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them on condition that their suit shall be brought within six months from the date of dispossession), from asserting the rights which the earlier cases and the English law recognised to exist. That their case was founded upon possession and unjustifiable dispossession is pretty clear: and our decision is limited to the proposition that they are debarred from succeeding, because they did not bring the suit within six months from the dispossession.

For myself, I am bound to say that, but for the rule that it is undesirable to disturb recent and established cases, I should follow the opinion expressed by Mr. Justice Dwarka Nath Mitter, in the case of *Khajah Enactoolah Chowdhry v. Kishen Soondur Surma* (1), and by Sir Richard Garth and Chief Justice Westropp in the cases I have referred to. But without referring the matter to a Full Bench it would be impossible to give effect to that view, and that we cannot do as we do not both dissent from the recent cases in this Court. Therefore, agreeing with my learned colleague as to the effect of the recent cases in this Court, I am of opinion that this appeal must be allowed and the suit dismissed on the ground stated.

Under the circumstances we have determined to allow no costs. The parties will bear their own costs throughout in all the proceedings.

C. D. P.

Appeal allowed.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Norris.

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 Novr. 26.

KHUB. LAL AND ANOTHER (DEFENDANTS) v. RAM LOCHUN KOER
 (PLAINTIFF).*

Limitation Act, 1877, Sched. ii, Art. 11—Civil Procedure Code (Act XIV of 1882), ss. 278, 280, 281, 282—Order disallowing claim to attached property.

The effect of an order made under s. 281 of the Civil Procedure Code disallowing a claim to attached property, is to give the auction-purchaser a title as against the claimant unless the order is set aside by a suit; and

* Appeal from Order No. 34 of 1889, against the order of Baboo Upendra Chunder Mullick, Subordinate Judge of Trihoot, dated the 22nd of December 1888, reversing the order of Baboo Jugal Kishore Dey, Munsiff of Mozufferpore, dated the 19th of September 1888.

a suit for that purpose can only be brought within a year from the date of the order.

Sardhari Lal v. Ambika Pershad (1) referred to.

THIS was a suit brought to recover possession of a fractional share of certain lands which the plaintiff alleged had been sold to her in 1887, but which, after she had taken possession, was attached under a decree obtained against her vendor. The plaintiff thereupon put in a claim under s. 278 of the Code of Civil Procedure, which was however rejected under s. 281 of that Code on the 6th August 1887. She thereupon, on the 7th August 1888, brought the present suit for the purposes above stated. The defendants contended that the suit was barred, it not having been brought within one year from the date on which the plaintiff's claim was rejected.

The Munsiff held that the suit was barred, and dismissed the suit. The Subordinate Judge, on appeal from that order, reversed this decision, holding that the suit was one to establish the plaintiff's title, and was not affected by the order of the 6th August 1887, and that the plaintiff had therefore twelve years in which to bring her suit.

The defendant appealed to the High Court.

Baboo *Saligram Singh*, for the appellant, contended that, against an order passed under ss. 280, 281, or 282 of the Code, a suit must be brought within one year from the date of the order in accordance with Art. 11 of sched. ii of the Limitation Act, and that the suit, not having been brought within that period, was barred.

Baboo *Sharoda Churn Mitter*, for the respondent, contended that the suit was one to recover possession, and not one contemplated by ss. 278 to 283 of the Code, and that the limitation for an ejectment suit was applicable thereto.

The judgment of the Court (PETHERAM, C.J., and NORRIS, J.) was as follows;—

This is a suit by the plaintiff to recover possession of a fractional share in mouza Bishampur Sadho, as having been sold and handed over to her by the owners on the 9th of March 1887.

(1) I. L. R., 15 Calc., 521; L. R., 15 I. A., 123.

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The defence upon which the present question arises is, that, after the sale to the plaintiff, the share of her vendor, including the share purchased by the plaintiff, was attached under a decree against the plaintiff's vendor, and that thereupon the plaintiff preferred a claim to the share now in dispute under s. 278 of the Civil Procedure Code, and that claim was enquired into and rejected on the 6th of August 1887. The present suit was instituted on 7th August 1888, and the question which we have to determine is, whether this suit is barred by limitation.

In our opinion it is. Section 283 provides that the party against whom an order under ss. 280, 281, or 282 is passed, may institute a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive. And Art. 11 of sched. ii of the Limitation Act prescribes one year as the period within which such suit may be brought.

It is contended, in the present case, that this being a suit to recover possession, it is not such a suit as is contemplated by ss. 278 to 283, and that the ordinary limitation for an action of ejectment applies. We think that this is not the case. Section 283 expressly provides that if the suit mentioned in that section is not brought, the order shall be conclusive; and it seems to us that the effect of this is, that the order gives the auction-purchaser a title as against the claimant, unless it is set aside by action, and an action for that purpose can only be brought within a year. In taking this view of the law, we are, we think, acting in the spirit of the decision of the Privy Council in the case of *Sardhari Lal v. Ambika Pershad* (1).

For these reasons we are of opinion that this appeal must be allowed, the decision of the Munsiff restored, and the suit dismissed with costs in all the Courts.

T. A. P.

Appeal allowed.

(1) I. L. R., 15 Calc., 521; L. R., 15 I. A., 123.