

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the appeal of Babu
Sardhari Lal v. Babu Ambika Pershad and
others from the High Court of Judicature at
Fort William in Bengal; delivered February
8th, 1888.*

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[Delivered by LORD HOBHOUSE.]

THE sole question in this suit is whether it is brought in time to satisfy the exigencies of the Law of Limitation. The Plaintiff's case is, that he was aggrieved by an Order passed on the 31st of July 1880, and he now seeks to get rid of it in this suit. The Order was passed in execution proceedings under the provisions of section 280 of the Code of 1877, and the effect of it was to allow certain objections that had been lodged to an attachment obtained by the Plaintiff in another suit in which he was Plaintiff and decree-holder, and to release from attachment the property which at his instance had been attached and put up to sale. The Plaintiff was entitled, under section 283 of the Code, notwithstanding the Order in question, to institute a suit to establish the right which he claims to the property then attached and put up to sale. But then it is provided by the 11th Article of the Limitation Act, Act 15 of 1877, that a suit by a person against whom an Order is passed under section 280 of the Code of Civil Procedure to establish his right to the property comprised in the Order must be brought

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within one year from the date of the Order. Now this suit was not brought until the 20th May 1882, that is to say, about 22 months after the date of the Order. It is clearly therefore out of time unless it can be shown that for some reason or other the case does not fall within the article of the Limitation Law.

Two reasons have been suggested why their Lordships should hold that the case does not so fall within the article. It is said that the article in question is aimed at Orders passed against the persons who object to the attachment. But the answer is that it is aimed against persons who object to Orders passed under section 280; and it is not suggested that there can be any person against whom an Order can be passed under section 280 except the decree-holder himself. He therefore is the very person who by section 283 is empowered to institute a suit to establish his claims, and who, by Article 11 of the Limitation Law, is confined to one year for the institution of that suit.

The other reason assigned is that section 280 does not contemplate that any Order shall be made until after an investigation which is directed by section 278. The answer to that is that in the first place we do not know what took place before the Subordinate Judge who made this Order. It may have been that the parties who were before him agreed so far upon facts that he was enabled to deliver his opinion off hand. But besides that, the Code does not prescribe the extent to which the investigation should go; and though in some cases it may be very proper that there should be as full an investigation as if a suit were instituted for the very purpose of trying the question, in other cases it may also be the most prudent and proper course to deliver an opinion on such facts as are before the Subordinate Judge at the time, leaving the

aggrieved party to bring the suit which the law allows to him. However that may be (and their Lordships do not desire to pronounce any opinion as to the extent of the investigation which is required under the Code), in this case the Order was made; and it was an Order within the jurisdiction of the court that made it. It is not conclusive; a suit may be brought to claim the property, notwithstanding the Order; but then the Law of Limitation says that the Plaintiff must be prompt in bringing his suit. The policy of the Act evidently is to secure the speedy settlement of questions of title raised at execution sales, and for that reason a year is fixed as the time within which the suit must be brought.

Their Lordships are clearly of opinion that this case falls within the scope of the 11th article in question, and that the suit must fail upon that ground.

The result is that their Lordships agree with the courts below; they think that the appeal should be dismissed, and they will humbly advise Her Majesty in accordance with that opinion.

