

Appellate Jurisdiction.(a)*Civil Miscellaneous Special Appeal No. 175 of 1875.*

KRISHNA CHETTY.....Appellant.

RAMI CHETTY and 2 others.....Respondents.

In computing the period of limitation, the time during which the judgment-creditor was prosecuting another suit to obtain a reversal of the order dismissing his application for execution of decree and for attachment of the property of the judgment-debtor cannot be deducted.

Provisions in the Limitation Act enacted for extending the period in certain cases where the limitation of suits is in question are inapplicable to proceedings in execution of decrees.

THIS was an Appeal against the order of Mr. F. M. Kindersley, the Acting District Judge of Coimbatore, dated the 10th April 1875, passed on Civil Miscellaneous Petition No. 99 of 1875, confirming the order of the Court of the District Munsif of Erode, dated 3rd February 1875.

1875.
October 1.
C. M. S. A.
No. 175
of 1875.

In this case the final decree of the Appellate Court was passed on the 16th January 1861. The last application made to enforce, or keep in force, the decree was presented on the 22nd September 1871, and a notice under Section 216 of the Code of Civil Procedure was issued on the 6th October 1871.

Upon the last application presented on the 22nd September 1871, the property of the judgment-debtor was attached on the 19th November 1871. A counter-claim was preferred and allowed. A summary order was passed withdrawing the attachment, and the last application was struck off the file on the 7th February 1872. The plaintiff instituted a Regular Suit No. 83 of 1873 to set aside the summary order and to make the said property liable to attachment. The suit was dismissed on the 10th October 1873. The plaintiff preferred an appeal, in Appeal Suit No. 1 of 1874, and the original decree was reversed and a decree was passed on the 20th October 1874, directing that the said property be held liable to attachment and sale for the satisfaction of the decree to enforce which the present application was made.

(a), Present :—Sir W. Morgan, C.J., and Kindersley, J.

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The plaintiff contended that he presented this application within three years from the date of the appeal decree, dated 20th October 1874, and from the date (7th February 1872) on which the last application was struck off the file.

The Lower Court dismissed the application for execution as barred. At the hearing of the appeal from the order of dismissal it was conceded that the order of dismissal was correct, unless the time during which petitioner was prosecuting another suit could be deducted.

The Acting District Judge of Coimbatore dismissed the appeal with costs on the ground that the claim was barred by the Law of Limitation.

From this order the plaintiff appealed.

Mr. P. Shaw, for the appellant.

T. Rama Row, for the 1st respondent.

The Court delivered the following

JUDGMENT:—The application as made is barred, for the appointed time has expired and we are not authorized by the Act to apply to proceedings in execution, provisions enacted for extending the period in certain cases where the limitation of suits is in question.

The appeal is dismissed but without costs.

Appeal dismissed.

NOTE.—See preceding case *Naranappa Aiyar v. Nanna Ammal*, ante p. 97. and the cases in the note thereto.

Appellate Jurisdiction.(a)

Special Appeal No. 365 of 1875.

NARAYANA PILLAY.....(*Plaintiff*) *Special Appellant.*

RAMASAWMY THAVUTHARAN { (*4th Defendant*) *Special*
Respondent.

A bond whereby "the superstructure of a house exclusive of the land beneath" is hypothecated creates an interest in immoveable property within the terms of the Limitation Act, the apparent intention being to mortgage the existing house and not merely the materials

1875.
October 4.
A. No. 365
of 1875.

THIS was a Special Appeal against the decree of Mr. A. C. Buraell, the Acting District Judge of South Tanjore, in Regular Appeal No. 460 of 1874, reversing the decree of the Court of the District Munsif of Combacoium in Original Suit No. 365 of 1873.

(a) Present:—Sir W. Morgan, C.J. and Kindersley, J