivered the following.  
**JUDGMENT** :—We are of opinion that Section 89 of the Code of Civil Procedure renders an attachment before judgment ineffectual as a bar to process of execution against the property attached in satisfaction of a decree in another suit, whether obtained before or after the attachment. In the present case, therefore, if the property attached had remained under attachment, the decree-holder would clearly have had a right to enforce the sale of it in execution of his decree. But it has been sold by order of the Court (whether rightly or wrongly it is not necessary here to consider, but we may point out that the Ruling of the Sadr Court quoted by the District Munsif refers to attachment in execution of decrees), and, as respects the claim of the decree-holder, the proceeds of the sale in deposit in the Court must be regarded as representing the property sold. It is, therefore, money in Court which may become payable to the defendant in the event of a decree not being obtained in the suit in which the property was attached, consequently the decree holder's application to attach the money under Section 237 was, we think, regular, and he is at liberty after attachment to apply for an order for the payment out of the money, or any part of it, in satisfaction of the decree, under Section 242.

APPELLATE JURISDICTION (a)

*Special Appeal No. 417 of 1870.*

MOPARTI PITCHI NAIDU.....*Appellant.*

VUPPALA KONDAMMA.....*Respondent.*

A Petition sent by post is not a substitute for the presentation of a plaint as required by Section 50 of Madras Act VIII of 1865.

1871.  
 Arch 13.  
 A. No. 417  
 of 1870.

**THIS** was a Special Appeal from the decision of J. R. Cockerell, the Civil Judge of Nellore, in Appeal Suit No. 20 of 1869, reversing the decree of the Assistant Collector of Nellore in Summary Suit No. 14 of 1868.

The suit was brought under Section 50 of the Rent Recovery Act (Madras Act VIII of 1865) for release of a bullock attached by plaintiff's landlord, and for damages for the injury sustained by the dstraint of the animal.

The Assistant Collector gave judgment for the plaintiff.

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

The defendant appealed to the Civil Court upon the ground, amongst others, that the suit was barred by lapse of time. It appeared that the distraint was made on the 11th July 1868. Twelve days after the plaintiff addressed a petition by post to the Acting Head Assistant Collector. This officer, on receiving the petition, endorsed it, advising the plaintiff that he must lay a summary suit under Act VIII of 1865. The plaintiff filed his plaint on the 25th September.

1871.  
March 13.  
S. A. No. 417  
of 1870.

The Judgment of the Civil Judge was in part as follows:—"The plaintiff should have proceeded under Section 50 and within thirty days from the date of the distraint with reference to Section 18. The words of Section 18 are "if the tenant does not appeal against the distraint by filing a summary suit before the Collector within thirty days from the date of such distraint."

In the present case, the plaintiff filed his plaint on the 28th September, that is to say forty days after receiving his petition endorsed by the Acting Head Assistant Collector. Accordingly the suit is barred by lapse of time.

It has been urged that the requirements of Section 18 of the Act were satisfied by the address of the petition by plaintiff to the Acting Head Assistant Collector, on the 11th July 1868. The argument appears to me to be unsound. A Revenue Officer adjudicating under Act VII of 1865 assumes the functions of a Civil Judge, and his powers are those of a Civil Court and his procedure the same.—Section 50 especially says that a plaintiff is to proceed by plaint. In the present case the communication addressed to the Acting Head Assistant Collector in the first instance was a petition. The *plaint* was not within time.

I reverse the decree of the Lower Court and dismiss plaintiff suit with costs."

The plaintiff presented a special appeal to the High Court on the ground that the Civil Judge was wrong in holding that the plaintiff did not appeal against the distraint within thirty days from the date of the distraint, from the mere fact of his original application not having been written in the form of a plaint.

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*Rama Rau*, for the special appellant, the plaintiff.  
*Rangaiya Nayudu*, for the special respondent, the first  
 defendant.

The High Court confirmed the decree of the Civil Judge upon the ground that a petition sent by post is not a substitute form the presentation of a plaint as required by Section 50 of Madras Act VIII of 1865.

The Special Appeal was, accordingly, dismissed with costs.

APPELLATE JURISDICTION (α)

*Special Appeal No. 179 of 1870.*

KAMMANA KALLACHERI ILLATH }  
 VASSUDAVAN NAMBUDESI and } *Special Appellants.*  
 3 others..... }

CHEMBRAKANDY MUSSA KUTTI }  
 and 2 others..... } *Special Respondents.*

The words "in the meantime" in Clause 15, Section 1 of the Limitation Act, import the time between the creation of the relation of mortgagor and mortgagee in possession and the end of the period of limitation.

*Stansfield v. Hobson* (3 DeG. M. & G., 620) dissented from.

1871.  
 January 6.  
 S. A. No. 179  
 of 1871.

THIS was a Special Appeal against the decision of K. R. Krishna Menon, the Principal Sadr Amin of Tellicherry, in Regular Appeal No. 370 of 1868, reversing the decree of the Court of the District Munsif of Badagara, in Original Suit No. 143 of 1866.

The suit was brought to redeem land alleged to have been demised on otti mortgage in 990 (1814-15.) The District Munsif disbelieved the mortgage sued on, but found a mortgage in 961 (1785-86) and an acknowledgment by the defendants more than 60 years after the date of the mortgage and less than 60 years before suit, and he decreed for the plaintiffs. On appeal the Principal Sadr Amin held that the words "in the meantime," in Clause 15, Section 1 of the Limitation Act, meant, in the case of immoveable property, the interval between the date of the mortgage and the day on which the period of 60 years from that date expires; and he reversed the decision of the District Munsif.

(α) Present: Holloway, Ag. C. J. and Innes, J.